S T A T E   O F   M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **INDIANA MICHIGAN POWER COMPANY** for a certificate of necessity pursuant to MCL 460.6s and related accounting authority.	)))))	Case No. U-21377

At the December 21, 2023 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER

History of Proceedings

On February 23, 2023, and in accordance with MCL 460.6s and the Commission's filing requirements and instructions adopted in Case No. U-15896, Indiana Michigan Power Company (I&M) filed a notice of intent to file an application for a certificate of necessity (CON) to construct a solar generation facility (Lake Trout) greater than 225 megawatts (MW). On March 27, 2023, I&M filed its application, along with supporting testimony and exhibits, for the CON for the Lake Trout Project (Project) and for other related accounting authority. According to I&M:

> [T]he Project is a solar generation facility located in Blackford County, Indiana and will produce 245 MWs of solar generation. The [c]ompany entered into a competitively bid Purchase and Sale Agreement (PSA) with the developer to construct the Lake Trout Project. The Project is expected to be operational in by [sic] April 2026. The [c]ompany will own and operate the facility and will include the capacity of this facility in its PJM [PJM Interconnection, L.L.C.] Fixed

> Resource Requirement (FRR) capacity plans. The Lake Trout Project will be capable of producing enough energy to power approximately 73,500 homes.

Application, p. 3.

On April 27, 2023, a prehearing conference was held before Administrative Law Judge Katherine E. Talbot (ALJ), at which the ALJ acknowledged the intervention of the Michigan Department of Attorney General (Attorney General), along with I&M's objection to Wabash Valley Power Association, Inc.'s (Wabash's) petition to intervene. I&M and the Commission Staff (Staff) also participated in the proceeding. On April 27, 2023, the ALJ also issued a protective order (April 27 protective order) that covered certain information "which is confidential, proprietary, competitively sensitive, and trade secret in nature and therefore exempt from public disclosure." April 27 protective order, p. 1.

On May 2, 2023, Wabash filed its response to I&M's objection to intervention, and on May 4, 2023, I&M filed its reply. On May 9, 2023, the ALJ issued her ruling (May 9 ruling) denying Wabash's petition to intervene as of right but granting Wabash permissive intervention. In her ruling, the ALJ determined that the benefit of Wabash's participation in the proceeding outweighed any potential for delay or expense. May 9 ruling, p. 8. No party appealed the May 9 ruling.

On May 5 and 6, 2023, I&M filed revised testimony. On May 13, 2023, the Staff filed both public and confidential testimony and exhibits while the Attorney General filed certain testimony under seal. On May 14, 2023, the Attorney General filed additional confidential testimony and exhibits along with a public version of testimony and exhibits. On August 8, 2023, the Staff and I&M filed public and confidential rebuttal testimony.

On August 16, 2023, the ALJ conducted an evidentiary hearing, at which cross-examination was waived by the parties and the prefiled testimony, both public and confidential versions, were entered into the record. The parties filed initial briefs on September 14, 2023, and the Staff and I&M filed reply briefs on September 28, 2023.

On October 30, 2023, the ALJ issued her proposal for decision (PFD). On November 13, 2023, I&M filed exceptions to the PFD. On November 22, 2023, the Attorney General and Wabash filed replies to exceptions. The record in the proceeding consists of 482 pages of testimony and 36 exhibits admitted into the record.

Proposal for Decision

On pp. 8-15 of the PFD, the ALJ provided a thorough overview of the record that will not be repeated in this order. The ALJ determined that no party disagreed with I&M's need to acquire additional solar generation under its approved integrated resource plan (IRP) in Case No. U-21189. The ALJ, however, addressed arguments from the Attorney General and Wabash that the Lake Trout Project is not the most reasonable and prudent means of acquiring the needed solar generation, and arguments from the Attorney General and Wabash to exclude certain contingency costs included in the application. The ALJ also granted I&M's request for related accounting authority and provided the parties an opportunity to address any concerns regarding the status of confidential material in exceptions to the PFD.

