STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of INDIANA MICHIGAN POWER COMPANY for reconciliation of its power supply cost recovery plan (Case No. U-20804) for the 12-months ended December 31, 2021.	)))))	Case No. U-20805

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 December 1, 2023.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before January 5, 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 January 19, 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

Sharon L. Feldman

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Sharon L. Feldman
Administrative Law Judge

December 1, 2023
Lansing, Michigan

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

Indiana Michigan Power Company (I&M) filed its application to reconcile its 2021 PSCR plan in this docket on March 31, 2022. The application reported a 2021 underrecovery of $1,98,861, with a cumulative underrecovery of $6,498,163, based on a beginning underrecovery balance of $5,386,708 and including interest, as shown on Exhibit IM-4, page 2. I&M's application was accompanied by the testimony and exhibits of 8 witnesses, Justin R. Ray, Keith A. Steinmetz, Terry L. Gates, Michelle M. Howell, Timothy C. Kerns, Jason E. Walcutt, Jason M. Stegall, and Jon C. Walter. At the May 12, 2022 prehearing conference held before Administrative Law Judge Dennis M. Mack, the company, Staff, and the Attorney General appeared, the Attorney General's notice of

intervention was granted, and a consensus schedule was adopted. A protective order was subsequently issued on July 22, 2022.

This matter was transferred to the undersigned ALJ on September 20, 2022, and the schedule was subsequently revised twice at the request of the parties. Consistent with the schedule established on January 4, 2023, on April 17, 2023, Staff filed the testimony and exhibits of witnesses Karen M. Gould, Raushawn D. Bodiford, and Paul M. Adams, and the Attorney General filed the testimony and exhibits of Devi Glick. Following a third schedule adjustment requested by the parties, I&M filed the rebuttal testimony and exhibits of two of its witnesses, Mr. Stegall and Mr. Walter, and Staff filed the rebuttal testimony of Mr. Bodiford on June 12, 2023.

I&M and the Attorney General each filed motions to strike on June 23, 2023, and I&M also filed a motion for leave to file surrebuttal testimony. At the evidentiary hearing held on July 14, 2023, the parties indicated that they had resolved the motions to strike and the motion for leave to file surrebuttal, with the motions to strike withdrawn as well as objections to the proposed surrebuttal testimony. By further agreement of the parties, the testimony of all witnesses was bound into the record without the need for them to appear, and all proffered exhibits were admitted into evidence. The parties filed briefs on September 8 and reply briefs on October 16, 2023.

The record in this case is contained in 237 pages of public transcript, with a confidential version of the testimony of witness Stegall bound into a separate confidential record, and 54 exhibits. Following a brief review of the evidentiary record in section II below, the disputed issues are discussed in section III.

II.

OVERVIEW OF THE RECORD

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

A. Indiana Michigan

I&M presented the direct testimony of eight witnesses and eight exhibits.

Justin R. Ray, Manager for Transportation, Logistics, and Railcar Fleet for American Electric Power Service Corporation (AEPSC), discussed I&M's coal purchases during 2021, including an overview of the coal market, and an explanation of I&M's purchasing strategy and major coal supply arrangements as well as its use of the Cora Terminal.[1] He compared actual coal costs to the plan forecast, with details in Exhibit IM-1, and testified to the reasonableness and prudence of I&M's actions.

Keith A. Steinmetz, Manager of Nuclear Engineering for I&M, testified to support the reasonableness and prudence of I&M's operation of the Cook nuclear plant.[2] He provided an overview of the responsibilities of his department, a description of major fuel contracts, a discussion of actions I&M took to minimize its actual nuclear costs, and a comparison to the plan case forecast for each of the two Cook units.

Terry L. Gates, Manager for Commercial Operations Support – RTO for AEPSC, presented an overview of I&M's PJM market activity, including costs and revenues, in 2021.[3] He explained the participation of I&M's parent company, American Electric Power Company (AEP) in PJM as a load serving entity, a capacity resource provider, and a

[1] Mr. Ray's testimony is transcribed at 2 Tr 23-33; his qualifications are presented at 2 Tr 23-24.
[2] Mr. Steinmetz's testimony is transcribed at 2 Tr 34-48; his qualifications are presented at 2 Tr 34-36.
[3] Mr. Gates's testimony is transcribed at 2 Tr 49-59; his qualifications are presented at 2 Tr 49-50.

transmission owner, and the costs and revenues associated with these roles. He testified that membership in PJM has significantly affected the dispatch of AEP's or I&M's generating units, and that the PJM costs reflected in I&M's reconciliation for 2021 were reasonable and prudent.

Michelle M. Howell, Director of Transmission Settlements and Investments for AEPSC, addressed the costs included in I&M's reconciliation associated with AEP's Open Access Transmission Tariff (OATT), including a discussion of the components of the charges and credits as well as comparison of plan forecast to actual costs in Exhibit IM-2.[4] She testified that the costs reflected in I&M's 2021 reconciliation were reasonable, noting that the AEPSC Settlements group "shadow settled the PJM charges and credits concurrently with PJM to help ensure the accuracy of PJM invoices, and further cited witness Walcutt's testimony for the calculation of the OATT costs.

Timothy C. Kerns, Vice President for Generating Assets for both I&M and Kentucky Power Company, testified regarding an extended outage at Rockport unit 1 during 2021, with a detailed chronology in Exhibit IM-3.[5] He provided his opinion that no part of the extended outage was caused or prolonged by I&M's negligence or unreasonable or imprudent management.

Jason E. Walcutt, a Regulatory Consultant Senior in the Regulatory Services Department of I&M, presented the reconciliation of the company's PSCR costs and revenues for 2021, as shown in Exhibit IM-4.[6] He described the four pages of the exhibit, the factor I&M billed during the plan year, and the interest calculations. He further testified

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[4] Ms. Howell's testimony is transcribed at 2 Tr 60-68; her qualifications are presented at 2 Tr 60-61.
[5] Mr. Kerns's testimony is transcribed at 2 Tr 69-73; his qualifications are presented at 2 Tr 69-70.
[6] Mr. Walcutt's testimony is transcribed at 2 Tr 74-83; his qualifications are presented at 2 Tr 74-75.

that the 2021 underrecovery was primarily due to lower off-system sales margins than forecast, also citing Mr. Ray's testimony. He cited the testimony of other I&M witnesses in opining that the costs included in the company's reconciliation were reasonable and prudent.

Jason M. Stegall, Manager of Regulatory Pricing & Analysis for AEPSC, testified in support of the costs associated with I&M's Intercompany Power Agreement (ICPA) with the Ohio Valley Electric Corporation (OVEC).[7] He addressed the Commission's recent orders concerning this agreement, and proposed what he considers an appropriate market comparison to use in applying the affiliate price cap, also presented Exhibits IM-5 and IM-6 in support of this testimony. Mr. Stegall also addressed I&M's operation of the Rockport plant in 2021. His rebuttal and surrebuttal testimony are reviewed below.

Jon C. Walter, Consumer and Energy Efficiency Programs Manager for I&M, addressed I&M's shortfall in meeting the company's Energy Waste Reduction (EWR) targets as required by the Commission's March 17, 2022 order in Case No. U-20867.[8] He presented Exhibits IM-7 and IM-8 in support of I&M's analysis of the impacts of failure to meet the EWR standard on the company's PSCR fuel and market energy costs. His rebuttal testimony is reviewed below.

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[7] Mr. Stegall's testimony, including his direct, rebuttal, and surrebuttal testimony, is transcribed at 2 Tr 84-141, with a confidential version in the confidential transcript; his qualifications are presented at 2 Tr 84-85.
[8] Mr. Walter's testimony, including his direct and rebuttal, is transcribed at 2 Tr 142-162; his qualifications are presented at 2 Tr 142-143.

B. Staff

Staff presented the direct testimony of three witnesses and three exhibits.

Paul M. Adams, Auditor in the Energy Cost Recovery Reconciliation section of the Commission's Regulated Energy Division, explained Staff's position regarding I&M's reconciliation, with Staff's revised underrecovery calculation in Exhibit S-1.[9] Mr. Adams explained that Staff revised the beginning balance from the $5,386,708 used in I&M's filing to $4,034,386, in order to reflect the Commission's February 2, 2023 order in I&M's 2020 reconciliation, Case No. U-20530. Mr. Adams revised the interest calculations accordingly to calculate a cumulative underrecovery of $5,142,482. He explained that this amount does not consider any of the alternative recommendations made by Staff witness Gould to reflect I&M's failure to meet its EWR target in 2020.

Karen M. Gould, Manager of the Energy Waste Reduction section of the Commission's Energy Resources Division, explained Staff's objection to the analysis I&M presented in response to the Commission's order in Case No. U-20867. She provided the Commission with multiple alternatives to address I&M's failure to meet its EWR targets, identifying Staff's preferred option as a $1.28 million disallowance, with annual revisions to be determined in future proceedings and with the potential for cancelation or offsets should I&M exceed its savings target in future years. She presented Exhibit S-2 in support of her testimony.

Raushawn D. Bodiford, Public Utilities Engineer in the Energy Cost Recovery & Generation Operations section of the Commission's Energy Operations Division,

[9] Mr. Adams's testimony is transcribed at 2 Tr 197-201; his qualifications are presented at 2 Tr 198-199,

explained Staff's review of I&M's procurement policies and practices and PSCR costs, including a comparison to the plan case projections.[10] He also specifically addressed I&M's costs under the OVEC ICPA, testifying that Staff did not recommend an adjustment, but noting the lack of a significant piece of information to follow the method of determining the market price for Code of Conduct compliance. Mr. Bodiford presented Exhibit S-3 in support of his testimony, and also presented rebuttal testimony, which is reviewed below.

C. Attorney General

The Attorney General presented the direct testimony of one witness and 32 exhibits.

Devi Glick, Senior Principal with the consulting firm Synapse Energy Economics, Inc., reviewed I&M's OVEC ICPA costs and the costs paid under an agreement with its affiliate for power generated by the Rockport plant.[11] She recommended a $2 million disallowance for OVEC to reflect the market price, critiquing I&M's analysis, and she recommended a $15.9 million disallowance of costs assessed under the Rockport agreement. In addition to her resume in Exhibit AG-1, Ms. Glick presented Exhibits AG-2 through AG-32 in support of her testimony.

D. Rebuttal

I&M presented the rebuttal testimony of witnesses Stegall and Walter. In his rebuttal testimony, Mr. Stegall responded to Attorney General witness Glick's recommended disallowance regarding the OVEC ICPA and the Rockport agreement,

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[10] Mr. Bodiford's testimony, including his direct and rebuttal testimony, is transcribed at 2 Tr 216-235; his qualifications are presented at 2 Tr 217-219.

[11] Ms. Glick's testimony is transcribed at 2 Tr 165-194; her qualifications are presented at 2Tr 169-170 and in Exhibit AG-1.

asserting that the Commission should adopt I&M's analysis as presented in his direct testimony or alternatively consider using one of the company's recent renewable energy contracts as a benchmark. He presented Exhibits IM-10 and 11 in support of this testimony.

In his rebuttal testimony, Mr. Walter took issue with Staff witness Gould's alternative recommendations regarding the company's failure to meet its 2020 EWR savings requirement. While defending the analysis presented in his direct testimony, he presented an alternative analysis in Exhibit IM-9.

Staff presented the rebuttal testimony of Mr. Bodiford, who provided a revised recommendation regarding the OVEC ICPA that included a disallowance of $803,809. He testified that through the Attorney General, Staff was able to obtain the information needed to follow the method the Commission used in Case No. U-20503, as shown in Exhibit S-4.

The Attorney General did not present rebuttal testimony, but did present an additional seven exhibits, Exhibits AG-33 through AG-39.

The surrebuttal Mr. Stegall presented by agreement of the parties addressed Staff witness Bodiford's rebuttal testimony recommending a disallowance related to the OVEC ICPA, contending that Staff misapplied the process the Commission used in Case No. U-20530, and misapplied values from the DTE Energy agreement.

III.

DISCUSSION

Based on the briefs of the parties, the following disputed issues require resolution in this proceeding: the appropriate beginning balance, as discussed in section A; the

treatment of OVEC ICPA costs as discussed in section B; the treatment of Rockport costs as discussed in section C; and the appropriate analysis of I&M's EWR shortfall as discussed in section D. At the outset of this discussion, this PFD notes that the evaluation of the issues has been made more difficult by a number of untenable arguments advanced by I&M, and by the lack of detailed information in its filing and evidentiary presentation.

A. Beginning balance

While it is routine for Staff to revise the beginning balance in PSCR reconciliations since often utility applications are filed before the reconciliation of the prior year's PSCR plan has been completed. There is no dispute in this case that the Commission determined a 2020 year-end underrecovery amount in Case No. U-20530 of $4,034,386, as Staff witness Adams explained. Nonetheless, I&M appears to raise two objections to revising the beginning balance in its brief: first, it seems to contend that because the 2020 reconciliation was not final at the time it filed, its filed beginning balance should not be revised; second, it notes that it has appealed the Commission's order in Case No. U-20530. I&M thus argues:

> Staff's calculation considers information unknown at the time the Company filed its application as the Commission's Order in I&M's 2020 PSCR Reconciliation was issued on February 2, 2023. The Company maintains its request for the total under-recovery amount, including interest, of $6,498,163. In the alternative, if the Commission adopts Staff's position, which is considered in light of Case No. U-20530, the Company requests the Commission permit I&M to seek additional under-recovered PSCR costs and expenses as needed pending the appeal of Case No. U-20530.[12]

This PFD finds I&M's request to retain the beginning balance it filed is unreasonable, without evidentiary support, and fundamentally inconsistent with the rolling

[12] I&M brief, 17-18; also see I&M reply, 36.

method for addressing PSCR overrecoveries and underrecoveries that the Commission has adopted for decades. While I&M notes that it has appealed the Commission's order in Case No. U-20530, any ruling on that appeal will be appropriately addressed by the Commission, with no need for any additional adjustments in this case.

B. OVEC ICPA

I&M's 2021 PSCR costs include power generated by the Ohio Valley Electric Corporation (OVEC) and supplied to I&M under the terms of the inter-company power agreement (ICPA), as amended. Exhibit IM-4 reports that I&M paid approximately $52.2 million for approximately 790,000 MWh in 2021, or $66.04/MWh. Exhibit IM-4 also reports that in the plan case, I&M forecast total costs of approximately $47.9 million, generation of 624,400 MWh, and a per-MWh cost of $76.71/MWh. The ICPA has been the source of dispute in prior cases, and was the subject of the Commission's warning under MCL 460.6j(7) (section 7 warning) in the plan case underlying this reconciliation that based on the evidence presented, the Commission would be unlikely to allow I&M to recover the projected costs. The plan case order and the Commission's recent order in Case No. U-20530 are reviewed by way of background in section 1 below; section 2 reviews the record evidence; section 3 reviews the briefs of the parties; and section 4 presents findings, conclusions and recommendations.

1. Background

In its November 18, 2021 order in the plan case, Case No. U-20804, the Commission reviewed the background of this agreement, and explained that because I&M has never presented the agreement for Commission review and approval, the costs are reviewed each year in the PSCR process for reasonableness and prudence:

> I&M's PSCR plan includes costs associated with the purchase of power from OVEC under the ICPA. It is uncontested that OVEC is an entity jointly owned by 12 utilities in Ohio, Indiana, Michigan, Kentucky, West Virginia, and Virginia. OVEC operates two 1950s-era coal fired power plants—Kyger Creek, a five-unit, 1,086 megawatt (MW) plant in Gallia County, Ohio, and Clifty Creek, a six-unit, 1,303 MW plant in Jefferson County, Indiana. OVEC supplies the power from these plants to utilities through a long-term contract, the ICPA. Together the utilities are responsible for the fixed and variable costs of OVEC. OVEC bills utilities a variable, demand, and transmission charge. 2 Tr 301-302. It is also uncontested that I&M is responsible for 7.85% of OVEC's fixed and variable costs and is entitled to a 7.85% share of OVEC's power output. The cost of the ICPA is passed through to I&M ratepayers as a direct cost. 2 Tr 302.
>
> The ICPA was set to expire on December 31, 2005. Before the contract was set to expire, the sponsors to the contract (Sponsors or Sponsoring Companies) agreed to extend the terms of the ICPA to 2026. In September 2010, the Sponsors again agreed to revise the ICPA to extend its terms until 2040. I&M and other Sponsors are obligated to cover the costs of the OVEC plants through 2040. 2 Tr 302. As the Staff testified in this case, I&M has not presented the ICPA for review by the Commission. 2 Tr 284. I&M did not seek approval from the Commission for the decision to extend the contract in 2004 or 2010. The actual costs resulting from I&M's participation in the OVEC ICPA are therefore reviewed each year in the PSCR process for reasonableness and prudence. 2 Tr 285.[13]

The Commission then explained at length its conclusions that the ICPA is an affiliate transaction, that on a forward-looking basis the operation of the OVEC units is uneconomical, and that the agreement is subject to the Code of Conduct, including the price cap. Among the Commission's findings was its finding that the ICPA was not approved by FERC.

