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March 11, 2024

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway, 3rd Floor
Lansing, MI 48909

Re: Case No. U-21261 - Indiana Michigan Power Company

Dear Ms. Felice:

Enclosed for electronic filing in the above-referenced matter are Indiana Michigan Power Company's Reply to the Exceptions Filed by Sierra Club and Proof of Service.

If you have any questions, please feel free to contact me.

Sincerely,

DYKEMA GOSSETT PLLC

Jason T. Hanselman

4869-3103-9286.1

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
INDIANA MICHIGAN POWER COMPANY)
for approval to implement a power supply cost) Case No. U-21261
recovery plan for the twelve months ending)
December 31, 2023)
_____)

INDIANA MICHIGAN POWER COMPANY'S
REPLY TO THE EXCEPTIONS FILED BY SIERRA CLUB

TABLE OF CONTENTS

I. INTRODUCTION 1

II. REPLY TO SIERRA CLUB’S EXCEPTIONS..... 2

III. CONCLUSION..... 6

I. INTRODUCTION

Indiana Michigan Power Company (“I&M” or the “Company”) submits to the Michigan Public Service Commission (the “Commission”) this Reply to the Exceptions filed by Sierra Club.

Although I&M maintains that the Code of Conduct’s market price-cap under Rule 8(4) directly contradicts MCL 460.6j, if the Commission applies that market price-cap to I&M’s Power Supply Cost Recovery (“PSCR”) costs, the Commission should determine that the most appropriate market proxy for I&M’s Inter-Company Power Agreement (“ICPA”) is the pricing from the Company’s 2022 All-Source Request for Proposals (the “RFP”) that the Commission approved in the settlement of Company’s Integrated Resource Plan (“IRP”) case (Case No. U-21189). Specifically, the Commission should consider pricing from two solar projects which the Commission approved in Case Nos. U-21189 and U-21377 as the most reasonable projects derived from the RFP process.

Michigan’s Clean Energy and Climate Action Plan embodied in Public Act 235 of 2023 requires a transition to 50% renewable energy by 2030 and 100% clean energy by 2040. In light of that new requirement, any potential replacement resources authorized in Michigan going forward will be renewable or clean energy resources. Accordingly, if Sierra Club wants the Commission to compare the cost of power purchased under the ICPA to other market resources, the most viable replacement comparison for power purchased under the ICPA would be renewable resources like the Mayapple and Lake Trout solar projects. The Administrative Law Judge (“ALJ”) agreed, finding that it is appropriate to consider the Mayapple and Lake Trout solar projects as comparisons when assessing whether the ICPA costs are reasonable. (PFD at 32).

Sierra Club takes exception largely in reliance on the proposal for decision in I&M’s 2021 PSCR reconciliation case, Case No. U-20805, which declined to use I&M’s Lake Trout and

Mayapple Projects to compare against I&M's ICPA costs. December 1, 2023 Proposal for Decision in Case No. U-20805, p. 44 ("U-20805 PFD"). Given that the U-20805 PFD was issued just days after the Legislature passed PA 341, the ALJ understandably could not have recognized the implications the new law will have on Michigan's energy landscape. It is clear now though that, to the extent a party contends that I&M should evaluate OVEC in light of potential replacement energy and capacity, the only viable option going forward will be projects like the Lake Trout and Mayapple projects. As such, given that Michigan's new energy law ensures that generation resources built to serve Michigan residents in the future will be renewable or clean energy resources, Sierra Club's reliance on the U-20805 PFD is misplaced and should be rejected. The Commission should instead adopt ALJ Thoits's well-reasoned conclusion that it is appropriate for the Commission to consider the Lake Trout and Mayapple projects as "comparisons when assessing whether the ICPA costs are reasonable" because prices for those renewable projects "are 'market prices', reflective of the 'market.'" (PFD at 32).

II. REPLY TO SIERRA CLUB'S EXCEPTIONS

Sierra Club argues that the Commission should disregard the Lake Trout and Mayapple solar projects—which the Commission recently approved in Case Nos. U-21377 and U-21189, respectively—as market proxies. Because acknowledging that Michigan's new energy law reshaped the market for future energy resources in Michigan would undercut Sierra Club's strategy of arguing that the ICPA is more expensive than potential substitute resources in the market, Sierra Club instead asks the Commission to ignore that reality in this case. Sierra Club's position has no basis in law or fact and should be rejected.

As real-time results of an all-source RFP seeking resources that can provide energy and capacity to Michigan, not only are the Lake Trout and Mayapple projects reasonable comparable

resources, those projects are the *most* appropriate market proxies for the ICPA. Under Act 304, the statute explicitly states that, in evaluating the reasonableness and prudence of a PSCR Plan, considerations of a plan must revolve around the availability of a certain resource to the utility. MCL 460.6j(6) (the Commission considers “the cost and availability of the electric generation available to the utility[.]”) None of the market proxies Sierra Club offered are available to I&M because they were either from outdated informational RFPs or are generation resources facilities that do not operate in, and are not connected to, PJM. Given that Sierra Club’s proposed market proxies cannot provide any energy or capacity, the Lake Trout and Mayapple projects are the only market proxies in the record that align with Act 304.