The Commission will discuss the legal framework associated with a CON application, the two issues addressed by the ALJ, related accounting authority, and matters related to the confidential record established in the case.

Discussion

I&M filed its application pursuant to MCL 460.6s (Section 6s), which provides in relevant part:

> An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of 6 years or longer may submit an application to the commission seeking a certificate of necessity for that construction, investment, or purchase if that construction, investment, or purchase costs $100,000,000.00 or more and a portion of the costs would be allocable to retail customers in this state. A significant investment in an electric generation facility includes a group of investments reasonably planned to be made over a multiple year period not to exceed 6 years for a singular purpose such as increasing the capacity of an existing electric generation plant.

MCL 460.6s(1). Additionally, under MCL 460.6s(3):

> An electric utility submitting an application under this section may request 1 or more of the following:
>
> (a) A certificate of necessity that the power to be supplied as a result of the proposed construction, investment, or purchase is needed.
>
> (b) A certificate of necessity that the size, fuel type, and other design characteristics of the existing or proposed electric generation facility or the terms of the power purchase agreement represent the most reasonable and prudent means of meeting that power need.
>
> (c) A certificate of necessity that the price specified in the power purchase agreement will be recovered in rates from the electric utility's customers.
>
> (d) A certificate of necessity that the estimated purchase or capital costs of and the financing plan for the existing or proposed electric generation facility, including, but not limited to, the costs of siting and licensing a new facility and the estimated cost of power from the new or proposed electric generation facility, will be recoverable in rates from the electric utility's customers subject to subsection (4)(c).

I&M is seeking: (1) a certificate of necessity that the size, fuel type, and other design characteristics of the existing or proposed electric generation facility represent the most reasonable and prudent means of meeting the company's power need, consistent with MCL 460.6s(3)(b), and (2) a certificate of necessity that the estimated capital costs of and the financing plan for the Project including, but not limited to, the costs of siting and licensing the Project and the estimated cost of power from the Project will be recoverable in rates from the company's customers, consistent with MCL 460.6s(3)(d). Application, p. 3. The Commission's responsibilities for evaluating the CON application are outlined in Section 6s(4), which provides:

> Within 270 days after the filing of an application under this section, or, for an application for an electric generation facility submitted as required under section 6t(13), concurrently with a final order issued under section 6t, the commission shall issue an order granting or denying the requested certificate of necessity. The commission shall hold a hearing on the application. The hearing shall be conducted as a contested case . . . . The commission shall permit reasonable discovery before and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the application, including, but not limited to, the reasonableness and prudence of the construction, investment, or purchase for which the certificate of necessity has been requested. The commission shall grant the request if it determines all of the following:
>
> (a) That the electric utility has demonstrated a need for the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed power purchase agreement through its approved integrated resource plan under section 6t or subsection (11).
>
> (b) The information supplied indicates that the existing or proposed electric generation facility will comply with all applicable state and federal environmental standards, laws, and rules.
>
> (c) The estimated cost of power from the existing or proposed electric generation facility or the price of power specified in the proposed power purchase agreement is reasonable. The commission shall find that the cost is reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation. Up to 150 days after an electric utility makes its initial filing, it may file to update its cost estimates if they have materially changed. No other aspect of the initial filing may be modified unless the application is withdrawn and refiled. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order granting or denying a certificate of necessity. An affiliate of an electric utility that serves customers in this state and at least 1 other state may participate in the competitive bidding to provide engineering, procurement, and construction services to that electric utility for a project covered by this section.
> (d) The existing or proposed electric generation facility or proposed power purchase agreement represents the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand, including energy efficiency programs, electric transmission efficiencies, and any alternative proposals submitted under this section by existing suppliers of electric generation capacity under subsection (13) or other intervenors.

> (e) To the extent practicable, the construction or investment in a new or existing facility in this state is completed using a workforce composed of residents of this state as determined by the commission. This subdivision does not apply to a facility that is located in a county that lies on the border with another state.

