

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

At the April 11, 2024 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 March 31, 2022, Indiana Michigan Power Company (I&M) filed an application, with supporting testimony and exhibits, pursuant to Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j, requesting authority to reconcile its power supply cost recovery (PSCR) plan costs and revenues for the 12-month period ended December 31, 2021.

A prehearing conference was held on May 12, 2022, before Administrative Law Judge Dennis W. Mack (ALJ Mack) at which ALJ Mack acknowledged and granted a notice to intervene filed by the Michigan Department of Attorney General (Attorney General). I&M and the Commission Staff (Staff) also participated in the proceeding.

On July 22, 2022, ALJ Mack entered a protective order for use in the matter.

On July 14, 2023, Administrative Law Judge Sharon L. Feldman (ALJ Feldman)<sup>1</sup> conducted an evidentiary hearing at which testimony and exhibits were bound into the record and cross-examination was waived. On September 8, 2023, the parties filed initial briefs, and on October 16, 2023, the parties filed reply briefs.

On December 1, 2023, ALJ Feldman issued a Proposal for Decision (PFD). On January 5, 2024, I&M and the Attorney General filed exceptions, and on January 19, 2024, the Attorney General, I&M, and the Staff filed replies to exceptions.

The record in this case consists of 269 pages of transcript and 54 exhibits admitted into evidence, with a portion of both marked as confidential.

#### Proposal for Decision

ALJ Feldman, hereinafter referred to as the ALJ in the matter, provided in her PFD a detailed explanation of the testimony and positions of the parties on pages 3-8, which will not be repeated here, and identified the following issues requiring resolution on pages 8-9: (1) the appropriate beginning balance for this case, (2) the treatment of costs associated with the company's intercompany power agreement (ICPA) with the Ohio Valley Electric Corporation (OVEC), (3) the treatment of costs associated with the company's Rockport generating unit, and (4) the appropriate analysis of the company's energy waste reduction (EWR) shortfall.

No party took exception to the ALJ's recommendation that the appropriate beginning balance involves a 2020 year-end underrecovery of \$4,034,386 as determined by the Commission's February 2, 2023 order in Case No. U-20530 (February 2 order). The Commission finds the ALJ's findings and conclusion regarding Issue 1 to be well-reasoned and therefore adopts the ALJ's

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<sup>1</sup> On September 20, 2022, this matter was reassigned to ALJ Feldman. *See*, September 20, 2022 Scheduling Memo (Case No. U-20805, filing #U-20805-0031).

findings, analysis, and conclusion on this issue. The remaining contested issues are discussed *ad seriatim* below.

### Discussion

#### 1. Intercompany Power Agreement with the Ohio Valley Electric Corporation

I&M's 2021 PSCR costs include power generated by OVEC and supplied to I&M pursuant to a long-term contract (i.e., the ICPA). Pursuant to Exhibit IM-4, I&M paid OVEC about \$52.2 million for approximately 790,000 megawatt-hours (MWh) in 2021 (or \$66.04 per MWh). Exhibit IM-4, p. 3, line 13. The Staff and the Attorney General disputed the reasonableness and prudence of these costs and the proxies I&M used for comparison to show compliance with the Code of Conduct,<sup>2</sup> with both the Staff and the Attorney General recommending a partial disallowance of costs as a result. Staff's initial brief, pp. 6-12; Attorney General's initial brief, pp. 21-39. I&M rebutted and argued that a disallowance is not warranted. I&M's reply brief, pp. 2-32, 37-41.