Regarding application of the Code of Conduct price cap, the Commission explained that it will look in part to this reconciliation to determine the best proxy:

> As previously noted, based on the record in this case the embedded cost of the ICPA is higher than the PJM market price. However, in the May 13 order [in Case No. U-20529], the Commission found that reviewing costs

[13] November 18, 2021 order, pages 12-13.

> associated with a long-term contract as they relate to short-term market purchases is not an appropriate basis for comparison and a comparison to the PJM capacity market, on its own, was insufficient to warrant a disallowance of funds. May 13 order, p. 18. The Commission stated that it would 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. Sierra Club provided three alternatives with which to compare the ICPA costs on the record in this case. While there may be other available comparisons, the Commission finds that the Rockport sale capacity value and net CONE may be appropriate proxies for calculating market price and I&M's resulting PSCR factor. There may also be legitimacy in valuing the attributes of price stability, supply certainty, and resilience afforded by a utility's Fixed Resource Requirement (FRR) alternatives to the PJM capacity market.
>
> The Commission will look to the upcoming IRP and reconciliation filings for greater evidence on whether the market price of net CONE is the appropriate proxy, or how best to price these incremental attributes associated with FRR resources for application of the affiliate price cap. In addition, should I&M seek to use a proxy other than the capacity value of the recent sale of Rockport Unit 2, it should prefile testimony in the reconciliation addressing why the OVEC market value differs from the Rockport unit's capacity value.[14]

While the Commission reiterated the directive from I&M's 2020 plan case that the company evaluate the ICPA as part of its then-upcoming IRP filing, as quoted above, the Commission acknowledged in a subsequent order in Case No. U-20152 that the settlement agreement approved in the IRP proceeding, Case No. U-21189, did not address cost approval, leaving the issue for PSCR plans and reconciliations, including this case.[15]

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[14] November 18, 2021 order, Case No. U-20804, page 22.

[15] June 22, 2023 order, Case No. U-21052, page 22 ("The Commission notes that I&M's IRP was resolved by a settlement agreement that did not include a proxy and Case No. U-20805 is currently pending before the Commission; therefore, an appropriate proxy has not been determined in either of those cases.")

In its February 2, 2023 order in Case No. U-20530, addressing I&M's 2020 plan reconciliation, the Commission adopted the $1.347 million disallowance recommended in the PFD in that case:

> Based on the previous decisions of the Commission and the evidence presented in this proceeding, the Commission agrees that the ALJ's recommended disallowance of $1.347 million is appropriate. The Commission agrees that cost comparison of prior power transaction costs are the fairest benchmarks for calculating the disallowance. As it pertains to I&M's arguments regarding the Attorney General's comparisons, the Commission notes that it would be difficult to produce comparisons that are 100% identical to the OVEC units. However, as the Attorney General demonstrated, comparisons can be made and the failure of I&M to provide the Commission with meaningful benchmarks when repeatedly directed to do so is not well taken.[16]

The PFD's recommended disallowance was based on the average of the costs paid under two agreements, one in which the Midland Cogeneration Venture Ltd (MCV) supplied power to Consumers Energy, and one in which DTE Energy supplied power from the Belle River plant to the Michigan Public Power Agency (MPPA). The PFD also considered including an agreement under which Consumers Energy supplied power to the MPPA from Campbell unit 3, but considered the significantly lower cost per MWh under that agreement to be an outlier. The PFD explained the ALJ's consideration of these three agreements, as well as other cost comparisons presented by the Attorney General in that case:

> [T]his PFD recommends that appropriate disallowances be ordered based upon the long-term cost comparisons offered by the Attorney General. This PFD notes that these various costs make up a reasonable and relatively narrow range, with the exception of the MPPA's cost from Consumers Campbell 3, which cost amount is rejected from consideration as an outlier. This PFD finds that each of these various categories of cost comparisons – prior power transactions, CONE, and RFPs – are supported by the record

[16] February 2, 2023 order, Case No. U-20530, page 11.

evidence in this case and are appropriate benchmarks for the Commission to consider in calculating any disallowance.[17]

2. Record evidence

In direct testimony, responding to the section 7 warning the Commission issued in the plan case regarding the costs of the OVEC ICPA, Mr. Stegall provided a general description of OVEC, its generating facilities, and I&M's benefits and obligations under the most recent agreement, the Amended and Restated ICPA, dated September 10, 2010.[18] He contended that in "recent cases" intervenors "have begun mischaracterizing I&M's authority under the ICPA as giving I&M power to operating and make operational decisions at OVEC."[19] He asserted that this mischaracterization "fails to acknowledge that I&M is one vote of the many needed to effectuate management or operational decisions."[20]

Mr. Stegall testified that a comparison to the PJM capacity market is insufficient on its own to warrant a disallowance, citing the Commission's order in Case No. U-20529 for support. He explained that I&M meets its capacity obligation in PJM by meeting the Fixed Resource Requirement and does not participate in the reliability auctions. He also distinguished the auction clearing price as reflecting "a different capacity product than the capacity purchased under the ICPA,"[21] since the ICPA is not short term and does entitle I&M to receive energy not dependent on market prices.[22]

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[17] April 18, 2022 PFD issued in Case No. U-20530, page 61.
[18] The agreement is not included in the record.
[19] 2 Tr 88.
[20] 2 Tr 88.
[21] 2 Tr 89.
[22] 2 Tr 89-90.

Mr. Stegall recommended that the Commission use the transfer price determined under Act 295, and published in Case No. U-15800, "as a proxy for the market price of energy and capacity on a dollar-per-megawatt-hour basis."[23] He explained the mechanics of his proposal:

> The transfer prices will be compared to the demand-related and energy-related costs incurred under the ICPA on a cumulative basis, beginning in 2013 with the first issuance of a transfer price schedule and will continue with the inclusion of the first year of each subsequent transfer price schedule issued under Case No. U-15800 through 2029. If, during a future PSCR reconciliation proceeding, the Company's annual comparison results in a situation where the cumulative costs under the ICPA exceed the costs of the same amount of energy under the transfer price, the Company will include that deficiency, net of any previously issued credit, as a credit in its PSCR Reconciliation revenue requirement.[24]

And he explained the reasoning underlying the cumulative basis he selected:

> Long-term contracts like the ICPA, should be evaluated over their full term since they may be below the market price in some years and above it in others. In addition, because the ICPA is a long-term contract for cost-based energy, it acts as a hedge to uncertain market prices. Over the ICPA's term, the total benefits outweigh the occasional year when market prices may fall below its cost and I&M should not be penalized for certain years being more costly than market without consideration of the other years that have been more beneficial when compared to market.[25]

Mr. Stegall testified that in the event the transfer price is discontinued, I&M would perform the annual calculation using a similar methodology.

Mr. Stegall presented a comparison of the ICPA costs to the transfer prices using his method in Exhibit IM-5, covering the years 2013-2021. He testified that he excluded "all transmission and PJM-related costs" under the ICPA "because they are excluded from

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[23] 2 Tr 90.
[24] 2 Tr 90.
[25] 2 Tr 90-91.

the Commission staff's calculation."[26] As a result, he restated the ICPA costs as $64.10/MWh for 2021, with the calculated values for other years shown in Exhibit IM-5. Summarizing the results, he testified that: "The 2023 transfer price schedule clearly demonstrates the expected future price of conventional generation at the time the ICPA was extended," with a cumulative value of $86.2 million.[27] He further concluded: "Viewing the same transfer price on a year-by-year basis, the cost of power under the ICPA since 2013 has been less than the annual transfer price used by the Commission by $60.7M on a cumulative basis through 2021."[28]

Mr. Stegall also compared the ICPA to what he characterized as two Consumers Energy long-term contracts for coal-fired generation,[29] presenting the comparison in his Exhibit IM-6. One Consumers Energy agreement is with the Michigan Power Limited Partnership (MPLP) and the other agreement is with North American Natural Resources Inc. (referred to as NANR or NANRI in the record). As the source for the cost data for these contracts, he cited Ms. Glick's testimony in Case No. U-21052, and Exhibit SC-22 from that case:

> Using hourly PJM settlement data for the Company's share of ICPA energy, I determined on and off peak energy supplied to I&M under the ICPA in 2021. I then applied the per-kilowatt hour administrative and capacity rates identified in Ms. Glick's exhibit. The result provides a hypothetical demand charge under those contracts, which was then compared to the demand charges billed under the ICPA. Both contracts bill their fuel charges based on cost and the exhibit does not identify a specific energy rate, so I held the energy charges billed under the ICPA constant for purposes of my comparison.

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[26] 2 Tr 92.
[27] 2 Tr 93.
[28] 2 Tr 93.
[29] 2 Tr 93. The record shows that these contracts are not actually for coal-fired generation. See, e.g., Glick, 2 Tr 179.

> The first Consumers Energy agreement, with Michigan Power Limited Partnership (MPLP), shows the capacity charges to be approximately $250 thousand or 0.8% below what the Company paid in demand charges under the ICPA in 2021. The second contract, with North American Natural Resources Inc. (NANRI), shows the capacity charges to exceed the 2021 demand charges under the ICPA by $3.6 million or 10.6%. This shows that the capacity cost of OVEC is in line with, or better than, contracts currently providing energy and capacity to another Michigan utility. That analysis has been provided in Exhibit IM-6 (JMS-2).[30]

Mr. Stegall also compared I&M's PJM energy and ancillary market revenues of $29.5 million to the $20.4 million in energy costs I&M paid under the ICPA in identifying a net benefit of $9.1 million. He presented a summary chart of his results at 2 Tr 95, Table JMS-1.

Mr. Bodiford reviewed the Commission's order in Case No. U-20529 in explaining that I&M is required to demonstrate that the ICPA complies with the pricing cap provisions of the Code of Conduct.[31] He addressed I&M's analysis as explained by Mr. Stegall, disputing that the transfer price is a sufficient proxy for market price on a dollar-per-megawatt basis:

> The Commission has explicitly discussed what it has determined are proper uses for the transfer price in the past. In Case No. U-15806, the Commission noted that:
>
> > Pursuant to Section 47(2)(b) of Act 295, the Commission is required to annually set a transfer price for ***renewables costs*** that will flow through the company's PSCR. The transfer price is ***simply a mechanism for estimating and allocating the reasonable and prudent costs of renewable energy between the PSCR and the REP surcharge***, (August 25, 2009 order in Case No. U-15806, p. 12, 8 ***emphasis added***).

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[30] 2 Tr 94.
[31] 2 Tr 224-225.

> It would follow that the Commission would again instruct DTE Electric in Case No. U-17302 that the transfer price schedule was appropriate "for ***planning purposes***, such as the calculation of surcharges, ***only***."[32]

He then explained that in Case No. U-20530, the Commission determined that "cost comparison of prior power transaction costs are the fairest benchmarks." He reviewed the basis for the disallowance in that case, and explained Staff's efforts to remain consistent with the comparison adopted in that order:

> In an effort to remain consistent with past Commission orders, Staff compared the 2021 costs for the OVEC ICPA to one of the recommended market price cap proxies approved by the Commission's order in the 2020 PSCR Reconciliation in Case No. U-20530. Staff determined that the MPPA/DTE Belle River transaction costs in Case No. U-20530 were calculated using data procured through an intervener discovery process in a different case involving DTE Electric. Staff was unable to determine these transaction costs for 2021 as they are not publicly available. Staff was however able to determine transaction costs for the Consumers-MCV PPA which can be found in Case No. U-20803, Consumers Energy's 2021 PSCR Reconciliation case. The recorded cost for the Consumers PPA with MCV is $73.26 per MWh. Company witness Stegall supported an ICPA cost for 2021 of $64.10 per MWh, for a difference of $9.16 per MWh. When this difference is multiplied by the 790,000 MWh of electricity billed in 2021 and reduced for the Michigan jurisdictional share (13.9%) of costs, Staff determined that I&M's costs for the OVEC ICPA in 2021 were about $1,005,860 below the market price cap established by this comparison.[33]

He then testified that if new information became available through this proceeding, Staff reserves the right to change its recommendation.[34]

In her direct testimony for the Attorney General, Ms. Glick clarified that she is not recommending how the OVEC plants should be operated. After reviewing the OVEC plants and ICPA history as well as prior Commission orders, Ms. Glick explained that she does not consider either the transfer price or the Consumers Energy PPAs that Mr. Stegall

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[32] 2 Tr 226-227 (emphasis in original).
[33] 2 Tr 228.
[34] 2 Tr 229.

cited to be comparable for purposes of applying the market price cap in the Code of Conduct. Regarding the transfer price, she testified:

> The transfer price is fundamentally not a market cost comparator. It is based on the levelized cost of power from a new natural gas plant that begins operating in 2022. The levelized cost represents an average lifetime cost, calculated as the net present value of the cost to build, maintain, and operate a plant over the entire life of the PPA. This is problematic for several reasons.
>
> First, Staff assumes the lifetime is 20 years, which is a relatively short lifetime over which to spread the full capital investment of a new fossil resource. Industry standard assumptions for new gas resources are generally 30 years, as I&M itself assumed in its most recent integrated resource plan ("IRP").
>
> Second, the average cost of power over a plant lifetime does nothing to reflect the cost of power in single, specific year where market factors may be driving higher or lower relative costs and utilization in a given year.
>
> Finally, the Commission established in several prior dockets that the transfer price is only to be used for planning purposes, such as the calculation of the renewable energy plan docket (REP) surcharge.[35]

Turning to the Consumers Energy agreements, Ms. Glick expressed concern that I&M continued to cite these agreements as comparable, noting that the company had erroneously labeled these agreements as PPAs for coal-fired generation in Case No. U-20529. She testified that the MPLP PPA covers a 125 MW gas-fired plant, and the NANR PPA covers a 4.8 MW landfill gas plant, and "neither are close to the size of the Clifty Creek or Kyger Creek Plants" covered by the ICPA:

> Witness Stegall first cited these PPAs as comparators in rebuttal testimony in Case No. 20529, where he mischaracterized both units as coal generators. It is forgivable for I&M to erroneously cite these as reasonable comparators in one docket, but cross-examination and briefing in Case No. U-20529 made clear the specific characteristics of each. The Company knows that the Commission is looking to I&M to provide reasonable

[35] 2 Tr 178-179.

> comparators and that these two PPAs are not reasonable comparators. By citing them again in this current docket, and not providing other reasonable benchmarks, I&M is once again putting the onus on the Commission to determine a reasonable benchmark.[36]

Ms. Glick presented several alternative long-term supply comparisons, reflected in her Table 2 at 2 Tr 181, which she generally described as including: "(1) The costs billed or paid by other entities for similar services provided under long-term PPAs; (2) the cost of replacement capacity resources as represented by Cost of New Entry (CONE); (3) The cost of replacement capacity and energy resources as represented by responses to requests for proposals (RFP) and other Company information; (4) and the PJM short-term capacity and energy market."[37]

In the category of costs billed or paid by other entities for similar services provided under long-term PPAs, she discussed two agreements the Michigan Public Power Agency (MPPA) entered into, one with Consumers Energy for power from its Campbell unit 3 and one with DTE Energy for power from Belle River. She calculated that comparable costs for these agreements in 2021 were $35.92/MWh and $40.30/MWh respectively. She testified: "These changes covered the construction, fuel, and operations and maintenance ("O&M") expenses from similar thermal resources and provided both energy and capacity to MPPA."[38]

In the second category, she discussed measures of CONE based on a 2022 report by the Brattle consulting firm, and the 2018 version of that report. Ms. Glick explained how she derived the range of values in her table, including $48.49/MWh and

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[36] 2 Tr 179.
[37] 2 Tr 180.
[38] 2 Tr 182.

$46.06/MWh, respectively, for a new combined-cycle unit and a new combustion turbine unit available in 2022, and $60.72/MWh and $53.85/MWh, respectively, for the same units available in 2026:[39]

> I arrived at these values by multiplying the $/MW-Day CONE values by the 174 MW of capacity that I&M purchases as part of the PPA with OVEC and then multiplying that by 365 days in a year. I then added the energy cost that I&M paid for its share of OVEC power. Finally, I divided that total cost of the power by the MWh of generation purchased from OVEC to find the total $/MWh.[40]

Ms. Glick further explained that CONE values are significantly higher than the PJM 2021/2022 planning period auction prices because there is surplus capacity in that market. She also testified that capacity prices are expected to fall due to lower demand attributable to energy efficiency and increased behind-the-meter solar, increased supply from utility-scale renewables, and a change in the PJM auction rules.[41] The capacity and energy market value included in her table reflects the 2021/2022 auction results included in Exhibit AG-11.

Turning to the results from the RFP I&M issued in 2021 as part of its 2021 IRP planning process, Ms. Glick determined the corresponding capacity and energy values for medium and large solar and for wind, as shown in her Table 2, with costs ranging from $44/MWh to $50/MWh. And she also looked at the results from an RFP issued by Northern Indiana Public Service Company (NIPSC), with costs ranging from $39.63/MWh to $42.77/MWh.[42]

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[39] 2 Tr 182-183.
[40] 2 Tr 183.
[41] 2 Tr 183-184.
[42] 2 Tr 184-185; Table 2 at 2 Tr 181.