MCL 460.6s(4). Additionally, under Section 6s(5), “the commission may consider any other costs or information related to the costs associated with the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed purchase agreement or alternatives to the proposal raised by intervening parties.” MCL 460.6s(5).

On February 2, 2023, the Commission issued an order (February 2 order) approving a contested settlement agreement in Case No. U-21189 in I&M’s IRP case. In that proceeding, the Commission concluded, “from the language of the settlement agreement on its face as well as the record in the contested settlement agreement portion of this proceeding, that I&M will conduct an all-source, non-discriminatory RFP [request for proposal] in 2023 that will target the amounts of capacity identified in the company’s Preferred Portfolio, without placing further size, generation-type, or run-time restrictions on the solicited bid.” February 2 order, p. 98. Additionally, the Commission recognized I&M’s and the Staff’s commitment “to conduct a robust analysis of costs and resource options for meeting power demand in a future CON proceeding under MCL 460.6s.” February 2 order, p. 99.

Most Reasonable and Prudent Means of Meeting Power Needs

Following the February 2 order, I&M entered into a PSA with EDF Renewables Development, Inc. (EDF Renewables) to develop the 245 MW Lake Trout Project that, upon the expected April 2026 completion date, will be owned and operated by I&M. 2 Tr 29. I&M argued that the company has significant capacity shortages for the 2024-2028 timeframe and that the Lake Trout

Project is the most reasonable and prudent means to meet the company's needs. I&M's initial brief, p. 28.

I&M averred that the PSA for the Lake Trout Project was entered into through a competitive solicitation process that complied with the Competitive Procurement Guidelines developed by the Commission to be used in the determination of whether resource procurements are reasonable and prudent. *Id*., p. 32. I&M further argued that the PSA structure was preferable to the power purchase agreement (PPA) structure because the PSA provides more years of service than the typical PPA and allows the company to realize the terminal value of the resource. *Id*., p. 29. I&M also provided that the company evaluated the environmental, social, and economic benefits in considering the RFP bids. *Id.*, p. 30. I&M contends that the Lake Trust Project's PSA ultimately won out over four other finalists in a competitive RFP process, resulting in the best choice for the company and its customers. *Id*., p. 40.

Citing the February 2 order, the Staff argued that the Commission specifically found that "I&M will have a 750 MW capacity need which follows naturally from the retirement of the Rockport plant and the resulting 2,600 MW capacity deficiency in 2028." February 2 order, p. 96. The Staff further contended that because the approved IRP also includes 1,300 MW of renewable capacity additions by 2026, the Lake Trout Project is consistent with that projected need. Staff's initial brief, p. 6. The Staff added that the Lake Trout Project was the product of the company's 2022-all-source RFP process to fulfill the identified need in the company's approved IRP settlement agreement. *Id*., p. 7.

The Staff also agreed with I&M that the Project is the result of a competitively bid PSA agreement between the company and EDF Renewables. *Id*. The Staff also argued that it reviewed the Lake Trout bid and other RFP material and found "the RFP selection process was in accord with the Competitive Procurement Guidelines for Rate-Regulated Electric Utilities, adopted by the Commission in its September 9, 2021, Order in Case No. U-20852." *Id*., p. 8; *see also*, 2 Tr 268.

The Staff argued that "the contract price is within a reasonable cost range as compared to the modeled solar in the IRP when considering tiered pricing modeled in the IRP and the amount of resources contracted under this RFP." Staff's initial brief, p. 13. The Staff recommended that the Commission find that costs associated with the Lake Trout solar generation facility are reasonable as they are the result of a competitive solicitation. The Staff also provided that in the August 30, 2023 order in Case No. U-21189 (August 30 order), the Commission stated that a "finalized price when compared to the initial bid does not discount the extensive competitive procurement process utilized in the selection of the projects." *Id*. (citing August 30 order, p. 53). Additionally, the Staff added, the record in this case is substantially similar to the record in Case No. U-21189 and demonstrates that negotiations following the initial bid are a common part of the competitive solicitation process. Staff's initial brief, p. 13.