The ALJ provided background involving the ICPA by way of review of the February 2 order, along with the plan case order for this case (i.e., the November 18, 2021 order in Case No. U-20804 (November 18 order)) wherein the company was given a Section 7 warning pursuant to MCL 460.6j(7) for its projected ICPA costs. In this discussion, the ALJ noted that the ICPA has never been presented by the company for the Commission's review and is thus reviewed each year in the PSCR process for reasonableness and prudence. The ALJ further noted that the ICPA is an affiliate transaction subject to the Code of Conduct and that the ICPA was not approved by the Federal Energy Regulatory Commission. The ALJ highlighted, as acknowledged on page 22

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<sup>2</sup> See, Mich Admin Code, R 460.10101 *et seq.*, promulgated pursuant to MCL 460.10ee(1).

of the June 22, 2023 order in Case No. U-21052 (June 22 order), that the settlement agreement approved in Case No. U-21189 (I&M's integrated resource plan (IRP) case) did not address cost approval of the ICPA; thus leaving the issue, with the determination of an appropriate proxy, for PSCR plans and reconciliations, including the instant case. The ALJ also highlighted the disallowance of ICPA costs in the February 2 order based on the long-term cost comparisons presented by the Attorney General in that case. PFD, pp. 10-14.

Following this background, the ALJ detailed the evidence and arguments presented by the parties in the instant case and then set forth her findings, conclusions, and recommendations. PFD, pp. 14-50.

The ALJ concluded that, based on prior orders, I&M has the burden to demonstrate the reasonableness and prudence of its ICPA costs, that the company has not submitted the ICPA to the Commission for a reasonableness and prudence review, and that the agreement is subject to the Code of Conduct, including the price cap. *See*, Mich Admin Code, R 460.10108(4) (Rule 8(4)). The ALJ also noted that the Commission found I&M's ICPA to be uneconomic and with excessive costs in the June 22 order. Finding that the application of the Code of Conduct to the ICPA has been previously established and because the company has not asserted a change in facts or circumstances in the instant case, the ALJ concluded that there is no basis to revisit I&M's legal claims asserting otherwise. PFD, pp. 41-42.

The ALJ next addressed the appropriate benchmark or proxy for determining the reasonableness and prudence of the ICPA costs and found that the Michigan Public Power Agency (MPPA) costs for Belle River and Campbell 3 provide the best basis for comparison, as adjusted based on further review of information provided in Exhibit IM-10. The ALJ noted that her recommended disallowance as a result of these findings falls within the range of recommendations

provided by the Staff and the Attorney General and is generally consistent with the finding in Case No. U-20530 that cost comparison of prior power transaction costs are the fairest benchmarks.

PFD, p. 42.

The ALJ, in this regard, found the company's benchmarks or proxies to be unpersuasive. The ALJ stated that the company failed to correct testimony on its behalf that the Michigan Power Limited Partnership and the North American Natural Resources, Inc. contracts were for coal-fired generation, when such statements were incorrect. The ALJ also disagreed with company testimony that any comparable source of market value should be of the same size when discussing utility-scale generation, testimony which the ALJ found was nevertheless undermined by I&M's own reliance on a 4.8-megawatt landfill gas plant that could not be considered comparable to the company's coal-fired generation under the ICPA. The ALJ was also unconvinced by I&M's argument that the company did not have copies of the MPPA agreements to review, considering the Commission's review of the same in Case No. U-20530 and the ability of the Attorney General to obtain them via the Freedom of Information Act without raising confidentiality concerns associated with the agreements. The ALJ stated:

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, [the company's witness] 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.

PFD, p. 43.

The ALJ further agreed with the Staff and the Attorney General and found that transfer price is also not an appropriate measure of market value in this case. The ALJ reasoned that the transfer price is:

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.

PFD, pp. 43-44.

The ALJ also rejected the company's reliance on the Lake Trout power purchase agreement (PPA) for several reasons. While the ALJ found it "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," the ALJ stated that "[t]hat 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," concluding this reason alone is sufficient to exclude I&M's request for proposal options for consideration. PFD, p. 44. Nevertheless, the ALJ included two other important reasons—namely, that the acquisition of renewable energy to meet IRP and renewable energy requirements is not the same as older coal-fired generation that would not be built today and, moreover, that it is not appropriate to consider agreements the company itself negotiated for renewable energy. The ALJ also addressed cost of new entry values and, while not finding them unreasonable for benchmark/proxy purposes, did not find that they reflected the costs of coal-fired generation. *Id.*, p. 45.