Ms. Glick also noted that following the Commission's orders in Case Nos. U-20529 and U-20804, I&M made what she characterized as only "minimal" efforts to minimize its OVEC costs, citing a January 2022 letter I&M's president sent to OVEC requesting that OVEC commence renegotiation discussions:

> OVEC responded that I&M would need to obtain consent from every other sponsoring Company to modify the ICPA. OVEC also indicated that that it would need Federal Energy Regulatory Commission approval, regulatory approval by state utility commissions, and advance consent from counterparties to OVEC's debt arrangements to modify the contract.
>
> There is no evidence that I&M has followed up on any of those items or made any further efforts beyond sending its initial letter to OVEC to actually renegotiate the ICPA.[43]

Ms. Glick's recommendation was that the Commission disallow $2 million to reflect the Michigan jurisdictional share of the $14.2 million difference between the costs I&M paid under the ICPA and the market value of the energy and capacity as valued by the PJM market in 2021.

In his rebuttal for I&M, Mr. Stegall took issue with Ms. Glick's analyses. First, he proposed a new benchmark for the ICPA, based on the company's Lake Trout solar generation purchase and sale agreement (PSA), which the company negotiated following an RFP issued in 2022, and which the company submitted for approval in Case No. U-21377. Without addressing his rationale, Mr. Stegall treated the levelized cost of energy under that contract as confidential, so the per/MWh price is in the confidential transcript. He characterized the contract as a reflection of "real-time market dynamics that any company developing renewable resources are likely to experience."[44] He further testified

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[43] 2 Tr 186.
[44] 2 Tr 107-108.

that “it is important that the market proxy the Commission uses is transparent, available and predictable, otherwise I&M is not afforded a reasonable opportunity to manage its business in light of the Commission’s application of the Code of Conduct.”[45] He further explained that the Lake Trout generation does not provide sufficient capacity to replace the ICPA purchases, and was not acquired for that purpose.[46]

Mr. Stegall then compared I&M’s total PSCR costs for 2021, excluding transmission, to the total amount I&M paid for capacity and energy in PJM, concluding: “[T]cost customers paid to I&M in 2021 for its generation-related PSCR costs is $53.6% of the cost customers would have paid had they been fully exposed to the PJM energy markets.”[47] He further testified that customers benefit from the company’s diverse energy portfolio as protection from market volatility that allows customers to pay less than market prices.

Mr. Stegall critiqued Ms. Glick’s analyses, characterizing them as “reviewing the Company’s decisions from the safety of perfect hindsight applied after all market decisions are made and results are known and then using this this information to determine a disallowance.”[48] Contending that Ms. Glick relied on information “that was not available to it at the time” its market decisions were made, he drew an analogy to Staff’s testimony that it did not have information for the MPPA purchases from Consumers Energy and DTE Energy. He also testified as follows regarding Staff’s reliance on the MCV costs:

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[45] 2 Tr 108.
[46] 2 Tr 108-109.
[47] 2 Tr 109-110.
[48] 2 Tr 112.

> Both I&M and Consumers Energy filed their PSCR Reconciliation cases on March 31, 2022, so the cost of Consumers Energy's PPA with Midland Cogeneration Ventures was not available until after the Company filed this case. This example demonstrates the difficulty the Company faces in adopting an adequate benchmark that can inform the Company at the time it makes resource planning decisions without having the benefit of hindsight, as Ms. Glick does now.[49]

He disputed Ms. Glick's view that I&M is putting the onus on the Commission to determine a reasonable benchmark, testifying that he proposed the transfer price in his direct testimony and is adding another option in his rebuttal testimony, and further asserting that Ms. Glick would only accept comparisons that have a lower cost than the ICPA.[50]

Mr. Stegall disputed Mr. Bodiford's testimony that use of the transfer price should be limited to its statutory purposes, characterizing it as a "publicly available metric" developed by Staff that provides information on a more timely basis than those recommended by Ms. Glick.[51] Responding to Ms. Glick's testimony that the transfer price is based on a 20-year life cycle for the plant, Mr. Stegall testified that the Brattle report Ms. Glick assumed a 20-year economic life for the gas-fired generation, quoting the following language from the report in Exhibit AG-9: "We believe these assumptions are reasonable given widespread concern by developers in the stakeholder community that gas-fired generation has limited value beyond the assumed 20-year life."[52] He also reiterated his direct testimony that long-term contracts should be evaluated over their full term, since they may be above or below market price from year to year.

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[49] 2 Tr 113.
[50] 2 Tr 113.
[51] 2 Tr 113-114.
[52] 2 Tr 114.

Mr. Stegall then specifically addressed other comparisons Ms. Glick identified. First, he objected to use of the MPPA agreements, contending that they could not be called PPAs because MMPA has an ownership interest in the plants, citing Exhibit IM-10 containing MPPA's 2021 financial statements:

> In such a situation, it is unclear whether the operating co-owner would bill the non-operating co-owner for any financing-related costs. In contrast, I&M holds no equity or investment in OVEC, provided no up-front investment, and is required to pay its share of OVEC's financing costs. This is critical because the bills issued to MPPA from both Consumers Energy and DTE may not include any capital investment necessary to replace aging equipment or debt service costs.[53]

He also testified that I&M asked the Attorney General in discovery for copies of the agreements, but was informed Ms. Glick did not have copies. On this basis, he testified that I&M was unable to review the agreements.[54]

Mr. Stegall further objected that neither Campbell unit 3 or the Belle River units "match the number of units, layout or structure of OVEC's Clifty Creek Plant or Kyger Creek Plant," disputing on that basis that they could be considered "similar" to OVEC on that basis.[55] He reiterated his concerns regarding the general and timely availability of the costs associated with these agreements.[56] He further objected that any comparison should only be made to "resources that can supply sufficient capacity and energy to replace the resources with which they are being compared," [57] noting that MPPA's share

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[53] 2 Tr 116.
[54] 2 Tr 117.
[55] 2 Tr 117.
[56] 2 Tr 117-118.
[57] 2 Tr 118.

of Campbell unit 3 is only 4.8% or approximately 44 MW, and 37.22% of Belle River or approximately 156 MW.[58]

Mr. Stegall objected to the values reported in Ms. Glick's Table 2 for the MPPA costs, testifying that the MPPA financial statements in Exhibit IM-10:

> MPPA indicated the total operating costs, not total billings, for Campbell Unit 3 were $54.91 per Megawatt-hour, 145.6% more than the $22.36 value reported in Table 2 of Ms. Glick's testimony. MPPA indicated the total operating costs, again not total billings, for Belle River was $47.67, 18% above the $40.30 value reported in Table 2 of Ms. Glick's testimony. The Company sought to understand the difference by seeking additional information from the Attorney General's office in discovery, but the Attorney General's office indicated that Ms. Glick had not reviewed the underlying contracts nor could she explain why MPPA would report different values in its financial statements. Even without an explanation, MPPA's audited financial statements identify operating costs that exceed what Ms. Glick describes as "the cost paid for power," while excluding financing costs such as the payment of interest and principal on existing debt.[59]

Mr. Stegall also objected to Exhibits AG-7 and AG-8 as originally filed,[60] explaining that they were not the actual billing statements.

Turning to the CONE values Ms. Glick presented, Mr. Stegall objected to comparing those values to the company's OVEC costs. He acknowledged that CONE values are useful in comparing resources, but opined that they are "inferior to the company's most recent solar agreement" identified in his rebuttal testimony.[61] He also took issue with the energy cost Ms. Glick included in her CONE calculation, objecting that she did not use the "energy revenues and the net margin" I&M received for its share of OVEC and provided to the Attorney General, and stating that the magnitude of the

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[58] 2 Tr 117-118.
[59] 2 Tr 120.
[60] The Attorney General filed revised versions on June 21, 2023, nine days after I&M filed its rebuttal testimony.
[61] 2 Tr 122.

discrepancy is $11.46/MWh.[62] He also contended that Ms. Glick should not have used a net present value calculation based on the Brattle reports, but should have used PJM's publication of a CONE value. His Table JMS-2 at 2 Tr 123 presented revised CONE calculations.

Mr. Stegall then testified that the resources modeled for the CONE values in Exhibit AG-9 included a 1,020 MW combined-cycle unit and a 353 MW combustion turbine, objecting that the combustion turbine with a capacity factor of 8.4% could not generate sufficient energy to match OVEC.[63]

Turning to the RFP results Ms. Glick included in her Table 2, Mr. Stegall objected that Ms. Glick had not used the 2022 RFP that I&M issued, contending that she should have asked in discovery if the 2021 RFP was the most recent RFP I&M issued.[64] He testified that the 2021 RFP was intended to be informational only, and he cited the PPAs reviewed in Case No. U-21189 and the Lake Trout purchase and sale agreement reviewed in Case No. U-21377, placing the costs per MWh on the confidential record:

> Importantly, the resources selected from the 2022 All-Source RFP replace only a fraction of the capacity need required by Rockport's retirement by the end of 2028. If I&M were to also exit the ICPA, that would create an even larger capacity need.[65]

He also objected to considering RFP results for other utilities, asserting "those resources are not available to I&M," and testifying that the Northern Indiana Public Service Company

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[62] 2 Tr 122.
[63] 2 Tr 123-124.
[64] 2 Tr 124. Note that Mr. Stegall subsequently asserted: "Witness Glick was aware of this RFP through I&M's IRP case as well as the stakeholder process it conducted, but she chose to ignore it in favor of other less relevant RFPs that better support her argument." 2 Tr 126.
[65] 2 Tr 125.

resources would be located in MISO, and thus "would require additional transmission costs that are not included in Ms. Glick's analysis."[66]

And finally, Mr. Stegall disputed that PJM capacity and energy market costs should be considered comparable, characterizing them as short term, reiterating that I&M does not participate in the PJM capacity auction and that the capacity auction does not provide the same capacity product. He cited the Commission's orders in Case Nos. U-20529 and U-20530.[67] He further objected to a comparison of the energy-related OVEC costs to market energy revenues, testifying that his "only provides information on their cost relative to market prices and only during the reconciliation period, not for the life of the agreement."[68]

In his rebuttal testimony for Staff, Mr. Bodiford revised Staff's analysis to incorporate the MPPA Belle River contract costs that he had found unavailable in his direct testimony. Specifically addressing the Attorney General's testimony, he explained that Staff agrees that the ICPA costs I&M has requested for recovery are unreasonable, but disagrees that the reasonableness of those costs should be determined by comparison to short-term energy market prices. He testified that with the additional information that the Attorney General had obtained through FOIA, Staff was able to determine the average that the Commission adopted in its order in Case No. U-20530. Mr. Bodiford took the difference between the ICPA costs ($64.10/MWh) and the average cost of MPPA/Belle River and Consumer-MCV ($56.78/MWh), multiplied by the electricity billed under the ICPA in 2021 (790,000 MWh), and reduced for the Michigan jurisdictional

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[66] 2 Tr 125.
[67] 2 Tr 126-127.
[68] 2 Tr 127.

share of the costs (13.90%). (2 Tr 233–234.) He computed a difference of $5.78 million between the OVEC costs and the average of the three benchmark proxy agreements, and recommended a disallowance of 13.9% of that amount, $803,809, to reflect Michigan's jurisdictional share of the costs, as shown in his Table 1 at 2 Tr 234.

Mr. Stegall's surrebuttal focused on Staff's revised calculation. He contended that Staff misapplied the process the Commission used in Case No. U-20530, reiterating his rebuttal testimony that MPPA reported different operating cost values in its financial statements in Exhibit IM-10, and that because MPPA is a part owner of both Campbell unit 3 and Belle River, "any billing would exclude financing costs." Mr. Stegall testified that the values from Exhibit IM-10 should be used, and in addition, proposed to add to each of those values $15.60 per MWh, which he represented is the amount of financing costs I&M paid under the ICPA. He explained his calculation of the $15.60/MWh as follows:

> Using the 2021 bills issued by OVEC and provided in response to discovery request AG 1-14, I compiled all charges billed under Components A and D of the demand charge. As detailed in Article 5.03 of the ICPA, Component A includes various items related to debt service interest expense, amortization of debt premiums and discounts, payment of debt principal, capital lease expense, and depreciation of replacement plant. While the total of Component A is $20.53 per MWh, $5.17 is associated with that final category, depreciation of replacement plant, so I excluded that amount to calculate $15.35 per MWh for debt service and capital lease payments. I then added the $0.25 per MWh billed under Component D of the demand charge, which is a charge based on OVEC shares of common stock.[69]

He presented the results of these additions as corrections that need to be made to Staff's calculations, as shown in his Table JMS-1SR at 2 Tr 140.

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[69] 2 Tr 138-139.

Mr. Stegall emphasized his view expressed in his rebuttal testimony that the values he relied on in Exhibit IM-10 are more reliable:

> Given that the MPPA financial statement package, provided as Exhibit IM-10, includes an Independent Auditor's Report, it was subjected to an additional level of scrutiny that a Freedom of Information Act request was not.[70]

He further explained his addition of his calculation of I&M's financing costs:

> [S]ince no party in this case has provided any information about the historic investment made by MPPA for Campbell Unit 3 and Belle River, I cannot determine a financing cost in any way that makes it comparable to the financing costs of OVEC. In order to make MCV comparable to the Campbell Unit 3 and Belle River comparable to both the ICPA and MCV transactions, I added the $15.60 per MWh of ICPA financing costs to the operating costs of Belle River and Campbell Unit 3.[71]

Mr. Stegall noted that in Case No. U-20530, the Commission excluded the Campbell unit 3 costs as an outlier, and testified it need no longer be excluded. He also concluded that no financing cost adjustment needed to be made to the Consumers Energy/MCV cost. Based on the computations in Table JMS-1SR, I&M's ICPA costs are almost $5/MWh below the average of the comparison points.

3. Arguments of the parties

Staff argues in its brief that the Commission should adopt the disallowance Mr. Bodiford recommended in his rebuttal testimony. Staff reviews the statutory charge to the Commission in MCL 460.10ee to adopt a code of conduct applicable to all utilities, the definition of "affiliate" in the Code of Conduct the Commission adopted, R 460.10102(1)(a), and the Commission's February 2, 2023 order in Case No. U-20503

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[70] 2 Tr 139.
[71] 2 Tr 139-140.

finding that I&M and OVEC are affiliates and the ICPA is an affiliate transaction, and that I&M must demonstrate compliance with the affiliate pricing provision, R 460.10108(4).

Staff argues that I&M failed to provide a proper comparison to establish a market price for the OVEC contract commitments. Citing Mr. Bodiford's testimony, Staff argues that the transfer price comparison I&M presented in its direct testimony is inapt, and that I&M's attempt to remedy its failure to provide a proper comparison was not remedied by the alternative solar contract price comparison it presented in rebuttal.

Regarding the transfer price, Staff discusses the statutory basis underpinning the transfer price calculation, MCL 460.1049(3)(c), and argues that prior Commission orders make clear the limitations on the use of this transfer price:

> The Commission has made clear that the transfer price is solely a tool for estimating and allocating the costs of renewable energy between the PSCR and REP surcharges. (2 TR 226–227 (quoting MPSC Case No. U-15806, 8/25/2009 Order, p 12.)) The Commission has stated that the transfer price is appropriate for "planning purposes, such as the calculation of surcharges, only." MPSC Case No. U-17302, 12/19/2013 Order, p 18 (emphasis in original). As witness Bodiford explained, this clear direction from the Commission regarding what constitutes the appropriate use of the transfer price, as well as the Commission's recent determination "that cost comparison of prior power transaction costs are the fairest benchmarks" for the ICPA costs, shows that the transfer price is not an appropriate comparison for these costs. (2 TR 227–228 (quoting MPSC Case No. U-20530, 2/2/2023 Order, p 11.))[72]

Staff also cites Attorney General witness Glick's testimony explaining that the transfer price is an inappropriate basis of comparison.[73]

Turning to the alternative comparison I&M presented in rebuttal, the Lake Trout PSA, Staff argues this should also be rejected. Staff cites the Commission's order in Case

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[72] Staff brief, 7.
[73] Staff brief, 7-8.

No. U-20503, as quoted above, finding that prior power transaction costs are the fairest benchmarks to use for the ICPA costs. Staff further explains:

> The Lake Trout PSA is a solar PSA that is currently the subject of a pending MCL 460.6s Certificate of Necessity proceeding in MPSC Case No. U-21377. (2 TR 107.) The project has not been approved and will not reach commercial operation for several years. See MPSC Case No. U-21377, 3/27/2023 Application, ¶ 7. Moreover, the Lake Trout PSA was just one of multiple projects selected by the Company through a single request for proposal process. (2 TR 124–125.) Company witness Stegall claims this project is an appropriate comparison for the ICPA costs because it was selected from an all-source request for proposal process designed to allow open and nondiscriminatory competitive procurement of resources consistent with the Commission's Competitive Procurement Guidelines. (2 TR 107–108.) However, this justification does nothing to negate that the Lake Trout PSA is currently an undeveloped and unapproved solar facility.[74]

Staff argues that its recommended disallowance of approximately $804,000 as explained by Mr. Bodiford is consistent with the Commission's decision in Case No. U-20530, noting that the Commission had available on the record in that case several options identified by the Attorney General.[75] Staff disputes I&M's claim, presented in Mr. Stegall's surrebuttal, that Staff misapplied the process the Commission used in that case. Staff addressed each of the three "corrections" proposed by Mr. Stegall, including two focused on the operating costs for MPPA/BelleRiver, and a third asserting additional information is required.