The Staff ultimately concluded:

> [T]hat the contract price is within a reasonable cost range as compared to the modeled solar in the IRP when considering tiered pricing modeled in the IRP and the amount of resources contracted under this RFP. Staff recommends the Commission find that costs associated with the Lake Trout solar generation facility are reasonable as they are the result of a competitive solicitation.

Id., p. 14.

The Attorney General did not dispute the need for the Lake Trout Project in principle; however, she took issue with the amount of project costs that I&M seeks preapproval for from the Commission. Attorney General's initial brief, p. 1. In particular, the Attorney General disputed the total cost of the project when comparing the initial bid price to the actual contract price. *Id*., p. 10. The Attorney General asserted that the contract price for the Lake Trout Project is substantially higher than the overall levelized cost of energy (LCOE) for solar in the IRP and for I&M's highest price tier of solar projects from the IRP. *Id*. The Attorney General argued that the contract price for the Lake Trout Project is far above any other utility-scale solar PPA that has been approved by the Commission. *Id*. The Attorney General claimed that I&M did not justify its decision to pursue utility ownership of the Lake Trout Project under the PSA in lieu of the PPA option. *Id*., p. 13.

The Attorney General argued that the value-to-cost ratio was much more favorable under a submitted PPA bid when compared to the PSA. *Id*., p. 14. The Attorney General further argued that I&M's declaration that the Lake Trout bid was the highest scoring of all the PSA bids submitted in the 2022 all-source RFP is irrelevant because this does not account for I&M not selecting a less expensive PPA bid. *Id*. The Attorney General also claimed that selecting future utility ownership under the PSA did not properly account for "additional risks, future costs, and liabilities associated with ownership and decommissioning." *Id*., p. 15.

The Attorney General did not dispute that the resources selected from the 2022 RFP met the IRP case settlement agreement requirement to target a minimum of 30% of new acquisitions via PPAs; however, she maintained that simply exceeding the minimum obligation does not relieve I&M's burden to demonstrate that the selected resource is the most reasonable and prudent option under MCL 460.6s(4)(d). Attorney General's initial brief, p. 15. The Attorney General concluded that by rejecting the lower-cost PPA option for the same project in favor of a higher price PSA, I&M defeated the purpose of soliciting both types of offers. *Id*.

Wabash also challenged I&M's selection of the PSA over other PPA bids. Wabash claimed that the significant post-bid changes in the contract price demonstrate that the PSA was the result of bilateral negotiations and not a competitive solicitation. Wabash's initial brief, p. 2. Before making its final decision, Wabash contended that I&M could have solicited revised bids from viable projects or even negotiated one of Lake Trout's PPAs that it submitted under the RFP in addition to the selected PSA. *Id*. Wabash also maintained that the record evidence does not establish that I&M's selection of the Lake Trout PSA was the most reasonable and prudent option because the company did not properly identify non-price issues with the PPAs or properly evaluate the Lake Trout PPA submissions. *Id*., pp. 2-3. Additionally, Wabash argued that even though I&M maintains the ability to determine its optimal portfolio, it does not necessarily mean that projects the utility determines to be optimal are the most reasonable and prudent options and eligible for cost recovery. *Id*., p. 7.

The ALJ agreed with I&M and the Staff and found that the Lake Trout Project is the most reasonable and prudent means to meet the company's energy needs. The ALJ determined that the Lake Trout Project contract price resulted from a competitive solicitation under the RFP and that I&M chose a mix of generation that complied with the settlement agreement in the IRP proceeding. PFD, pp. 29-31.