Sierra Club attempts to undermine these solar resources, claiming “solar prices were inflated due to extraordinary market conditions.” (SC Exceptions, pp.1-2).¹ The PFD, however, explicitly rejected that argument. The PFD aptly found that, “by definition, market conditions – whether changing or stable – determine market prices.” (PFD at 32). “[T]he fact that the current market prices may have changed from those in the past or may change in the future, or that the current market prices might be reasonably characterized as unusual or exceptional, does not change the fact that the prices are ‘market prices’, reflective of the ‘market’.” *Id.*² Indeed, the Commission

¹ Sierra Club’s position highlights a concern that the Company recently raised that parties may subsequently challenge solar power supply cost recovery under the market price cap for investments utilities make today if solar development costs decrease in the future. Specifically, if Sierra Club’s position is accepted, parties may argue that, although the Commission deemed I&M’s solar investments “reasonable” in 2023, parties can undermine those reasonable decisions years later by arguing that those 2023 solar costs exceed a future year’s market cap since those 2023 prices were “inflated due to extraordinary market conditions.” Sierra Club’s position is dangerous and, if accepted by the Commission, likely would stifle solar development

² The Company is compelled to highlight the irony of Sierra Club’s current position—after years of the Company explaining the inherent difficulty in identifying a market proxy for energy and capacity and arguing that the benefits of a long-term contract like the ICPA are that it provides price stability and avoids market volatility, Sierra Club now contends that the Commission should not use solar energy projects as a market comparison due to the volatility of the solar energy

determined in Case Nos. U-21189 and U-21377 that those projects' costs are reasonable based on the current market. The Commission should reject Sierra Club's attempt to use a market proxy when helpful to its argument but eschew that market proxy when it contradicts its argument.

Sierra Club also argues that Lake Trout and Mayapple pricing is inadequate because "the cost of projects that will not begin generating power until *after 2023* cannot represent the market prices of *in 2023*." (SC Exceptions, p. 3). The completion date of the Lake Trout Solar Project and the Mayapple Solar Project has no relevance to whether the levelized cost of energy ("LCOE") is an adequate comparison to fuel available in today's market. The LCOE is the result of an RFP process that reflects the real-time market dynamics that any company developing renewable resources is likely to experience in today's market. Whether constructed immediately or three years after it is selected, the price per megawatt hour would be the same.

Sierra Club's assumption that Lake Trout and Mayapple are inappropriate market comparators because solar generation is "too different in nature" is also incorrect. Environmental impacts of one resource over another is not a quantifiable metric that impacts pricing—electricity from a solar plant would be the same as coal-fired generation. There is no evidence in the record that solar pricing for Lake Trout and Mayapple include a premium because of its long-term environmental benefits. If, however, Sierra Club believes that appropriate market competitors should be chosen by factors other than the annual market price, then the price stability and reliability benefits of the ICPA also should be considered in a market comparison. As Mr. Stegall explains, through the first eight months of 2022, the Company's energy revenues for its energy

market. Sierra Club's concern highlights precisely the Company's point in recent PSCR cases that determining reasonableness based on a market proxy is impractical because long-term power purchase decisions that are a reasonable today could be considered unreasonable in the future based on market fluctuations and volatility.

from the ICPA exceed the total billings from OVEC by \$3.5 million, which demonstrates the value of this resource in the current energy markets. (2 Tr. 122).

Finally, suggestions that I&M's own resources should be disregarded as a market proxy to ensure I&M does not "bootstrap" reasonableness and prudence for ICPA costs is meritless and imposes an arbitrary restriction to the market proxy concept the Commission is attempting to create. The Lake Trout PSA is a contract between I&M and a third party for a price that is "within the range of acceptable prices" under current market conditions. See December 21, 2023 Order in Case No. U-21377, p. 13. It is illogical to assume that the price of such an agreement is an inadequate market proxy, particularly given that the Commission reviewed that price and found it to be "the most reasonable and prudent means of meeting the company's power need." *Id.*, p. 19. Indeed, the Commission has *twice* rejected the notion that the agreements selected from the Company's 2022 Request for Proposals were negotiated in bad faith. See August 20, 2023 Commission Order in Case No. U-21189, p. 53 and Case No. U-21377, p. 12. As noted by the PFD, the Commission found that Lake Trout and Mayapple were the result of a competitive RFP consistent with the Michigan Competitive Procurement Guidelines. *Id.*; (PFD at 32). Sierra Club's assumption that a price determined through a competitive RFP and approved by the Commission was selected to make existing resources like OVEC look better is simply false and there is no evidence in the record to support such conjecture.

Accordingly, the PFD correctly found that Lake Trout and Mayapple are appropriate to consider as market proxies when assessing whether the ICPA costs are reasonable. (PFD at 32). When viewed in relation to Lake Trout and Mayapple, the record demonstrates the ICPA is a reasonable resource for the 2023 PSCR Plan year and a reasonable long-term resource.

III. CONCLUSION

Based on the foregoing arguments, those stated in I&M’s Initial Brief, Reply Brief, and Exceptions to the Proposal for Decision, and based on the evidence set forth in the record, I&M respectfully requests the Commission to approve the Company’s proposed PSCR Plan and PSCR Factor in rates for 2023 jurisdictional sales of electricity that are subject to the PSCR clause, and otherwise approve the Company’s request for a 2023 PSCR Factor of 16.53 mills per kilowatt hour (kWh), resulting in a proposed Michigan jurisdictional PSCR Factor of 5.08 mills per kWh applicable to the billing months of January 2023 through December 2023. The Company respectfully requests that the Commission accept the Company’s five-year forecast without amendment and without issuing any Section 7 warning. Finally, the Company requests that the Commission grant any such further and additional relief as the Commission may deem just and appropriate.

Dated: March 11, 2024

By: _____
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**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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PROOF OF SERVICE

Cassandra A. Jackway, an employee of Dykema Gossett PLLC, states that on the 11th day of March 2024, she served Indiana Michigan Power Company's Reply to the Exceptions Filed by Sierra Club upon the following parties via email addresses indicated:

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