First, Staff disputes that it should have used the operating costs for MPPA/Belle River shown in Exhibit IM-10, arguing that it used the same "evidentiary basis" used to calculation the disallowance in Case No. U-20530. Staff presents a comparison of Mr. Bodiford's testimony in this case at 2 Tr 231-235 to a portion of the transcript from Case

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[74] Staff brief, 8.
[75] Staff brief, 9-10.

No. U-20530 and the Commission's February 2, 2023 order in Case No. U-20530 at page 8 to support its argument. Staff further states:

> Staff does not dispute that the operating costs listed in Exhibit IM-10 are different from the total billing costs presented by the Attorney General and the similar costs relied on by the Commission in Case No. U-20530. (Compare Exhibit IM-10, p 11 with 2 TR 181.) However, Staff disagrees with the notion that it misapplied the Commission's U20530 analysis. In fact, Staff followed that exact analysis in reaching its recommendation. The MPPA/Belle River costs used to calculate the U-20530 disallowance were also obtained under the Freedom of Information Act. (MPSC Case No. U-20530, 2 TR 317; MPSC Case No. U-20530, 2/2/2023 Order, p 8.) Furthermore, the basis of witness Stegall's criticism is, at least in part, that because Exhibit IM-10 "includes an Independent Auditor's Report, it was subjected to an additional level of scrutiny that a Freedom of Information Act request was not." (2 TR 139.) Yet, page 11 of Exhibit IM-10, to which witness Stegall cites for these operating costs, is explicitly marked as "unaudited." (2 TR 137; Exhibit IM-10, p 11.)[76]

Turning to Mr. Stegall's claim that additional information is needed regarding the investments MPPA made in the Campbell unit 3 and Belle River, Staff argues that I&M chose not to present an appropriate benchmark in its direct case, and thus it is reasonable for Staff to follow the method adopted in Case No. U-20530. Staff emphasizes that I&M bears the burden of proof in this case.[77]

Staff also takes issue with Attorney General witness Glick's recommended disallowance of $2 million, arguing that short-term energy market prices are not an appropriate comparison, citing the Commission's order in Case No. U-20530.[78]

The Attorney General argues in her brief that the Commission should adopt Ms. Glick's recommended disallowance. The Attorney General begins by reviewing the all-in $66.04/MWh cost of OVEC as shown in Exhibit IM-4, and the energy and demand

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[76] Staff brief, 11-12.
[77] Staff brief, 12.
[78] Staff brief, 9.

$64.10/MWh cost in comparison to the value of the energy, capacity, and ancillary services provided to I&M by OVEC as measured by PJM, which Ms. Glick calculated to be $46.11 per MWh.[79] The Attorney General cites the Commission's obligation under MCL 460.6j(15) to consider "the cost and availability of the electrical generation available to the utility" and "other relevant factors." She notes that the Commission issued a section 7 warning regarding the OVEC costs in I&M's 2021 plan case, Case No. U-20804, concluding that as a result, I&M is required to demonstrate "by clear and convincing evidence that the expenses were beyond the ability of the utility to control through reasonable and prudent actions," as provided in MCL 460.6j(15).[80]

The Attorney General contends that I&M failed to provide this clear and convincing evidence:

> In this case, I&M provided no evidence that it attempted to work through its parent company – the largest owner of OVEC with the most seats on the board – to reduce the uneconomic generation that I&M was required to purchase. Further, I&M undertook only the most minimal, "check-the-box" effort to renegotiate the ICPA by sending a letter asking OVEC to renegotiate, which OVEC promptly rebuffed in a response letter.115 The dearth of evidence that I&M took meaningful efforts to reduce its purchases of OVEC power when much cheaper power was available on the market or to renegotiate the ICPA means that I&M did not carry its burden to demonstrate by a preponderance that its purchase of above-market OVEC power was reasonable and prudent – let alone its burden to demonstrate by clear and convincing evidence that the OVEC costs were beyond its ability control through reasonable and prudent actions.[81]

While the Attorney General acknowledges that the Commission has not adopted capacity auction prices as a benchmark for market price under the Code of Conduct, she maintains

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[79] Attorney General brief, 21-22.
[80] Attorney General brief, 22-23, quoting MCL 460.6j(15) in part.
[81] Attorney General brief, 23-24.

that "the value of a long-term agreement is properly evaluated by comparing it to the market," explaining:

> The purpose of a long-term agreement is to secure some advantage – whether price or security of supply or otherwise – compared to the market. That is the case even if a long-term agreement with an affiliate should be benchmarked against other long-term agreements between unaffiliated parties to determine whether the affiliate agreement is at market rate. They are two different questions.[82]

The Attorney General views the company's failure to make a meaningful effort to lower its costs in the face of the Commission's section 7 warning germane to a determination whether those costs should be found reasonable and prudent.

Additionally, the Attorney General argues that the costs exceed the Code of Conduct market price cap, as explained by Ms. Glick. The Attorney General lists the different comparisons she presented at 2 Tr 180-185, with costs ranging from $35.92 per MWh to reflect MPPA's 2021 costs for Campbell unit 3 to $60.72 to reflect the CONE for a new gas combined cycle plant that would not be online until 2026.[83]

Addressing Mr. Stegall's rebuttal testimony, the Attorney General argues that his critiques were either addressed through the corrections Ms. Glick made to her direct testimony or are not valid. Regarding the claimed need for financing costs, the Attorney General notes that the corrected monthly bills in Exhibits AG-7 and AG-8 show construction expense. She further argues that Exhibit IM-10 shows that the costs paid by MPPA members include financing costs.[84] Addressing Mr. Stegall's contention that the capacity provided to MPPA is less than the capacity OVEC provides I&M, the Attorney

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[82] Attorney General brief, 24.
[83] Attorney General brief, 26.
[84] Attorney General brief, 27-28.

General argues that the Commission has rejected the contention that to be comparable, long-term power supply arrangements need to be perfect apples-to-apples comparisons. The Attorney General further notes that only the Campbell 3 and not the Belle River capacity is below the OVEC level. Finally, the Attorney General rejects Mr. Stegall's contention that Exhibit IM-10 contains audited operating costs, noting that the costs I&M relies on are from the unaudited portion, and further arguing that these statements do not include a breakdown of the cost elements: "[I]t at least seems reasonable that MPPA's own financing costs and perhaps other costs to MPPA are included in the total operating costs whereas Ms. Glick evaluated the costs included in the billing statements from Consumers and DTE to MPPA."[85] Finally, the Attorney General also responded to Mr. Stegall's objection to Ms. Glick's use of I&M's 2021 RFP results in determining CONE values rather than I&M's 2022 RFP, arguing that Ms. Glick appropriately compared 2021 OVEC costs to long-term supply arrangements. The Attorney General also cited the Commission's June 22, 2023 order in Case No. U-21052 to show that the Commission found cost comparisons to prior transactions to be the fairest benchmarks.[86]

The Attorney General also argues that the Commission should reject the comparisons proffered by I&M. It characterizes the transfer price as a "hypothetical construct with a different purpose," noting that it is not a cost that varies with market conditions, noting that the Commission has expressly recognized that the transfer price has a limited purpose, and also citing Mr. Bodiford's testimony.[87] She also argues that the two Consumers Energy contracts, the MPLP and NANR agreements I&M relied on

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[85] Attorney General brief, 28.
[86] Attorney General brief, 29.
[87] Attorney General brief, 31-33.

Exhibit IM-6, "are much less similar to OVEC than Campbell 3 and Belle River."[88] She points out that the MPLP contract is for a 125 MW natural gas plant, with costs below OVEC as shown in Exhibit IM-6, and the NANR contract is for a 4.8 MW landfill gas facility. The Attorney General cites Ms. Glick's testimony that these are not comparable to OVEC, and notes that Mr. Stegall did not further address these agreements in his rebuttal.[89] And the Attorney General argues that the Lake Trout agreement that I&M advanced only in rebuttal should not be considered comparable, characterizing the agreement as "the result of extraordinary solar market conditions (according to I&M) and not relevant to the cost of long-term power supply in 2021,"[90] and citing the Commission's August 30, 2023 order in Case No. U-21189 as well as testimony I&M provided in that case and in Case No. U-21377 regarding the extraordinary market conditions that led to contracts above the bid prices.[91]

The Attorney General urges the Commission to adopt a disallowance, offering options to the Commission to calculate that disallowance, including the MPPA Belle River contract cost as well as an average of the MPPA Belle River and Campbell unit 3 contract costs and the MCV contract costs:

> • The Michigan share (13.9%) of one of the excess cost figures from the comparisons in Table 1 of witness Glick's testimony. For example, using Belle River the amount would be $2,613,485.

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[88] Attorney General brief, 33.
[89] Attorney General brief, 33-35. This PFD does note, however, that Mr. Stegall did not correct his description on direct of these agreements as agreements for coal-fired generation.
[90] Attorney General brief, 35.
[91] Attorney General brief, 35-38.

• Alternatively, based on Staff's method with one modification, the Michigan share of the average of the cost difference between the Campbell 3, Belle River, and MCV arrangements and the OVEC costs in 2021, which comes out to $1,566,993.[92]

The modification to Staff's recommendation is that the Attorney General has included the Consumers Energy contract with MPPA for Campbell unit 3, while Staff excludes this contract to replicate the Commission's calculations in Case No. U-20530.

In its brief, I&M argues based on Mr. Stegall's testimony that no disallowance is warranted and that its OVEC ICPA costs are reasonable and prudent. I&M reviews his initial analysis, using the transfer price calculated for renewable energy costs under MCL 460.1049(3)(c) as the basis of comparison, the additional analysis he presented on rebuttal based on the Lake Trout PPA and his accompanying critique of Ms. Glick's analysis.[93] I&M expressly contends that Ms. Glick "appears to have simply picked agreements that she believed would fit her desired narrative without bothering to review the substance of the documents or determinate whether they are legitimate comparators."[94] I&M also cites Staff witness Bodiford's testimony as supporting the company's position.[95]

I&M further argues that any disallowance is unlawful. It contends that the affiliate cost recovery cap in R 460.108(4) goes beyond the statutory authorization in MCL 460.10ee, that the application of the cap is arbitrary and capricious, that application of the cap to the ICPA would cause MCL 460.10ee to be an unlawful delegation of legislative

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[92] Attorney General brief, 38-39.
[93] I&M brief, 21-28.
[94] I&M brief, 25.
[95] I&M brief, 24.

authority, that application of the cap to contracts executed before the statute was adopted is impermissibly retroactive, and that the Commission's order in Case No. U-18361 correctly established that the Code of Conduct does not apply to federally-regulated wholesale services.[96] I&M concludes by arguing:

> The Commission has statutory authority under Act 304 to disallow recovery of ICPA costs which are unreasonably or imprudently incurred. It may only do so, however, through making such a finding, as opposed to setting the contract price of, or otherwise seeking to void, the ICPA itself via the Code of Conduct's pricing provision.[97]

In their reply briefs, Staff and the Attorney General dispute I&M's legal contentions and analysis.[98] Staff also notes that I&M failed to address Staff witness Bodiford's rebuttal testimony, inaccurately asserting that "Staff agrees that the Company's 2021 ICPA costs were reasonable and prudent in light of market pricing."[99] Staff pointed out that not only did Mr. Bodiford present rebuttal testimony concluding that the ICPA costs are not reasonable and prudent, I&M filed surrebuttal testimony addressing his conclusion and the updated information he relied on, making clear that I&M was fully aware of Staff's position.

Staff addresses the discussion of Attorney General witness Glick's analysis in I&M's brief. Staff reiterates that it does not agree with the use of short-term energy market prices as a benchmark for the ICPA, but does agree that the agreement does not comply with the Code of Conduct. Staff also reiterates that it does not consider the transfer price or the Lake Trout agreement appropriate benchmarks.

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[96] I&M brief, 28-54.
[97] I&M brief, 54.
[98] See Staff reply, 3-17; Attorney General reply, 4-38.
[99] See Staff reply, 1-2; quotation is taken from I&M brief, 24.

The Attorney General also objects to I&M characterization of Staff's position.[100] The Attorney General then addresses I&M's critique of Ms. Glick's analysis, arguing that I&M's criticisms are misplaced.[101] While the Attorney General addressed Mr. Stegall's rebuttal in her initial brief, she specifically responded to I&M's assertion, quoted above, to the effect that Ms. Glick was not objective or careful in her selection of points of comparison:

> I&M asserts that in offering the Campbell 3 and Belle River agreements, witness Glick "appears to have simply picked agreements that she believed would fit her desired narrative without bothering to review the substance of the documents or determine whether they are legitimate comparators." I&M fails to cite any record evidence in support of this statement, whose only purpose appears to be impugning Ms. Glick or her work without any basis. As noted in the discussion of prior Commission Orders in I&M's PSCR cases in the Attorney General's initial brief, the Commission has either accepted or endorsed Ms. Glick's testimony regarding appropriate market comparisons for OVEC in Case Nos. U-20804, U-20530, and U-21052.[102]

In its reply brief, I&M generally repeats its legal arguments and the arguments presented by Mr. Stegall. I&M characterizes Staff's position as "belated," reviewing Mr. Bodiford's direct testimony.[103] Referencing its arguments in response to the Attorney General's recommendation, I&M further argues:

> Staff's belated proposal to disallow $803,809 through application of the Code of Conduct's price cap should also be rejected because (i) Staff did not carry its burden to go forward with the market comparison evidence it relied upon; and (ii) Staff's proposed disallowance is not based on substantial evidence on the whole record.[104]

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[100] Attorney General reply, 2.
[101] The Attorney General identifies the points she made in her initial brief, with page citations, in her reply brief at pages 2-4.
[102] Attorney General reply, 3, also citing Attorney General brief, 13-20.
[103] See I&M reply, 38. Notwithstanding that I&M withdrew its motion to strike and was permitted to file surrebuttal testimony, I&M also argues that Mr. Bodiford's rebuttal was not proper rebuttal, and "is not permitted." This PFD finds that I&M waived its objections in exchange for Staff's acquiescence to Mr. Stegall's surrebuttal testimony. See I&M reply, 38 at n39.
[104] I&M reply, 37.

4. Findings, conclusions and recommendation

Based on a review of the Commission's prior orders, this PFD concludes that I&M has the burden in this case to demonstrate the reasonableness and prudence of the costs it seeks to recover under the ICPA, and further, that the Commission has already determined that I&M has not submitted the ICPA for a reasonableness and prudence review, and that the agreement is also subject to Code of Conduct, including the price cap. The Commission's plan case order is quoted extensively in subsection 1 above. Most recently, in its June 22, 2023 order in Case No. U-21052, the Commission found I&M's ICPA to be uneconomic, and the costs excessive. The Commission also cited numerous prior rulings holding that the Code of Conduct applies to the ICPA[105] and rejecting the same legal arguments I&M presents in this case:

> I&M makes similar arguments in this case as in previous proceedings that the Code of Conduct does not apply to the ICPA and that the Code of Conduct cannot be read in harmony with Act 304. As it has done before, the Commission rejects these arguments. Finding this issue to be well-settled, the Commission will not rehash its legal analysis explaining the application of the Code of Conduct. Rather, the Commission incorporates by reference the discussions in its previous orders, and, finding the ALJ's analysis in the instant proceeding at pages 24-31 of the PFD to be well-reasoned and aligned with the Commission's previous decisions on this issue, adopts the PFD.
>
> I&M does not assert that facts or circumstances have changed with respect to the company's relationship with OVEC or the nature of the ICPA such that the Code of Conduct and its affiliate pricing provisions would no longer be applicable. Therefore, the Commission finds that the Code of Conduct applies to the ICPA as an affiliate contract and that the Code of Conduct does not interfere with the requirements under Act 304. As such, the ICPA is an affiliate contract and is subject to the market price cap set out in Rule 8(4) of the Code of Conduct.[106]

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[105] The Commission cited its May 13, 2021 order in Case No. U-20529, its June 23, 2021 order in Case No. U-20224, and its November 18, 2021 order in Case No. U-20804. See June 22, 2023 order, Case No. U-21052, page 21 at n6.

[106] June 22, 2023 order, Case No. U-21052, pages 21-22.

Because the application of the Code of Conduct to the ICPA is "well-settled," and because I&M has similarly not asserted that facts of circumstances have changed, this PFD concludes that there is no basis to revisit I&M's repetition of its legal claims.

Turning to an evaluation of the appropriate benchmark or proxy by which to measure the reasonableness and prudence of the ICPA costs, this PFD finds that the MPPA costs for Belle River and Campbell 3 provide the best basis of comparison, adjusted based on additional review of the information included in Exhibit IM-10. While not identical to the recommendations of Staff and the Attorney General, this PFD's recommended disallowance falls within the range of those recommendations and is generally consistent with the Commission's conclusion in Case No. U-20530 that cost comparison of prior power transaction costs are the fairest benchmarks.