The ALJ disagreed with the Attorney General and Wabash's argument that the final contract price for the Lake Trout Project resulted from bilateral negations and not a competitive solicitation. PFD, p. 29. The ALJ determined that I&M complied with the Commission's Competitive Procurement Guidelines and that no party disputed the utility's adherence to the guidelines. *Id*. Additionally, the ALJ found that I&M and the Staff presented credible evidence that post-bid negotiations are common and designed to address changing market conditions and fluctuating prices between the initial bid and final contract price. PFD, pp. 29-30. The ALJ further determined that the record evidence established that the selection of the Lake Trout Project resulted from the same RFP process implemented in Case No. U-21189 to select four approved projects. PFD, p. 30. The ALJ noted that in that case the Commission stated:

> The finalized price as compared to the initial bid does not discount the extensive competitive procurement process utilized in the selection of the projects. Concerns regarding the negotiations process also do not support the Attorney General's objections. More specifically, the record demonstrates that negotiations are a common part of the competitive solicitation process.

Id. (citing the August 30 order, p. 53). The ALJ further found that, under MCL 460.6s(4)(c), the finding that the RFP process was a competitive solicitation is dispositive of reasonableness and prudence and, therefore, recommended that the Commission find the Lake Trout Project costs to be reasonable and prudent. PFD, p. 30.

The ALJ further determined that, "[e]ven if the Commission disagrees that the solicitation was a competitive solicitation, this [ALJ] recommends a finding that the Lake Trout Project is a reasonable and prudent means of meeting the company's capacity needs." PFD, p. 31. The ALJ explained that the RFP considered both economic and non-economic criteria and that the Staff conducted an audit of the submitted bids. *Id*. The ALJ added that the Staff presented credible evidence that the LCOE associated with the Lake Trout Project is within the range of acceptable prices and that the capital costs are reasonable. *Id*. The ALJ further found the Attorney General's market comparison analysis failed to include data from recent PJM solar projects resulting in a range for LCOE that was too low. *Id*.

Ultimately, the ALJ recommended that the Commission grant I&M's request for a CON that approves the size, fuel type, and other design characteristics of the proposed Lake Trout Project and found that the project represents the most reasonable and prudent means of meeting the company's power need. PFD, p. 32. The ALJ further recommended that the Commission grant a CON that approves the inclusion of capital costs for the project in base rates. *Id*.

No party filed exceptions to the ALJ's recommendations on this issue.

As stated previously, the Commission's responsibilities for evaluating I&M's CON application are dictated by MCL 460.6s(4)(a)-(e). First, no party argued that I&M failed to demonstrate the need for the power generation that the Lake Trout Project will supply or that the information supplied failed to show the project's compliance with all applicable state and federal environmental standards, laws, and rules. The Commission finds that the application meets the requirements under MCL 460.6s(4)(a) and (b). The Commission further finds that because the Lake Trout Project is located in Indiana, evaluation of the project under MCL 460.6s(4)(e) is unnecessary.

The Commission agrees with I&M and the Staff that the estimated cost of power from the Lake Trust Project is reasonable. The Commission is satisfied from the record evidence that the RFP resulted in a competitive solicitation that complied with the Commission's Competitive Procurement Guidelines, which included oversight by an independent monitor and with bids audited by the Staff. The Commission disagrees with the Attorney General and Wabash that I&M did not properly evaluate PPA bids prior to its final selection. The Commission agrees with I&M that a competitive solicitation considers the entire process rather than just the final process. The Commission also agrees with the ALJ that I&M and the Staff presented credible evidence that post-bid negotiations are common and designed to address changing market conditions and fluctuating prices between the initial bid and final contract price.

Under MCL 460.6s(4)(c), the finding that the RFP process was a competitive solicitation is dispositive that the cost is reasonable. The Commission agrees with the ALJ that the record evidence establishes that the selection of the Lake Trout Project resulted from the same RFP process implemented in Case No. U-21189. In that proceeding, the Commission found that "[t]he finalized price as compared to the initial bid does not discount the extensive competitive procurement process utilized in the selection of the projects" and that "the record demonstrates that negotiations are a common part of the competitive solicitation process." August 30 order, p. 53. The Commission finds that the RFP process resulting in the selection of the Lake Trout Project was a competitive solicitation. The Commission, therefore, finds that I&M has met its burden under Section 6s(4)(c).