This PFD finds Mr. Stegall's recommendations to be unpersuasive for several reasons. First, he makes no effort to be consistent or accurate. As noted above, he did not correct his testimony that the MPLP and NANR contracts were for coal-fired generation. He criticized Ms. Glick for failing to learn of I&M's 2022 RFP and also for knowingly ignoring it.[107] His contention that any comparable source of market value should be of the same size, or capable of replacing OVEC entirely (or I&M's share of), a point he repeated multiple times, is both incorrect, when discussing utility-scale generation,[108] and undermined by his own reliance in Exhibit IM-6 on a 4.8 MW landfill gas plant that could not be considered comparable to the company's coal-fired

[107] Stegall, 2 Tr 124, 126.
[108] Any utility scale option would be capable of duplication: that is, if 1000 MW are needed and 500 MW is the most efficient of cost-effective plant size, two can be built.

generation. Mr. Stegall also complained that Ms. Glick did not have copies of the MPPA agreements, asserting on that basis that he was unable to review them. Of course, the Commission reviewed these agreements in Case No. U-20530, giving I&M plenty of notice and opportunity to obtain them. The Attorney General's information was obtained through FOIA. Unlike I&M, MPPA does not seem to assert any claim of confidentiality concerning these agreements. The Commission did put the burden on I&M to conduct an analysis, and I&M's failure to obtain what it now contends is pertinent information is unpersuasive. More fundamentally, he complained that hindsight is being used, when it is undisputed that I&M never presented the OVEC agreement to the Commission for its review, and has not established the range of choices available to I&M at the time any of the OVEC agreements were entered into.

This PFD agrees with Staff and the Attorney General that the transfer price is not an appropriate measure of market value, since it intended to fulfill a specific purpose under MCL 460.1047, a determination of the costs of renewable energy projects that should be recovered through the PSCR process. Significantly, Staff makes the determination each year of a transfer price that will attach to projects that year for the life of the project. As the Attorney General notes, it reflects the levelized cost of a natural gas combined cycle plant, with construction as well as fuel costs levelized, so there is no adjustment for any project that reflects market variations in fuel or other costs. In contrast, I&M is seeking to recover costs for a particular year, 2021, and is not committing that it will not seek higher costs in future years. Thus, both because the underlying costs reflect a natural gas combined cycle plant and because the costs are levelized and thus invariant to reflect a 20-year commitment, it is not appropriate to use the transfer price as a point

of comparison. Put another way, I&M does not contend that its OVEC contract or any of the potentially comparable contracts have fully fixed costs over a 20-year period.

This PFD also rejects reliance on the Lake Trout PPA for several reasons. The inquiry regarding the Code of Conduct is to determine what would be a comparable market price: it is reasonable to conclude that there is a value to a long-term source of supply that is greater than its capacity value in any one year. That does not mean that the costs of generation that would be built in subsequent years and not available until 2026 or 2028 is an appropriate basis of comparison. This is reason alone to exclude consideration of I&M's RFP options. There are two other important reasons. First, the acquisition of renewable energy to meet IRP and RE requirements is not at all the same as the older coal-fired generation that would not be built today. In addition to the need to meet statutory requirements, the acquisition of renewable resources provides a hedge against future environmental requirements and associated costs and potentially reducing significant risk through diversification away from fossil fuels.

Second, it is not appropriate to consider the agreements I&M itself negotiated for renewable energy. A review of the issues surrounding the PPAs and purchase and sale agreements I&M negotiated reveals that I&M agreed to pay significantly more than the initial bid prices in those agreements. One reason had to do with short-term constraints including increased demand for renewable energy associated with the Inflation Reduction Act, continued supply-chain issues, and uncertainty associated with imports due to an international trade dispute. However, if I&M had an incentive to increase the amount it paid under those agreements to make its OVEC costs appear more reasonable, it would throw a different light on the Commission's ability to evaluate those agreements as the

produce of good-faith negotiation, and similarly cast a shadow over future negotiations. To avoid any such specter that future agreements the company enters into may be used as a bootstrap for OVEC costs, the Commission should exclude them from consideration.

Turning to the CONE values, while not unreasonable, they also do not reflect the costs of coal-fired generation. The four CONE values presented in Ms. Glick's Table 2 are for a natural gas combined cycle available in one of two years, 2022 or 2026, and a gas-fired combustion turbine available in one of the same two years, 2022 or 2026. The 2022 values would be most pertinent, and are shown as $48.49/MWh and $46.08/MWh respectively. Mr. Stegall objected to using CONE values primarily by asserting that if CONE values can be used, which reflect a 20-year expected life for a gas-fired generating plant, than the transfer prices should be used.[109] He also restated the CONE values in a table at 2 Tr 123, changing the source of the CONE values to a PJM publication and using the market energy revenues I&M received for certain OVEC market transactions as the energy cost. While Mr. Stegall did not justify these revisions as a basis for comparison to the cost I&M is seeking to recover for OVEC in this case, this PFD does find that the CONE values are less useful because they reflect gas-fired generation.

I&M's view that it is inequitable to consider the market price each year is encapsulated in the following rebuttal testimony Mr. Stegall provided:

> [C]ustomers benefit from the stability provided by the Company's generation portfolio and the Company seeks long-term contracts, like the ICPA and the UPA, to maintain that stability, it is unreasonable to then disallow these costs, especially if the decision to disallow costs is made using information not available until after the period is over. This is also why it is important that the Commission's determination of whether the costs of long-term contracts are above or below market make that assessment on a

[109] 2 Tr 114-115.

> cumulative basis. Meaning the Commission does not just consider each year individually but considers whether the costs overtime have been above or below market. Not doing so is one sided, where customers receive the full benefit in years where the Commission determines the long-term power cost to be below market and penalizing I&M in years where the opposite is determined.[110]

This PFD finds that Mr. Stegall's view that the ICPA should be evaluated over a long period of time is inconsistent with the company's failure to present the contract for review, so that the long-term benefits or "stability" could be evaluated with a forward-looking vantage point. I&M did not present a levelized cost of energy analysis over the term of the ICPA, or a present value revenue requirement calculation.[111] This PFD further notes that with the exception of the auction price for energy and capacity, which this PFD does not recommend, the comparative values Staff and the Attorney General have identified reflect the costs of long-term arrangements that also have some responsiveness to market forces.

As noted above, recognizing that the Commission used the MPPA/Belle River costs in Case No. U-20530, this PFD finds that the MPPA/Belle River and MPPA/Campbell unit 3 costs are reasonable and appropriate comparable costs to use in evaluating the market value of OVEC.

I&M objects to relying on the MPPA costs except as substantially modified by Mr. Stegall. Mr. Stegall's analysis of the MPPA financial statements is unpersuasive and his lack of meaningful review of the statements he offered for the record also undermines the credibility of his testimony. First, a review of those financial statements shows that the

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[110] 2 Tr 115.

[111] Such an analysis would also provide an estimate of the market value of the agreement as a whole.

cost figures that Mr. Stegall relies on are not "audited" versions of the billings from Consumers Energy and DTE, but instead reflect the total costs billed to the MPPA members, reported as "gross operating revenues" on page 18 of Exhibit IM-10.[112] Thus, while one can debate the MPPA cost elements that should be included in determining comparable costs, this PFD finds that both Staff and the Attorney General reproduced the analysis the Commission adopted in Case No. U-20530.

Second, as shown on page 18 of Exhibit IM-10, the costs included in the per-MWh values Mr. Stegall relied on include transmission costs, which all parties seemed to agree should be excluded. As discussed in more detail below, the costs included in the per-MWh values Mr. Stegall relied on also include MPPA's own administrative costs,[113] although I&M's own administrative costs are excluded from the $64.10/MWh ICPA cost.

Third, Mr. Stegall's financing assumption that results in the addition of $15.60/MWh to the MPPA total cost values is unsupported on this record. As the Attorney General argues, clearly some construction costs are included in the billings from Consumers Energy and DTE Energy, and depreciation costs are also reflected on page 18 of Exhibit IM-10. Moreover, while Mr. Stegall calculates financing costs for I&M, he does not present any meaningful information regarding what those financing costs are financing, which makes his testimony at 2 Tr 116-117 to the effect that he lacked adequate information to review the MPPA financing unhelpful. Indeed, Mr. Stegall's contention that he was unable

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[112] For Campbell unit 3, the $54.91/MWh cost times the generation of 261,373 MWh stated on page 11 equals $14,351,991, which compares to $14,351,877 shown on line 1 of page 18; for Belle River, the $47.67/MWh cost times the generation of 1,312,641 MWh stated on page 11 equals $62,573,596, which compares to $62,569,655 shown on line 1 of page 18.

[113] There is a breakdown of the "general and administrative costs" reported on page 18 of Exhibit IM-10 on page 48 (for Campbell unit 3) and page 49 (for Belle River).

to review the MPPA agreements because the Attorney General did not have them is also more of an indictment of his analysis than Ms. Glick's: she presented the billing statements for these agreements in Case No. U-20530, in testimony filed on August 24, 2021, many months before I&M even filed its application in this case, and as Mr. Bodiford and Ms. Glick explained, the information was obtained through FOIA. In its May 13, 2021 order in Case No. U-20529, the Commission found that I&M would be required to demonstrate that the ICPA is in compliance with the pricing provisions of the Code of Conduct, so it should have been on notice of its obligations to evaluate reasonable comparisons.

It is also interesting to put I&M's calculation of the financing costs it pays under the ICPA into perspective. According to I&M, the $64.10/MWh cost recovery I&M is seeking in this case, excluding transmission costs, includes financing costs of $15.60/MWh. Thus, the amount of cost recovery I&M is seeking excluding financing costs would be $48.50/MWh, and the ICPA financing costs add approximately 32% to that amount. Mr. Stegall made clear that his calculation of $15.60/MWh does not include depreciation expense, i.e. the recovery of underlying capital investment.

While Mr. Stegall's revised versions of the Campbell unit 3 and Belle River costs are exaggerated, it is reasonable to use the additional information in Exhibit IM-10 to revise the costs billed by Consumers Energy and DTE Energy. Consistent with the discussion above, a review of the information in Exhibit IM-10 shows that the per-MWh costs that I&M begins with, before adding its own financing costs, reflect Consumers Energy and DTE billed costs, transmission costs, depreciation and MPPA's own administrative costs. As noted above, the parties agree that transmission costs should

be excluded for purposes of comparison, and I&M's internal administrative costs are also not included in its $64.10/MWh cost recovery request in this case, since those would be recovered through base rates. Deducting the transmission costs and the MPPA administrative costs from the revenue used to derive the figures I&M cites in Exhibit IM-10 results in per-MWh values of $48.39 and $42.63 per MWh respectively.[114] This PFD finds that it is reasonable to consider as benchmarks for the OVEC ICPA market value both the MPPA Belle River costs as well as the MPPA Campbell unit 3 costs that appeared to be an outlier in 2020, as revised.

In Case No. U-20530, the Commission adopted the PFD's disallowance, which also relied on the MCV/Consumers Energy PPA. This PFD finds the MCV contract less relevant as a point of comparison, and notes that it appears to be as much of an outlier in this analysis as the Commission found the Consumers Energy MPPA cost to be an outlier in Case No. U-20530. No party seems to have questioned why the MCV per/MWh costs increased from the costs presented in Case No. U-20530, $48.49 in 2020[115] compared to $73.26 in 2021, but this increase at least in part reflects the significant increase in natural gas costs, noted by Mr. Ray in his direct testimony at 2 Tr 26 and illustrated in his Figure 1 at 2 Tr 27. He cited the U.S. Energy Information Administration in testifying that the price for natural gas almost doubled from 2020 to 2021. This PFD also notes that Consumers Energy has recently renegotiated that contract, with the

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[114] For Campbell unit 3: gross revenue of $14,351,877 less transmission expense of $1,303,011 from page 18, and less MPPA administrative costs of $400,691 from page 48 equals $12,648,175 for 261,363 MW or $48.39/MWh. For Belle River: gross revenue of $62,569,655 less transmission expense of $5,962,852 from page 18, and less MPPA administrative costs of $643,788 from page 49 equals $55,963,788 for 1,312,641 MWh, or $42.63/MWh.

[115] See Bodiford, 2 Tr 227, citing the Commission's February 2, 2023 order in Case No. U-20530, page 8.

changes to take effect beginning in approximately two years.[116] For these reasons, this PFD finds that it is most reasonable to consider the MCV costs to be an outlier in 2021.

If the $45.51/MWh average of the two MPPA values derived above[117] is used as the comparison for the OVEC costs, the resulting disallowance would be $2,041,373.[118] If these values are used in conjunction with the MCV contract as a third value, the average of these costs and the $73.26 MCV contract costs becomes $54.76/MWh, with the resulting disallowance equal to $1,025,628.[119] This PFD finds the use of the revised MPPA Belle River and Campbell costs to produce the most reasonable estimate of an appropriate adjustment to I&M's PSCR costs to reflect the market value of the OVEC ICPA in 2021. Nonetheless, this PFD recognizes that the MCV agreement was included in the calculation of the 2020 disallowance, and finds that an average of all three values also produces a reasonable alternative estimate of the market value of the OVEC agreement in 2021 that would not be inappropriate.

C. Rockport

I&M also included the costs from Rockport generation that I&M obtains through an agreement, the Unit Power Agreement or UPA, with its affiliate AEP Generating Company (AEG). As shown in Exhibit IM-4, in 2021, the total costs were $217,849,997 for 1,680,933 MWh and a per-Why cost of $129.60. The plan case projection was for a total cost of $203,827,000 for 1,785,500 MWh at a per-MWh cost of 114.16/MWh. form the Rockport

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[116] See March 4, 2021 order, Case No. U-20896.
[117] $48.39 per MWh and $42.63 per MWh.
[118] The difference between $64.10/MWh and $45.51/MWh, times 790,002 MWh, times 13.9% equals $2,041,373.
[119] The difference between $64.10/MWh and $54.76/MWh, times 790,002 MWh, times 13.9% equals $1,025,628

plant in 2021 in its PSCR costs. In the plan case, the Commission provided an explanation of I&M's relationship with the Rockport units:

> I&M's PSCR plan also includes the capacity of the Rockport Plant generating units. Exhibits IM-5, IM-6. The Rockport Generating Station is a two-unit coal-fired power station located in Spencer County, Indiana. Rockport Unit 1 has an expected capacity of 1,072 MW and Rockport Unit 2 has an expected capacity of 1,051 MW for the present plan year. Id. Rockport Unit 1 is owned in 50% shares by I&M and AEP Generating Company (AEG), and Unit 2 is leased on the same percentage basis as I&M and AEG. AEG sells 70% of its share of the power from each Rockport unit back to I&M and 30% to Kentucky Power under a Unit Power sales agreement. 2 Tr 328. I&M pays AEG under a FERC-approved power agreement that includes both energy charges and demand charges. I&M pays AEG demand charges associated with 35% of the capacity of the Rockport plant and recovers its share of demand charges from its Michigan customers in the PSCR. 2 Tr 260.
>
> I&M's and AEG's leases of Rockport Unit 2 were set to expire in December 2022. On April 22, 2021, I&M announced its purchase of Rockport Unit 2. During cross-examination, I&M indicated that the impact of the purchase of Rockport Unit 2 by I&M and AEG was not included in any of the forecasting completed for this filing in September 2020. 2 Tr 254.[120]

While the Commission directed I&M to address the impact of its purchase of Rockport unit 2 in this reconciliation proceeding, Mr. Walcutt testified that there was no impact and no party disputed that testimony.[121]

Also by way of background, in rebuttal testimony, Mr. Stegall explained the genesis of the agreement:

> In 1982, approximately four years after I&M started construction on the Rockport Generating Plant, AEP created American Electric Power Generating Company, Inc. (AEG). I&M's mortgage indenture capped the amount I&M could borrow, so AEG was created to facilitate I&M's share of the financing for the plant. The sole purpose of creating AEG was so that it could acquire an ownership interest in the Rockport Plant This essential credit support allowed I&M to finish the Rockport construction and retain the

[120] November 18, 2021 order, Case No. U-20804, pages 23-24.
[121] 2 Tr 78; Ms. Walcutt also cited the testimony of I&M witness Williamson in Case No. U-21189.

> essential benefits of Rockport ownership – the cost-based energy and capacity provided by AEG. The UPA continues to act as a financing vehicle for 50% of each Rockport unit.[122]

He acknowledged that AEG has no employees and does not participate in the day-to-day management of the plant units.[123] Mr. Stegall considered that this distinguishes the UPA "from a typical 'affiliate' agreement."[124] He further testified that the costs I&M incurs under the UPA represent a pro rata share of the same Rockport-related costs I&M incurs directly and recovers through base rates.

In its February 2, 2023 order in Case No. U-20530, the Commission concluded that the UPA is subject to the pricing provisions of the Code of Conduct, including the affiliate pricing cap, but it declined to adopt a disallowance in that case, explaining:

> First, the Commission notes that unlike the ICPA, the underlying costs related to the UPA have been reviewed and at least partially approved in a previous PSCR proceeding settlement agreement. *See*, March 14, 1991 order in Case No. U-9656, Exhibit A. Additionally, the Commission finds that the unique circumstances created by COVID-19 during 2020 do not allow for a proper evaluation of the UPA during the PSCR period in question as the reduction in production and the weighting of costs to fixed costs skew the comparison; as such the Commission finds that the comparisons suggested by the Attorney General do not properly evaluate the capacity and demand charges associated with these fixed costs. Finally, the Commission finds that based on the evidence, I&M's energy costs associated with the UPA were not unreasonable.[125]

Mr. Ray testified that I&M's Rockport coal generating station in Spencer County, Indiana consists of two 1300 MW coal-fired generating units. He described the company's compliance with emission limits. 2 Tr 25-26. He also described the coal market during 2020 and 2021, I&M's coal purchasing strategy, and I&M's use of the Cora terminal in

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[122] 2 Tr 127-128.
[123] 2 Tr 128.
[124] 2 Tr 128.
[125] February 2, 2023 order, Case No. U-20530, pages 15-16.

Lockwood, Illinois for coal transloading due to a July 2021 fire at the Cook Coal Terminal. Mr. Ray also testified that Rockport burned less coal than forecast primarily due to reduced demand in the first half of the year, while the delivered cost of coal at $33.35 per ton was $3.74 per ton above the plan forecast of $29.61 per ton, primarily due to increased rail transportation cost and the use of the Cora transloading facility.

Mr. Kerns discussed the 107-day outage at Rockport unit 1, testifying that the outage was not caused or prolonged by the company's negligence. 2 Tr 70. He also provided a description of the Rockport plant.

In the plan case, an issue was raised regarding I&M's commitment strategy for Rockport in PJM. Mr. Stegall discussed the commitment process in the PJM energy market, including the company's dispatch of Rockport. He presented an analysis of the company's Rockport dispatch, concluding that the Rockport plant earned $40.7 million of net margin during 2021. He further concluded that the company's use of the must-run designation for the plant was prudent "because the company also earned positive margins in hours when it self-committed the units." He presented a summary of the results of his analysis in Table JMS-2 at 2 Tr 101. He also discussed two periods in which Rockport unit 1 and one period in which Rockport unit 2 realized negative margins.

The Attorney General contends that the UPA as an affiliate transaction is also subject to the Code of Conduct price cap. Ms. Glick testified that I&M ratepayers paid unreasonable costs under the agreement in 2021, totaling $114.2 million more than equivalent energy and capacity purchased from the market and above the cost of available benchmarks. She cited the Commission's order in I&M's 2018 plan case as directing the company to address the contract costs, with no action taken by I&M.

Ms. Glick explained I&M's responsibility for its 50% ownership of Rockport unit 1, 50% leased share of Rockport unit 2, and 70% of AEG's portion of Rockport purchased through the UPA, resulting in a total responsibility for 85% of Rockport costs. She noted that I&M includes all costs associated with the UPA in PSCR costs because it is a PPA.[126] She cited discovery responses in testifying that the agreement with AEG was dated March 31, 1982 and amended May 8, 1989.

Ms. Glick relied on advice of counsel for her understanding that the UPA is subject to the affiliate price cap in the Code of Conduct and that the Commission held accordingly in Case No. U-20530.[127] She explained that the AEG and I&M are affiliates, both subsidiaries of AEP, and that I&M operates the plant that produces the power it purchases under the agreement. And she further explained that under the UPA, I&M pays both an energy charge and a demand charge, with a return on equity of 12.16% for AEG included in the demand charge.[128]

Ms. Glick discussed what she considered partial prior approval by the Commission, citing the Commission's February 12, 1991 order approving a settlement agreement in an earlier I&M rate case, Case No. U-9656:

> The Commission originally approved the inclusion of the capacity charges related to the purchase of Rockport Unit 2 capacity from AEG in a 1991 order. But as part of that order, a settlement agreement was approved that allowed any party to challenge capacity charges associated with Rockport 2 "if circumstances change such that Michigan ratepayers are no longer fairly compensated for the cost of the generating capacity which I&M makes available to the AEP System."[129]

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[126] 2 Tr 188.
[127] 2 Tr 189.
[128] 2 Tr 189-190.
[129] 2 Tr 190.

The order, with the approved settlement agreement attached, is Exhibit AG-28. The 1982 agreement and 1989 amendment are included in Exhibit AG-24; Exhibit AG-26 includes I&M's application to FERC concerning the UPA.

She also noted the Commission's more recent, June 7, 2019 order in Case No. U-18404, which addressed the agreement in response to the Attorney General's recommendation regarding the return on equity for AEG built into the agreement.[130] Ms. Glick testified that although the Commission made clear its expectation that I&M demonstrate in the reconciliation of that plan case and in future plan cases that its wholesale purchases from affiliates are just and reasonable under current market conditions, and that it is taking appropriate actions to minimize PSCR costs, I&M did not take any action in response to that order. She cited I&M's discovery response in Exhibit AG-29, as well as testimony I&M presented in its recent IRP case, to show that I&M is contending that the UPA provides favorable debt and equity financing for AEG's share of the investments made in Rockport.[131]

Ms. Glick rejected I&M's contentions in this regard as a substitute for compliance with the Commission's order in Case No. U-18404. Citing I&M's discovery response in Exhibit AG-30, she testified that I&M did not attempt to compare the UPA costs to market prices or any other benchmarks to determine Code of Conduct compliance. Ms. Glick testified that I&M received an average of $38.56/MWh in energy and ancillary revenues for the Rockport power purchased through the UPA in 2021, and she estimated the

[130] 2 Tr 190.
[131] 2 Tr 191.

capacity value in 2021 as $21.78/MWh, for a total market value of $60.35/ MWh. She contrasted this to the amount I&M paid AEG of $128.31/MWh:

> This means that I&M customers are paying an estimated $67.97/MWh premium for Rockport's energy and capacity services over the equivalent value of the energy and capacity in the PJM market. This works out to a total $114.2 million premium for Rockport services allocated to I&M based on the UPA. Approximately $15.9 million of this will be passed on to Michigan customers in this reconciliation docket.[132]

Citing the benchmarks she presented for the OVEC ICPA, she testified that I&M's cost for Rockport is more than twice as much as any of those supply options.[133]

In recommending that the Commission disallow the $15.9 million premium she calculated, she noted that in case No. U-20530, the Commission declined to do so due to unique circumstances created by the pandemic, including significantly depressed market prices.[134] She testified that in 2021, the energy market recovered.

Ms. Glick also considered the operating costs I&M incurs under the agreement, citing I&M's representation in discovery that the operating costs it incurs under the UPA are equivalent on a pro rata basis to the Rockport-related costs it incurs for its ownership share and recovers through base rates. She concluded from I&M's response that ratepayers are also paying $128.31/MWh "for the portion of Rockport owned by I&M."[135]

In his rebuttal testimony, as noted above, Mr. Stegall included the Rockport UPA and the OVEC ICPA in contending that the company's 2021 PSCR costs of $22.76.MWh were approximately half of what the company paid per-MWh in the PJM market, a weighted average of $38.99/MWh, as evidence of the "favorable economics customers

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[132] 2 Tr 192.
[133] 2 Tr 193.
[134] 2 Tr 193.
[135] 2 Tr 194.

realize from I&M's diversified generation portfolio."[136] His assertion that long-term contracts should be evaluated over their full term applied to the UPA as well as to the ICPA.[137] And his critiques of the cost comparisons proffered by Attorney General witness Glick discussed in connection with the OVEC ICPA also applied to the UPA.[138]

Mr. Stegall acknowledged that he did not provide an analysis of the total cost of Rockport power in comparison to alternatives, "especially the portion purchased under its UPA with AEP Generating Company (AEG)."[139] He then reviewed the history of the UPA as follows:

> In 1982, approximately four years after I&M started construction on the Rockport Generating Plant, AEP created American Electric Power Generating Company, Inc. (AEG). I&M's mortgage indenture capped the amount I&M could borrow, so AEG was created to facilitate I&M's share of the financing for the plant. The sole purpose of creating AEG was so that it could acquire an ownership interest in the Rockport Plant. This essential credit support allowed I&M to finish the Rockport construction and retain the essential benefits of Rockport ownership – the cost based energy and capacity provided by AEG. The UPA continues to act as a financing vehicle for 50% of each Rockport unit.[140]

He testified that AEG does not have any involvement in the management of the Rockport units, with no employees, and that all "costs and management decisions that underly the charges I&M incurs, either directly or through the UPA, are fully managed by I&M."[141] He considered that this "distinguishes the UPA from a typical 'affiliate' agreement." He also testified:

> The costs incurred by the Company under the UPA represent a pro rata share of the same Rockport-related costs incurred by the Company and

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[136] 2 Tr 109-110.
[137] 2 Tr 115.
[138] 2 Tr 116-127.
[139] 2 Tr 127.
[140] 2 Tr 127-128.
[141] 2 Tr 128.

> recovered through base rates. Ongoing operating costs associated with Rockport, such as fuel and consumable costs were addressed by the commitment analysis discussed in my Direct Testimony. Capital investments and O&M costs associated with Rockport, of which AEG receives a 50% share, are reviewed in the Company's base rate cases. These types of costs have been reviewed and approved by the Commission and found reasonable and necessary and are reflected in I&M's base rates. Recent examples include more than $700 million of environmental control equipment investments made at Rockport since 2015, such as Dry Sorbent Injection- (DSI) and Selective Catalytic Reduction- (SCR) related costs in Case Nos. U-16801, U-18370, and U-20359. In other words, the Commission has routinely reviewed, determined to be prudent, and reflected in I&M's base rates and PSCR rates, the same capital investments and O&M activities that underly the charges I&M incurs under the UPA.[142]

He asserted that the relevance of the relationship between the costs of I&M's 50% share and the 35% share build under the UPA is that the underlying source of the costs is the same, with the same review for reasonableness and prudence for both: "[I]f the costs of the Company's 50% share are determined to be prudent, then AEG's share of the costs billed through the UPA should be considered prudent as well."[143]

Mr. Stegall cited a cost-of-service study (COSS) presented in Case No. U-20359. He testified that this COSS included the rate base for I&M's 50% ownership share, and testified:

> As discussed previously, during the majority of 2022 I&M was responsible for 70% of AEG's 50% share of Rockport's costs under the UPA (effectively 35% of Rockport's annual costs). The 35% share of these costs would result in a higher overall revenue requirement if they were billed under I&M's base rates instead of being billed under the UPA.[144]

He contended that since the ownership costs were approved in that rate case, "the demand charges billed under the UPA should be excluded from review in the PSCR

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[142] 2 Tr 128-129.
[143] 2 Tr 129.
[144] 2 Tr 130.

reconciliation filing and any evaluation of the UPA under the Michigan Code of Conduct should be limited to the energy charges only, which can be addressed with the Company's unit commitment analysis provided in the Company's direct case."[145] Mr. Stegall summarized his recommendation to the Commission regarding the application of the Code of Conduct to the UPA:

> The Commission should not apply the Code of Conduct's market price cap to the UPA. I&M's non-fuel charges under the UPA are based on the same underlying investments costs that the Commission routinely reviews, has found to be prudent for many years, and has been reflected in I&M's rates, so there certainly would be no valid reason to apply the Code of Conduct to those costs at this point. Furthermore, I&M has demonstrated the unit commitment and dispatch decisions were prudent and therefore the underlying PSCR costs related to Rockport should also be determined to be prudent.[146]

Mr. Stegall also cited the settlement agreement approved in the company's IRP, noting that I&M is actively seeking resources to replace the Rockport capacity, and further noted that Staff did not take issue with the Rockport costs.

In the plan case, the dispute regarding Rockport focused on claims advanced by the Sierra Club that I&M was operating the Rockport units uneconomically. The Commission concluded that a section 7 warning was premature given that I&M was not locked into any particular commitment strategy. Staff reviewed the company's dispatching in this case and did not find it objectionable.

I&M's brief makes clear that its legal objections to the application of the Code of Conduct offered in response to the proposed disallowances of the ICPA costs to apply as well to the Rockport contract costs.[147] It also argues in its brief that the costs incurred by

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[145] 2 Tr 130-131.
[146] 2 Tr 131.
[147] I&M brief, 6, 28-54.

the company under the UPA are a pro rata share of the same Rockport-related costs recovered through base rates, which have been reviewed and approved by the Commission.[148] It argues further that it provided an analysis of its unit commitment strategy, which no party disputed. And it objects to the cost comparisons presented by Attorney General witness Glick for the reasons Mr. Stegall explained and as discussed above in connection with the ICPA.[149]

The Attorney General's brief reviews the record information about the Rockport plant and the UPA. The Attorney General then reviews the Commission's orders in Case Nos. U-18404, and U-20530 as well as Ms. Glick's testimony regarding the costs of the contract relative to market revenues.[150] She argues that because the Commission has held that the Code of Conduct applies to the UPA and because 2021 was not a year of unique circumstances like 2020, the Commission should apply the market price cap to disallow the portion that exceeds a reasonable long-term supply benchmark or average benchmark.[151] In her brief, she presents two calculations, one leading to a $20.6 million disallowance, the second leading to an $18.3 million disallowance.[152] The first is based on a comparison of the UPA costs to the Belle River MPPA agreement; the second is based on a modification of Staff's method, using the average of the costs of Campbell 3, Belle River, and MCV agreements and the OVEC costs in 2021.

In her reply brief, the Attorney General references the arguments in its initial brief responding to Mr. Stegall's rebuttal. She also references her legal analyses regarding

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[148] I&M brief, 55.
[149] I&M brief, 24-28.
[150] Attorney General brief, 39-44.
[151] Attorney General brief, 44.
[152] Attorney General brief, 44-45, at n199 and n200.

OVEC in disputing I&M's contentions that the Commission may not lawfully apply the Code of Conduct to the Rockport UPA, and summarizes her positions with reference to key cases and prior Commission decisions. The Attorney General cites a February 14, 2019 FERC letter accepting I&M's filing of the UPA to show that FERC did not approve the agreement,[153] and further argues:

> Finally, it is worth noting again that I&M also has chosen for the past few years to disregard the Commission's directive in Case No. U-18404 to address the inflated return on equity that I&M pays its affiliate AEG under the UPA. The Attorney General discussed this point in her initial brief.[154]

There can be little dispute that viewed as an agreement for the purchase of capacity and energy, the UPA costs are well above market prices, at an acknowledged cost of approximately $129/MW as shown in Exhibit IM-4. There is little information on this record regarding the 2018 amendment. Other than Ms. Glick's testimony that the market had rebounded, no party addressed the Commission's finding in the 2020 reconciliation that the record evidence did not lead to a finding that I&M's UPA costs were unreasonable. The Attorney General did not specifically address the remaining elements underlying the Commission's finding or explain how the current record evidence is different than the evidence presented in Case No. U-20530.

In its order in Case No. U-20530, the Commission concluded that it had at least partially approved the UPA in an order in Case No. U-9656.[155] The Case No. U-9656 order approved a settlement agreement that expressly approved the capacity costs of the UPA for Rockport unit 2 under the provision of MCL 460.6j(13)(b) as then in effect. As

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[153] Attorney General reply, 37-38.
[154] Attorney General reply, 38.
[155] The Commission identified an order date of March 14, 1991, but this PFD has reviewed an order dated February 12, 1991, approving a settlement agreement.

Ms. Glick noted in this case, the settlement agreement did provide a reservation stating that "any party may challenge the inclusion of capacity charges associated with the purchase of Rockport 2 capacity by I&M from AEG in rates charged to Michigan ratepayers in a future PSCR proceeding if circumstances change such that Michigan ratepayers are no longer fairly compensated for the cost of the generating capacity which I&M makes available to the AEP system."[156] To put this provision in context, it appears to relate to the concern raised in the Commission's November 21, 1990 order in Case No. U-9458, declining to grant cost approval under MCL 460.6j(13)(b) for the Rockport unit 2 capacity charges given that I&M did not need capacity at that time. As background, the order in that case explained:

> The capacity charges to be incurred by I&M for purchased power, representing demand charges compensating AEP Gen for a proportionate share of Rockport 2 fixed costs, are intended by the utility to be largely offset by capacity settlement credits from the AEP system. Thus, the reasonableness and prudence of I&M's acquisition of purchased power is intertwined with the larger cost issues enveloping the planning, construction, and operation of Rockport 2, issues that will presumably be addressed in the upcoming electric general rate case.[157]

The rate case referenced would appear to be Case No. U-9565, which resulted in the settlement agreement quoted above.