Although the lines of evaluation between MCL 460.6s(4)(c) and (d) are somewhat blurred, the Commission agrees with the ALJ that the Lake Trout Project is the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand. MCL 460.6s(4)(d). The Commission agrees with the ALJ that the RFP considered both economic and non-economic criteria in the selection process and that the Staff conducted an audit of the submitted bids. The Commission also agrees with the Staff that the settlement agreement in Case No. U-21189 specifically provided that new resources obtained through PPAs would not compete economically against the new resources which will be owned by the company. February 2 order, Exhibit A, p. 5.

The Commission agrees with the ALJ that the Staff presented credible evidence that the LCOE associated with the Lake Trout Project is within the range of acceptable prices and that the capital costs are reasonable. The Commission further agrees that the Attorney General's market comparison analysis failed to include data from recent PJM solar projects resulting in a range for LCOE that was too low. The Commission finds that I&M has met its burden under MCL 460.6s(4)(d).

Contingency Costs

The Attorney General and Wabash argued that substantial contingency costs[1] should be excluded from the capital costs of the Lake Trout Project. Wabash asserted that the inclusion of these costs is unreasonable. Wabash's initial brief, p. 5. The Attorney General claimed that the inclusion of these costs results in an unacceptable LCOE and argued the Commission should not approve these costs for inclusion in rates. Attorney General's initial brief, p. 17. The Attorney General further argued that the inclusion of these contingency costs makes the final price of the Lake Trout Project higher than the range of projects approved in the IRP.

I&M argued that including all costs in the Lake Trout Project is reasonable and that it was necessary to include contingency costs to create a final contract structure to address post-bid market volatility. I&M's initial brief, p. 42. I&M contended that the included contingency costs are comparable to those developed for solar projects by other utilities and "designed to manage economic issues and risks while allowing the [c]ompany to acquire the resources needed to meet customers' need for energy and capacity resources." *Id.*, p. 44. I&M acknowledged that the Commission routinely disallows recovery of contingency costs that have not been realized or spent, but simply requests recovery of the entire project now while leaving the Commission flexibility to review actual incurred costs before the company can include them in rates. *Id.*

The Staff agreed with I&M's approach that contingency costs should be approved costs under MCL 46.6s(6) but excluded from rates unless the following conditions are met: (1) the costs have been incurred by the company; (2) the company has provided evidence that these expenses have been incurred; (3) the company provides an explanation of the event or events that led to these costs being necessary with such evidence to be provided in the annual CON update that is to be

[1] I&M's contingency costs are part of the confidential record and are shown in Table TBG-3.

filed in this docket, as well as in future rate cases in which I&M is proposing to recover these costs and include them in rates; and (4) the costs have been reviewed and the Commission finds the costs included to be reasonable and prudent. *See*, 2 Tr 256-257.

The Attorney General criticized the approach for contingency costs advocated by I&M and the Staff, arguing that the recommendation defeats the purpose of MCL 460.6s(9), relieving the company of its obligation to overcome the statutory presumption that costs exceeding those approved by the Commission are not prudent. Attorney General's initial brief, p. 19. The Attorney General maintained that contingency costs are inherently speculative, and approval would be unreasonable. *Id*. The Attorney General pointed out that the Commission rejected the suggested approach under similar circumstances when it excluded contingency costs in its approval of the four other projects selected in the RFP in Case No U-21189. *Id*.; *see also*, August 30 order, pp. 54-55.

I&M argued that this is not a rate case and that the company is not seeking inclusion of projected contingencies in its rate base. I&M's reply brief, p.18. Furthermore, I&M maintained, the Commission has determined in a previous CON proceeding that contingencies are appropriate. *See*, April 27, 2018 order in Case No. U-18419 (April 27 order), pp. 53-54.