Regarding Rockport unit 1, the Commission approved a settlement agreement in Case No. U-8037 that in turn approved the capacity charges for that Rockport unit under the UPA for the years 1985 and 1986.[158] In its subsequent February 10, 1987 decision in I&M's 1986 PSCR plan case, the Commission appears to have reviewed and approved

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[156] February 12, 1991 order, Appendix A, para. 10, page 5.
[157] November 21, 1990 order, page 12.
[158] See, e.g., February 10, 1987 order, Case No. U-8285; November 26, 1985 order, Case No. U-8037, page 3.

the reasonableness and prudence of the agreement as part of the company's plan, with the following explanation and findings:

> In an Opinion and Order dated May 7, 1985 in I&M's 1984 plan case, No. U-7792, the Commission directed I&M to fully explain in its 1986 PSCR Plan case the necessity and propriety of its projected reserve capacity; it has done so. In the 1984 plan case, the projected reserves on both the AEP and ISM systems appeared large. I&M's projection encompassed proposed capacity from Rockport 1 and 2, as well as that from the ill-fated Zimmer Nuclear Generating Plant (Zimmer). Changes and assumptions have caused revisions in the proposed in-service dates of Rockport 2 and Zimmer, reducing capacity additions. I&M and AEP have sold portions of projected generating capacity, which will be recaptured when it is needed in the late 1990s. Further, both systems reflect the capacity added through large 1300 megawatt units that were planned under prior, larger projections of customer needs to meet economies of scale for the AEP system. While these units are large by today's standards that favor cogeneration and small power production, because construction was begun prior to recent clean air and emissions regulations, their final cost has been greatly reduced.
>
> Given these factors, we, like the ALJ, find that I&M's and AEP's present projected reserves of approximately 30% are not unreasonable. However, like the ALJ, we conclude that the off-system sale of substantial capacity, which is always subject to contract revision, the changing in-service dates of projected new units and fluctuating peak needs, and the industrial customer demand projections in the Ohio Valley heavy industrial region require continued monitoring of the I&M/AEP reserve capacity on a yearly basis. Consequently, I&M should continue to fully explain its reserve capacity and projections in each yearly PSCR plan filing and five-year forecast.
>
> I&M presented considerable evidence regarding the cost and availability of electric generation on its system and that of the AEP system, as well as the cost of short-term power purchases. The company's plan provides for ample power to meet the needs of its ratepayers and its projected costs appear reasonable. I&M is a multistate utility and, consequently, by statute its sales to out-of-state customers need not be reviewed. I&M's witnesses provided substantial testimony regarding the actions the company is taking to minimize its cost of nuclear fuel and coal, and the Commission concludes that the company is taking appropriate action to minimize such costs. In accordance with our prior discussion, the Commission finds that I&M's 1986 PSCR Plan is based upon reasonable and prudent decisions and should be approved.

These earlier approvals do not foreclose the Commission from further considering the UPA, but they do provide context for the Commission's decision on this issue in Case No. U-20530. The Attorney General argues that there is a new agreement, and that the amended agreement has not been approved by the Commission or by FERC. It is not possible to discern on this record what the terms of the UPA are. The Attorney General cites Exhibit AG-24, but that contains only the agreements from the 1980s, and those agreements in turn reference other agreements. The 1981 agreement refers to an "operating agreement," an "Owners' Agreement," and a "Capital Funds Agreement" that are not in the record; the 1989 amendment to the agreement refers to "Leases," a "Revolving Credit Agreement." Exhibit AG-26 is an excerpt from a FERC filing with a "filed date" on each page of December 28, 2018, but it is not clear whether this is a portion of an agreement or description of an agreement, and it has no signatures, and contains no internal dates later than 1990.

In addition to referencing prior approvals, the Commission's order in Case No. U-20530 cited unique circumstances created by the pandemic during 2020 as precluding a proper evaluation of the UPA during the plan year "as the reduction in production and the weighting of costs to fixed costs skew the comparison; as such the Commission finds that the comparisons suggested by the Attorney General do not properly evaluate the capacity and demand charges associated with these fixed costs."[159] The Attorney General notes Ms. Glick's testimony that the energy market recovered during 2021, citing a near-doubling of the average of energy market and ancillary revenues I&M received from the

[159] February 2, 2023 order, Case No. U-20530, page 16.

market for the Rockport power it purchased from AEG.[160] But Ms. Glick also testified that the Rockport units had a capacity factor of only 21%.[161] And she did not dispute I&M's contention that its costs under the UPA for Rockport power are the same costs on a per-MWh basis as the costs I&M recovers through base rates and through the PSCR process for its ownership share of the plant.[162] Mr. Ray for I&M and Mr. Bodiford for Staff also testified regarding a component of additional costs incurred for Rockport due to a coal fire at the Cook Coal Terminal, with Mr. Bodiford explaining Staff's conclusion that I&M should recover the additional costs associated with using the alternate transloading services.

Turning to the costs the Commission actually approved in Case No. U-20530, those costs are roughly comparable to the costs at issue in this case. The Commission's order cited Ms. Glick's analysis for 2020 showing a $122.24/MWh cost under the UPA for 721,476 MW, which compared to a PJM market energy and capacity value of $40.79/MWh generated a per/MWh premium of $81.45 MWh, and a total premium above market for Michigan customers of $16.1 million.[163] In this case, Ms. Glick's analysis for 2021 shows a $128.31/MWh cost for 1,680,933 MWh, which compared to the PJM market energy and capacity value of $60.35/MWh generated a per/MWh premium of $67.97MWh and a total premium above market for Michigan customers of $15.9 million.[164]

Based on an analysis of the Commission's order in Case No. U-20530, this PFD concludes that there is no substantial basis on this record to reach a different conclusion. The amount of generation increased, as did market values, such that the amount by which

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[160] Attorney General brief, 41.
[161] 2 Tr 188.
[162] 2 Tr 194.
[163] See February 2, 2023 order, Case No. U-20530, pages 13-14.
[164] 2 Tr 192.

the Rockport UPA costs exceeded the PJM energy and capacity value in 2021 was very slightly less in total for Michigan customers than in that case. Thus, this PFD does not recommend a disallowance for the Rockport costs. To the extent the magnitude of the costs relative to most measures of market value are significant, the Commission may want to require I&M to present a review of the costs it recovers attributable to its ownership interest and the costs it recovers through the PSCR factor attributable to the UPA in a separate docket in which I&M is required to present the full terms of the UPA and referenced agreements.

D. EWR deficiency

In Case No. U-20867, the Commission directed I&M to present in this reconciliation "a detailed explanation and supporting documentation of the impacts of its failure to comply with the EWR savings requirements of Act 295, as amended by Act 342, on its power supply costs and needs."[165] I&M's analysis to comply with this order and the recommendations of Staff, concurred in by the Attorney General, are discussed below, with a review of the positions of the parties in subsection 1 and conclusions and findings presented in subsection 2.

1. Positions of the parties

Mr. Walter presented I&M's analysis in his direct testimony and Exhibits IM-7 and IM-8. He stated that I&M used 2021 PSCR costs, and made two key assumptions: 1) if I&M had achieved EWR compliance at the 1% level for 2020, that incremental performance would have reduced PSCR fuel and market purchases over the lifetime of

[165] March 17, 2022 order, Case No. U-20867, page 10.

the investment; and 2) I&M had to determine "a counterfactual sales baseline to be used over the life of the EWR measures."[166] He further explained this second assumption:

> To determine this counterfactual sales baseline, the Company assumed that the level of EWR shortfall for 2020 would reduce the Company's annual retail sales for the average life of the 2020 EWR Plan portfolio of measures. Further, in order to equate these future impacts with EWR measure benefit determination, the Company applied present value discounting to the future impacts using the Company's weighted average cost of capital.[167]

Mr. Walter then testified that I&M computed the performance shortfall relative to the 1% standard based on 2019 weather-normalized kWh sales, and determined "how much more EWR compliance would have cost" by using the company's 2020 EWR plan budgets at the 1% compliance level. He also testified that he used the 2021 average PSCR costs that are "energy-related costs only" in determining the incremental PSCR cost associated with the performance shortfall.[168] Mr. Walter referenced the calculations in Exhibit IM-8 and in his table at 2 Tr 147 in concluding that "the incremental cost of EWR compliance exceeds the cost of increased fuel supply and market purchases borne by the Company," and further that this "demonstrated that the PSCR costs were, in fact, prudent and reasonably incurred."[169] The figures he presented included incremental fuel supply and market purchase costs of $879,094, and avoided incremental EWR compliance costs of $1,167,903. He requested that the Commission find the company's PSCR costs reasonable and prudent.[170]

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[166] 2 Tr 145.
[167] 2 Tr 145-146.
[168] 2 Tr 146.
[169] 2 Tr 147.
[170] 2Tr 147.

Ms. Gould took issue with I&M witness Walter's comparison in Exhibit IM-6, characterizing it as a comparison of the EWR costs that I&M did not spend to the incremental cost of the additional fuel supply and market purchases due to the reduced kilowatt-hour savings, and testifying that this is not comparing like costs.[171] She cited the Commission's order, and took issue with I&M's analysis:

> Although the Commission Order stated that the Company was to provide the impacts on its power supply costs and needs, the impacts of its failure to comply with the Act is much greater to its customers. Given that the Commission has the full authority to "consider any issue regarding the reasonableness and prudence of expenses for which customers were charged" in this case, a more reasonable and prudent comparison would be all the expenses I&M's customers incurred, and will incur, for the Company's failure to comply with the Act. By only comparing EWR costs not incurred to the PSCR component of the customer's energy expenses or incremental fuel supply and market purchase costs [I&M] is not comparing like costs. Of course, the PSCR component is a portion of the costs incurred by customers, and if that were the only component the Commission would like the Company to address, one could simply multiply the actual 2021 PSCR component by the amount of kWh not saved by EWR programs and measures. I&M's 1st year legislative goal was 29,662,950 kWh. Similarly, as presented in Company witness Walter's testimony and exhibits, comparing only the fuel supply and market purchase costs due to the shortfall is also not comparing like costs or taking into consideration the full cost to customers for this shortfall. The Company achieved energy savings equal to 19,269,235 kWh. That is a shortfall of 10,393,715 kWh for customers in 2020. That means in 2020, I&M paid a PSCR component of $0.0124/kWh (based on the 2021 rate). This would equate to customers being charged $128,882 for the PSCR component for one year. When you consider the average measure life (AML) for EWR programs offered by I&M in 2020, equal to 11.88 years, and you multiply that by the one-year expense, it shows that customers will ultimately realize $1,531,119 of expenses for the shortfall of EWR programs and measures not implemented by the Company for their customers.[172]

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[171] 2 Tr 207-208.
[172] 2 Tr 207-208.

She further testified that the PSCR component is not the only expense customers will realize as a result of the shortfall, stating that "[t]he full picture of the detriment to customers for the shortfall of EWR implementation is much greater."

Focusing on the first-year savings shortfall of 10,393,715 kWh that she identified, she looked to the company's actual revenue and total kWh sales taken from I&M's actual report for 2020 to get a per kWh cost of $0.1233/kWh.[173] With these figures, she computed a total first-year cost of $1,282,373, and a lifetime cost of $15,222,706.

Turning to the amount I&M would have spent to achieve these savings, she disputed Mr. Walter's use of the actual spending shortfall relative to the company's plan. She testified that I&M would have spent $1,684,344 to achieve the additional savings, which reflects the per-kWh cost of the actual kWh savings that I&M achieved. As shown in Exhibit S-2, Staff divided the company's total spending of $3,024,921 by the total lifetime savings of 353,395,846 kWh to get a cost of $0.0136/kWh, and applied this to the first-year savings shortfall of 10,393,715 kWh to get an incremental cost of $1,684,344 for the shortfall. Ms. Gould considered the difference between the lifetime savings valued at $15,222,706 and this projected spending amount of $1,684,344, equal to $13,538,362, to be the measure of the cost to ratepayers of the company's failure to meet its EWR target.

Ms. Gould also took issue with I&M's use of discount rate to reduce the lifetime savings in kWh. She cited I&M's discovery response, included in Exhibit S-2, as providing I&M's explanation of its "present value" adjustment, and testified that discounting the

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[173] 2 Tr 210.

energy savings customers would realize is not necessary. She acknowledged that measures may reduce over time, but explained that this is already accounted for in the Utility Cost Test. She further disputed I&M's conclusion that customers were positively impacted by having to purchase additional power in lieu of I&M's program implementation, citing both financial benefits as well as non-financial benefits to customers such as a reduction in greenhouse gas emissions and improvements in indoor air quality.[174]

Ms. Gould identified several options for the Commission. The first option is an adjustment of $128,882 to reflect the application of the PSCR rate of $0.0124 to the first-year savings shortfall of 10,393,715 kWh. The second option would be to order this calculation each year over the 11.8-year life of the measures, with the 12th year prorated to reflect eight-tenths of the annual savings, and the per-kWh savings adjusted to reflect the PSCR rate then in effect. The third option would allow the company to make up shortfalls in future years, and she provided an example of that calculation. The fourth option would be for the Commission to reduce PSCR costs by $1,281,715 in this reconciliation, using the first-year savings shortfall and the company's total revenue per kWh of $0.1233. The fifth option would be to adopt this method of calculation for each year of the 11.8 life of the measures, similar to the second option. The sixth option would be to determine that the lifetime net cost to ratepayers that she calculated of $13,538,362 should be returned to customers through rates. And the seventh option she identified would reduce the company's PSCR costs by $1,281,715 this year, and make the same

[174] 2 Tr 212.

calculations in future years through the 11.8-year life of the measures as explained in the fifth option, but allow I&M to offset those future reductions with additional kWh savings.[175]

Ms. Gould testified that Staff recommends that the Commission adopt this last approach, but testified that Staff considers each of these options "a more fair and equitable compensation to customers as compared to the Company's suggestion that their customers were positively impacted by not implementing cost effective EWR in their service territory."[176]

In rebuttal, Mr. Walter contended that Staff's "assertions are inconsistent with the Commission's order direct I&M to undertake the EWR compliance analysis."[177] He testified that I&M "analyzed the appropriate costs in good faith."[178] He defended I&M's use of PSCR fuel and market purchase costs as "the most appropriate basis to use because these costs are variable in nature," and testified:

> Since the Company's analysis used the most appropriate costs for the comparison to EWR compliance, the outcome of the Company's analysis is appropriate and therefore the PSCR fuel and market purchase costs borne by the Company were prudent and reasonably incurred.[179]

He testified that in contrast to variable costs, "fixed costs do not change, or go away."[180] He objected that by using total cost, Staff significantly overstated the impact of I&M's compliance shortfall.[181] He calculated that the savings shortfall would contribute only 1.7MW or 0.3% to the company's peak demand of 514,298 MW, and thus asserted that

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[175] 2 Tr 213-214.
[176] 2 Tr 215.
[177] 2 Tr 150.
[178] 2 Tr 151.
[179] 2 Tr 152.
[180] 2 Tr 153.
[181] 2 Tr 153-154.

"the EWR compliance shortfall would not expect to cause any additional fixed cost expenditure for system capacity."[182]

Mr. Walter further objected that Staff did not "apply a present value discounting approach to the future year energy savings whereas I&M's analysis did."[183] He testified that Staff thus "overstates the effect of future savings for customers and is not consistent with the commonly used methodology for evaluating the cost of future energy supply, both in the industry and in other Commission proceedings such as the renewable transfer price established by Commission and Commission Staff."[184] He further discussed "measure degradation," but testified that: "EWR measure degradation is not the equivalent of present value discounting and does not fully account for the reasons why discounting is used, neither mathematically nor qualitatively."[185] He noted that Ms. Gould referenced the UCT test, characterizing this as "a contradiction because the UCT is not being used ore relied upon in the analysis and neither is a present value discounting method of the energy savings."[186] He then testified that without discounting, Staff's result is "significantly overstated," and "would result in significant financial harm to the Company in the context [sic] PSCR cases for a one-year EWR performance consideration."[187] He then testified that the company has already "borne a financial opportunity cost from its 2020 EWR shortfall . . . by not becoming eligible to earn a financial incentive for the 2020 EWR performance year."[188]

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[182] 2 Tr 154.
[183] 2 Tr 155.
[184] 2 Tr 155.
[185] 2 Tr 156.
[186] 2 Tr 156.
[187] 2 Tr 157.
[188] 2 Tr 157.

Mr. Walter then presented an alternative analysis, reflected in his rebuttal exhibit, Exhibit IM-9, which he testified retains the "values and approaches" used by Ms. Gould, except that it uses the PSCR fuel and energy market costs he used in Exhibit IM-8. He testified that this revised analysis still shows a benefit to customers, in the amount of $147,403, from I&M's failure to meet the EWR savings target.[189] Then he testified that "other costs" should be factored into Staff's analysis, including the costs customers would pay for the EWR measures that are not covered by rebates, as well as the financing costs some customers would incur to pay their share of those measures.[190] He included in his Exhibit IM-9 an "alternative analysis" to reflect these costs, citing column 4 of that exhibit, and information presented in the company's EWR reconciliation filing.[191] And he presented yet another alternative analysis as shown in column 5 of that exhibit to reflect "the EWR cost [I&M] would have incurred if the shortfall in EWR savings were achieved through a one-year measure life resource that compares directly to the one-year PSCR cost impact."[192] He testified that I&M relied on its 2020 Home Energy Reports program cost for this analysis, contending:

> If I&M could have used the Home Energy Reports Program to achieve incremental EWR compliance of 10,393,715 kWh, the cost for EWR compliance in the analysis is $91,568. Column 5 on Exhibit IM-9 JCW-1R shows the outcome of the analysis using this EWR incremental cost of compliance and a one-year useful life of the energy savings. When compared against the PSCR fuel and market purchase costs, the cost of EWR incremental compliance energy savings is less, where the net cost outcome is $37,804 favorable to EWR compliance.[193]

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[189] 2 Tr 157-158.
[190] 2 Tr 159.
[191] 2 Tr 159-160.
[192] 2 Tr 160.
[193] 2 Tr 161-162.