The ALJ agreed with the Attorney General and Wabash and recommended that the Commission exclude contingency costs from capital costs. PFD, p. 36. The ALJ noted that the Commission has a long history of disallowing contingency costs and if approved in a CON case, would be deemed reasonable and prudent. *Id*. The ALJ further noted that the Commission addressed contingency costs in Case No. U-21189 with the following:

> Although the total cost requested by the company inclusive of contingency and contingency-like costs may be a reasonable cost for such a resource, approval of contingency or contingency-like expenses would equate to a finding of reasonableness and prudence, which the Commission declines to provide at this

> time. Such a finding of reasonableness and prudence of contingency and contingency-like costs, inclusive of the reviews detailed by the Staff, cannot take place until such costs have been incurred.

PFD, p. 37 (quoting August 30 order, p. 55). The ALJ further stated that the contingency costs for the Lake Trout Project are speculative and recommends exclusion from approval in this CON case. PFD, p. 37. The ALJ, however, did not recommend excluding "owner's costs" that the Attorney General labeled as contingency-like costs. *Id*.

I&M's first exception to the PFD requests clarification on what contingency costs the ALJ recommends the Commission exclude in the final order. I&M's exceptions, p. 5. I&M also requests the Commission clarify that the requested contingency costs excluded from approved capital costs will be subject to a narrow review for: (1) whether the expenses were incurred, and (2) whether they were necessary. *Id*., p. 6. I&M argues that the Commission provided guidance on this issue in relation to declining to approve contingency or contingency-like costs on the four approved projects in Case No. U-21189 when it stated:

> This conclusion, however, does not preclude I&M from seeking approval of any such expenses in the future once the costs have been incurred and the company can provide evidence that the expenses were incurred, as well as an explanation of what led to the costs being necessary, as consistent with the Staff's recommendation.

I&M's exceptions, p. 7 (quoting August 30 order, p. 54). I&M requests that the Commission's final order provide that "the subsequent review and approval of actually incurred contingency costs will be limited to 'evidence that the expenses were incurred' and 'an explanation of what led to the costs being necessary.'" *Id*., p. 8 (quoting August 30 order p. 55).

In replies to exceptions, the Attorney General argues that I&M seeks to be excused from the statutory requirement of MCL 460.6t(17) that provides in relevant part:

> [i]f the actual costs incurred by the electric utility exceed the costs approved by the commission, the electric utility has the burden of proving by a preponderance of the evidence that the costs are reasonable and prudent. The portion of the cost of a

> plant, facility, power purchase agreement, or other investment in a resource that meets a demonstrated need for capacity that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. The commission may include any or all of the portion of the cost in excess of the cost approved by the commission if the commission finds by a preponderance of the evidence that the costs are reasonable and prudent.

The Attorney General contends that for contingency and contingency-like costs excluded from preapproval, I&M will have to overcome the presumption that such costs were imprudently incurred and prove otherwise by a preponderance of the evidence. Attorney General's exceptions, pp. 5-6.

Wabash takes exception on a similar line. Wabash argues that the Commission's August 30 order clarifies that contingency costs and contingency-like costs are not suitable for a determination of reasonableness and prudence unless and until those expenses are actually incurred and an explanation of why the costs are necessary can be provided. Wabash's exceptions, p. 2. Only at that point, Wabash contends, can the Commission review the costs for reasonableness and prudence. *Id*.

The Commission agrees with the ALJ and finds that the contingency costs are speculative in nature and should not be approved by the Commission in this CON proceeding. As the Commission previously stated in Case No. U-21189, "a finding of reasonableness and prudence of contingency and contingency-like costs, inclusive of the reviews detailed by the Staff, cannot take place until such costs have been incurred." August 30 order, p. 55. Although, as I&M points out, the Commission allowed for contingencies in a previous CON proceeding, in that case the Commission allowed for only a small percentage of the requested contingency costs for which the utility bore minimal risk on the type of contract the company intended to enter into, and that the CON was evaluated under statutory language that predated the passing of Public Act 341 of 2016 that "changed important provisions regarding the regulatory standard for any costs ultimately incurred by the utility above the amount approved in the CON." April 27 order, p. 54.

The Commission finds the Attorney General's argument more persuasive and finds that contingency and contingency-like costs are excluded from preapproval. The Commission clarifies that the contract allowances and project contingency costs, as shown in Table TBG-3, are excluded at this time and that I&M may seek approval of any such expenses in the future once the costs have been incurred and the company can provide evidence that the expenses were incurred, as well as an explanation of what led to the costs being necessary.

Confidential Material

The ALJ noted that "the record in this case contains a significant amount of material that is redacted as confidential, including the actual costs associated with the Lake Trout Project." PFD, p. 38. The ALJ further provided that:

> [a]lthough this [ALJ] describes the costs recommended for approval with reference to the confidential record, and does not identify the specific costs recommended for approval, the parties should expect that if the Commission issues a final order approving the CON, it will explicitly identify, in its non-confidential final order, the costs being approved under MCL 460.6s(6). This [ALJ] finds that the total amount of approved costs under that statutory section has independent legal significance and does not constitute the revocation of a document's protected status under Paragraph IV.A of the Protective Order in this case, so no hearing is required. Nonetheless, this [ALJ] is placing the parties on notice, so that any party wishing to do so may raise its concerns with the Commission regarding such disclosure as part of exceptions to this PFD.

Id.

In exceptions, I&M requests that the Commission maintain confidentiality of the record in this case consistent with the August 30 order and find that the redacted, confidential material is commercially sensitive protected material in accordance with the April 27 protective order. I&M's exceptions, p. 9. I&M argues that the Commission should, as it has done in previous cases, determine that commercially sensitive information provided by third parties and price terms should not be publicly disclosed. *Id*. (citing August 30 order, pp. 33-34; April 20, 2009 order in Case No. U-15806, pp. 10-11; October 31, 2012 order in Case U-16582, p. 6; and November 19, 2015 order in Case No. U-15805, p. 5).

The Commission agrees with I&M and finds that I&M would experience harm if the project-specific price terms and project-specific contract terms, including the project's LCOE, were disclosed. Additionally, the PSA's price terms, and project-specific contract terms are commercially sensitive and meet the definition of "Protected Material" under the April 27 protective order. However, in accordance with MCL 460.6s(6), the Commission specifies that it is approving $531,877,831 of total project costs in relation to the Lake Trout Project CONs approved in this order.

Accounting Authority

Lastly, in its application, I&M requested "authority to defer as a regulatory asset the incurred project costs once the Project is placed in-service for 30 months and until I&M's base rates are reset to reflect such costs" and other accounting relief. Application, p. 8. The ALJ found that no party disputed the request and recommended that the Commission grant I&M the requisite accounting authority consistent with her determination related to contingency costs. PFD, p. 37.

The Commission finds that, excluding any amounts relating to contingency or contingency-like expenses discussed above, the accounting requests are reasonable and should be approved.

THEREFORE, IT IS ORDERED that:

A. Consistent with this order, Indiana Michigan Power Company is granted a certificate of necessity pursuant to MCL 460.6s(3)(b) in that the size, fuel type, and other design characteristics of the 245-megawatt Lake Trout solar generation facility represent the most reasonable and prudent means of meeting the company's power need.

B. Consistent with this order, Indiana Michigan Power Company is granted a certificate of necessity pursuant to MCL 460.6s(3)(d) that the estimated capital costs of and the financing plan for the 245-megawatt Lake Trout solar generation facility including, but not limited to, the costs of siting and licensing the project and the estimated cost of power from the project up to a total of $531,877,831 will be recoverable in rates from the company's customers.

C. Consistent with this order, Indiana Michigan Power Company's requested accounting treatment of Lake Trout solar generation facility costs is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of December 21, 2023.

Lisa Felice, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-21377

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on December 21, 2023 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna J. Brown

Brianna Brown

Subscribed and sworn to before me
this 21st day of December 2023.

Angela P. Sanderson

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-21377

Name	On Behalf Of	Email Address
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