In its brief, I&M quotes the Commission's order in Case No. U-20867, and reviews Mr. Walter's direct testimony and the analysis he presented in Exhibits IM-7 and IM-8.[194]

Staff cites the requirements of MCL 460.1071 et seq., arguing that I&M has been found to be in violation of MCL 460.1077(1), and that it is subject to enforcement of this provision under MCL 460.1073. Staff also cites MCL 460.6j(12) to show that the Commission's review in a PSCR reconciliation includes the reasonableness and prudence of any expense for which the customers were charged if the issue was not considered adequately in the plan case review, and Staff cites the Commission's order in Case No. U-20867. Staff argues that the Commission should adopt Ms. Gould's analysis, and her final (seventh) recommendation as described above, recognizing there is no precedent establishing the mechanics of the calculation since "no other rate-regulated utility in Michigan independently administering its own EWR program has ever failed to meet the 1% statutory minimum."[195]

Staff did not further address the issue in its reply brief, relying on Ms. Gould's testimony and the positions articulated in its initial brief.

I&M did not address Staff's analysis or Mr. Walter's rebuttal testimony in its initial brief, but reviewed his rebuttal extensively in its reply brief.[196] In this unduly repetitive reply brief, I&M argues that the Commission should not adopt Staff's analysis, contending it is not consistent with the Commission's order in Case No. U-20867. Without explaining what EWR costs Staff is seeking to disallow, I&M cites MCL 460.1074 in arguing that there are no grounds for disallowing EWR costs, and without explaining what savings in

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[194] I&M brief, pages 18-21.
[195] Staff brief, 14-15, citing Gould, 2 Tr 215.
[196] I&M reply, pages 41-53.

excess of the 1% savings target Staff is seeking an adjustment for in this case, I&M further argues: "The statutorily established consequence for not exceeding the 1% savings target in Act 295 is the inability to recover a financial incentive."[197] I&M then argues:

> Notably, the Commission's directive in Case No. U-20867 did not mandate a specific financial assessment against the Company or establish a means for penalizing the Company in this Act 304 proceeding based on the 2020 EWR shortfall. To penalize the Company for its 2020 EWR shortfall in the context of its 2021 PSCR reconciliation, as recommended by Staff witness Gould, would result in the disallowance of PSCR costs for reasons not contemplated in Act 304 and the expansion of Commission authority beyond Act 295. Thus, the Commission should adhere to the statutorily established limits for disallowing PSCR costs under Act 304 in this case and reject Staff witness Gould's recommendations.[198]

I&M next faults Staff for not providing additional briefing addressing in greater detail the range of options proffered by Ms. Gould and contends that Staff "did not analyze the scope of the Commission's directive in Case No. U-20867 and whether Staff witness Gould's recommendations are consistent with the directive and applicable statutes."[199] I&M then contends that Staff "mischaracterizes the Company's EWR impact analysis in this Act 304 proceeding when claiming I&M contends customers were 'positively impacted' by the 2020 EWR shortfall." Citing Mr. Walter's rebuttal testimony at 2 Tr 151, I&M contends that it "considers EWR an important resource for its customers and has been working diligently to meet energy savings targets in recent years." But, it further argues, the Legislature's primary goal was to delay the need for constructing new electric generating facilities, and "EWR played an important role in the Company's approved IRP."[200]

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[197] I&M reply, 43.
[198] I&M reply, 43.
[199] I&M brief, 44.
[200] I&M reply, 44.

Focusing on the Staff options that rely on the company's total per-kWh costs, or include recommendations regarding disallowances in future PSCR proceedings, I&M argues that such considerations are beyond the scope of this PSCR reconciliation proceeding and the Commission's order in Case No. U-82067.[201] As part of its contention, I&M also argues that in Case No. U-20867, "Staff sought the Commission to impermissibly alter another EWR Plan period in the context of an EWR reconciliation which is not a remedy provided by the Legislature."[202] It contends that it "adhered to the Commission's straightforward directive in U-20867 by analyzing how the EWR shortfall may have impacted revenues recovered pursuant to the power supply cost recovery factors," citing Mr. Walter's rebuttal testimony in contending that the company presented its analysis in good faith.[203]

I&M argues that only PSCR fuel and market purchase costs should be used in the analysis "to compare how customers benefit from EWR energy savings," characterizing these costs as "variable in nature."[204] I&M then goes on to distinguish these costs from fixed costs that it incurs, "especially energy supply assets such as those used for generation, transmission, and distribution," that "are paid for over the lifetime of the assets," and "do not change or go away because customers did not use the amount of energy they had once used before."[205] I&M thus objects to Staff's consideration of all of

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[201] I&M reply, 45-51.
[202] I&M reply, 47.
[203] I&M reply 48.
[204] I&M reply, 48-49.
[205] I&M reply, 48-551, citing Mr. Walter's rebuttal testimony at 2 Tr 152-155.

the company's costs in formulating certain of its recommendations.[206] I&M argues in defense of its cost analysis:

> The Company's 2020 EWR shortfall in first-year annual energy savings of .3%, or 10,393,715 kWh, would not generally cause the Company to incur additional fixed costs to expense either its generation, transmission, or distribution system . . . or trigger the need for, additional fixed cost for the amount of capacity need resulting from the level of 2020 EWR shortfall.[207]

I&M next contends that Staff's analysis is flawed because Staff did not "apply a present value discounting approach to the future year energy savings."[208] It cites Mr. Walter's rebuttal testimony further in arguing that Staff should have accounted for "EWR measure degradation."[209]

In its reply brief, the Attorney General endorses Staff's recommendations for addressing I&M's failure to comply with the EWR statute.[210]

2. Findings, conclusions and recommendations

After reviewing the arguments of the parties and the Commission's order in Case No. U-20867, this PFD first concludes that only PSCR costs should be considered in this reconciliation, and thus the impact on 2021 PSCR costs of I&M's failure to meet the statutory savings target in accordance with its approved plan. For this reason, this PFD does not find it appropriate to adjust I&M's 2021 PSCR reconciliation to include the impacts on base rates that are set in a general rate case. Correlatively, because this PFD concludes that only PSCR costs should be considered in this reconciliation, what I&M would have spent to attain the 1% savings is not relevant to a determination of the

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[206] I&M reply 49-50.
[207] I&M reply, 50.
[208] I&M reply, 51-52, citing Mr. Walter's rebuttal testimony at 2 Tr 155.
[209] I&M reply, 51-52, citing Mr. Walter's rebuttal testimony at 2 Tr 155-157.
[210] Attorney Geneal reply, 38.

reasonable and prudent PSCR costs ratepayers should pay. I&M would not have recovered those EWR expenses through a PSCR proceeding, and indeed, it may still make the expenditures and achieve the savings going forward, all of which will be reviewed through the EWR planning and reconciliation process.

This PFD notes that Staff also has recommendations that address steps the Commission may take in future reconciliations. This PFD concurs with Staff that without making a final determination on future PSCR costs, the Commission may indicate for I&M's benefit how it is likely to evaluate the impact of the EWR shortfall in future cases, Indeed, despite I&M's objections, this PFD does not understand Staff to be recommending that the Commission set the amount of future disallowances, but rather to acknowledge that I&M's failure to comply with its approved plan for meeting the statutory target may have long-lived impacts, and also that I&M may still achieve the savings, albeit with delayed timing.

Although EWR plan expenditures are not recovered through the PSCR clause, I&M presented an analysis in Exhibit IM-8 that attempts to compare its EWR spending shortfall, based on its EWR plan at the 1% savings level, to its estimate of PSCR cost savings that could have been achieved by meeting that 1% savings level. Staff, in contrast, considered as measure of the additional costs I&M would have spent the per/kWh cost of the savings it did achieve. To the extent it is relevant to an issue to be resolved in this case, this PFD agrees with I&M's analysis, and finds that the appropriate measure of the cost I&M would have incurred to meet its 1% savings target is the $1.17 million presented in Exhibit IM-8, line 10. That amount is consistent with I&M's plan, and

in addition, there is no evidence on this record to show that the actual spending per kWh saved is a better predictor of cost than the plan cost estimate.

Because the focus of this case should be on determining the impact on PSCR costs of I&M's failure to achieve the 1% savings, the company's contention that it would have spent more to attain those savings than the value of the planned measures over their estimated useful lifetime is also not relevant. More fundamentally, I&M cannot establish the reasonableness and prudence of its PSCR costs notwithstanding the additional costs imposed by its failure to attain the 1% savings with a comparison of EWR spending (required under Act 295) with those additional costs. I&M contends that it is not challenging the value of the EWR requirements, but without presenting any holistic analysis of the benefits of EWR, including capacity and energy cost savings measured both over short and longer term periods as well as other benefits explained by Ms. Gould, that is precisely what I&M is contending. This PFD finds that contention untenable and outside the province of this case.

However, this PFD also finds the company's analysis of the impact of the EWR savings shortfall on PSCR costs to be incomplete and unpersuasive for additional reasons as explained below, including its failure to justify its "discounting" of the lifetime savings expected under its EWR plan and its failure to justify its estimate of the PSCR cost impact of the savings shortfall.

As noted above, I&M's analysis was explained by Mr. Walter and as shown in Exhibit IM-8. I&M uses this analysis to show its PSCR costs "were, in fact, prudent and reasonably incurred" because "the incremental cost of EWR compliance exceeds the cost

of increased fuel supply and market purchases borne by the company."[211] It starts with the premise that it planned to save 27,374,373 kWh per year with a life expectancy of 11.8 years, and actually achieved savings of 19,269,235 kWh per year with a life expectancy of 11.8 years. The analysis then essentially takes the difference of 8,105,138 kWh per year for 11.8 years—a total of 96,289,039 kWh—and "discounts" that total to a "present value" of 63,919,458 kWh, or 70,626,082 kWh after accounting for system losses from generation to sales.

To this measure of the incremental savings I&M would have achieved, it then computes the incremental cost of achieving those savings as the difference between the company's planned expenditures of $4,192,824 to achieve the 1% savings and its actual expenditures of $3,024,921 to achieve the reduced savings, a difference of $1,167,903. While Exhibit IM-8 includes some unnecessary steps to derive the result it presents, the analysis essentially compares this unspent or incremental cost of $1,167,903 to the PSCR energy cost of the "discounted" incremental savings amount of 70,626,082 kWh, which it states as $879,094 based on a PSCR cost of $0.012447151. The net savings, or negative "net customer impact" of $288,810 shown on line 20 of Exhibit IM-8 is the difference between the incremental PSCR cost savings of $879,094 and the incremental EWR spending of $1,167,903.

As Staff argues, I&M failed to justify its use of its cost of capital as a discount rate to "discount" future kWh savings. It presented no justification in its direct testimony, it presented no justification in response to Staff's discovery response in Exhibit S-2, page

[211] Walter, 2 Tr 147.

1, and in rebuttal, Mr. Walter focused on Ms. Gould's brief recognition that savings can diminish over time without providing any technical evaluation or quantification to justify his adjustments. The concept of "present value" has no applicability to kWh, it is a means of recognizing the time value of money.[212] In this case, kWh may become more costly in the future, but I&M did not provide a stream of future costs that could be discounted. There is no connection between the company's capital costs and any change in savings over time. And Mr. Walter's assertion that it is "standard" was without any support on this record. The 11.8 year average life value is an estimate derived from the measures in I&M's plan, and the company has not provided any detail to impeach that estimate. This PFD notes that there is no curtain that is pulled down at the end of 11.8 years that says, henceforth there will be no savings from those measures that were implemented 11.8 years ago. Since I&M failed to address the elements underlying the 11.8 year estimate, let alone to establish that the estimate is flawed, its ad hoc adjustment is meaningless.

Moreover, this PFD finds that simply redoing I&M's analysis in Exhibit IM-8 without the "present value" reduction leads to contrary results, showing a net cost to ratepayers when comparing the EWR spending shortfall to the company's own estimate of the PSCR costs of the savings shortfall. Without the "present value" discounting, line 1 becomes 323,017,601 kWh;[213] line 2 becomes 227,366,973 kWh;[214] line 3, which is the difference between lines 1 and 2, becomes 95,640,620 kWh, which is increased to 105,673,330

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[212] The *New Oxford American Dictionary* (2001 Ed.) defines "present value" as "the value in the present of a sum of money, in contrast to some future value it will have when it has been invested at compound interest."
[213] 27,374,373 kWh times 11.8 years = 323,017,601.
[214] 19,269,235 times 11.8 years = 227,366,973.

kWh on line 9 to restate the values at the generation level, by adjusting for line losses.[215] Using I&M's stated "average annual cost of energy supply fuel and market cost rate" of $0.012447151 per kWh on line 14 leads to a revised "incremental fuel supply and market purchase cost due to EWR shortfall" on line 19 of $1,315,332, which is greater than the incremental cost of compliance of $1,167,903 that I&M presents on line 10 of Exhibit IM-8 by $147,429.

I&M has also failed to justify its estimate of PSCR cost savings on a per-kWh basis, shown on line 14 of Exhibit IM-8 as approximately $0.01245/kWh. I&M merely asserts what its variable cost of energy production it, without tying this value to values presented in its reconciliation filing. It has not reviewed each element of its PSCR costs to establish what costs vary based on kWh. It has not clearly reflected higher-cost energy or other charges that could have been avoided by reduced requirements. For example, I&M reports the energy costs under the OVEC agreement as $20,423,658 for 790,000 MWh in 2021, or a per-kWh cost of $0.026/kWh, more than double the cost reported on line 14 of Exhibit IM-8. It has not evaluated its capacity costs or transmission costs, although as shown in its Exhibit IM-6, capacity costs can vary by kWh, as shown by Ms. Howell's testimony, PJM market costs may vary by kWh, and both capacity and transmission costs can vary by peak usage.[216] This PFD finds Mr. Walter's testimony regarding the company's asserted cost figure instructive, in that he appears to be considering what he regards philosophically as costs that are variable "in nature" rather than costs such as capacity costs that he regards as fixed.[217] This PFD notes that in Exhibit IM-6, Mr. Walter

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[215] 95,640,628 kWh times 1.1049 = 105,673,330.
[216] See, e.g., Howell, 2 Tr 62-68.
[217] 2 Tr 152.

presented a comparison of I&M's OVEC capacity costs to costs under two Consumers Energy agreements; while the capacity costs under those agreements were calculated on a per-kWh basis, Mr. Walter labeled them "fixed" in his exhibit.

Another way to view the shortcomings in I&M's analysis is to recognize that market revenue also reduce total PSCR costs. Taking I&M's statement of the PSCR costs associated with the additional generation at face value, the $0.01245/kWh figure is equivalent to a cost of approximately $12.45 per MWh. In contrast, I&M reports the market value of energy in 2021 on a per/MWh basis as an average of $38.99/MWh.[218] Yet I&M failed to provide an analysis on this record of market revenues foregone given the need to supply the addition kWh to customers. Put another way, had I&M not needed to provide the additional kWh to its customers, it could have reduced PSCR costs by approximately $0.039/kWh, or approximately $405,355 for the 2021 kWh savings shortfall of 10,393,715 kWh as determined by Staff.

And the market value of energy does not consider any capacity values. While Mr. Walter acknowledged that the 2020 kWh shortfall is equivalent to 1.7 MW or 0.3% of the company's Michigan peak demand, I&M did not include any value in its analysis for this capacity. That's true even though Mr. Stegall found it worthwhile to consider the costs of a 4.8 MW landfill gas contract in comparison to OVEC costs.[219] Ms. Glick calculated a market value of $8.79/MWh, which is approximately an additional two-thirds of the PSCR cost value I&M placed on the excess kWh. Adopting Staff's 2021 savings figure of

[218] Stegall, 2 Tr 109.
[219] See Walter, 2 Tr 154, Stegall, 2 Tr 94and IM-6.

10,393,715 kWh, which this PFD concludes is correct, the additional market revenue forgone would be $91,465.

The company's contention that it is a sufficient consequence for not achieving the 1% savings target that it must forgo incentive compensation for exceeding the target is another untenable argument. The incentive compensation is intended to motivate companies to exceed the target; the statute requires that companies attain the target through an approved plan.

Thus, this PFD finds that, unless the Commission desires to direct I&M to conduct a more thorough analysis, PSCR costs should be reduced by the total energy and capacity value of the savings shortfall of 10,393,715 kWh, or $496,820. Unless I&M makes up for the shortfall as explained by Staff, the Commission should direct I&M to provide a more thorough review of the basis for each of the costs included in its next reconciliation, and an analysis of market revenues that could have been attained.

IV.

CONCLUSION

Based on the findings and conclusions above, this PFD recommends that the Commission revise the beginning balance as shown in Exhibit S-1, adopt a disallowance for OVEC costs within the range of $1,025,628 to $2,041,373 as explained above, reject the Attorney General's proposed disallowance for costs under the Rockport UPA but consider requiring an evaluation of the agreement over its expected term, and disallow

$496,820 in PSCR costs as an estimate of the PSCR costs that would have been avoided had I&M met the 1% target in its approved EWR plan.

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

Sharon L. Feldman

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Sharon L. Feldman
Administrative Law Judge

Issued and Served:
December 1, 2023

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN)
) SS.
County of Ingham)
_____)

Case No. U-20805

PROOF OF SERVICE

Meaghan Dobie being duly sworn, deposes and says that on December 1, 2023, she served a copy of the attached Notice of Proposal for Decision and Proposal for Decision via email and/or first-class mail, to the persons as shown on the attached service list.

Meaghan Dobie

Subscribed and sworn to before me this
1st day of December 2023.

Brianna L. Brown
Notary Public, Gratiot County, Michigan
My Commission Expires July 4, 2028

Case No. U-20805
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