The ALJ then addressed rebuttal testimony on behalf of the company and found the company's view that its ICPA should be evaluated over the long term to be "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.” *Id.*, p. 46 (referencing 2 Tr 115). The ALJ also noted that the company “did not present a levelized cost of energy analysis over the term of the ICPA, or a present value revenue requirement calculation.” PFD, p. 46. In contrast, the ALJ found the comparative values provided by the Staff and the Attorney General, aside from the auction price for energy and capacity, to reflect costs of long-term arrangements that have responded to market forces.

Recognizing the Commission’s use of the MPPA/Belle River costs in Case No. U-20530, the ALJ reiterated her finding 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, using the MPPA cost elements provided by the Staff and the Attorney General since both parties reproduced the analysis the Commission adopted in Case No. U-20530.

The ALJ further highlighted I&M’s calculation of the financing costs it pays under the ICPA.

The ALJ stated:

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. [I&M witness] Mr. Stegall made clear that his calculation of \$15.60/MWh does not include depreciation expense, i.e. the recovery of underlying capital investment.

PFD, p. 48. In light of this, the ALJ then explained her revisions to the MPPA/Belle River and MPPA/Campbell Unit 3 costs using information in Exhibit IM-10, which she found reasonable to consider as benchmarks for the OVEC ICPA market value. The ALJ also addressed Midland Cogeneration Venture Limited Partnership (MCV)/Consumers Energy Company (Consumers) PPA costs, since Case No. U-20530 relied on these costs, and found it reasonable to conclude that the 2021 costs are an outlier due to a significant increase in natural gas costs from 2020 to 2021 and considering that Consumers recently renegotiated the contract. The ALJ concluded:

If the \$45.51/MWh average of the two MPPA values derived above is used as the comparison for the OVEC costs, the resulting disallowance would be \$2,041,373. 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. This [ALJ] 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 [ALJ] 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.

PFD, p. 50 (footnotes omitted).

I&M objects and asserts that the ALJ's recommendation is neither supported by Act 304 nor by substantial evidence on the record as a whole. The company contends that, "despite the Commission's prior orders regarding OVEC, the Commission must recognize the benefit customers receive as a result of a long-term agreement like the ICPA, particularly when the record contains unrefuted testimony that the ICPA has saved customers millions of dollars compared to available market purchases in recent years." I&M's exceptions, p. 2. I&M further asserts that its OVEC costs are reasonable and prudent under Act 304 "despite how they happen to compare to selected market proxies and pricing that was [sic] not available at the time when I&M filed its 2021 PSCR Plan case." I&M's exceptions, p. 3. I&M highlights timeline dates for contract execution of its ICPA, the Commission's adoption of the current Code of Conduct, and Commission orders that the ALJ relied upon to demonstrate that the company "entered into the ICPA long before the adoption of the current Code of Conduct and its new definition of 'affiliate,'" that "[t]he extension of the ICPA also occurred long before the adoption of the current Code of Conduct," and that the Commission should thus "reject the [ALJ]'s recommendation to retroactively apply the Code of Conduct to a long-term contract entered into before the Code of Conduct was enacted because Michigan courts do not allow retroactive application of statutes or



rules unless explicitly stated therein.” I&M’s exceptions, pp. 4, 20-21. Nevertheless, even if the ALJ’s approach is not deemed to be a prohibited retroactive application of statutes and rules, I&M maintains that prospectively applying MCL 460.10ee and the Code of Conduct—brought about in response to the increasing popularity of value-added programs and services (VAPS)—to the ICPA is inapt in this type of proceeding and would violate the Contracts Clause and the Takings Clause of the Michigan and U.S. Constitutions. *Id.*, pp. 10-20, 24-30. I&M further argues that the ALJ declined to address the company’s legal arguments relating to the application of the Code of Conduct’s price cap on the company’s ICPA costs by failing to acknowledge the company’s renewed legal arguments made in response to the Commission’s decision in Case No. U-20530. I&M states that the ALJ instead focused her analysis on market proxies to determine fairest benchmarks to recommend a disallowance of ICPA costs, which I&M disputes. I&M asserts that the Commission should reject the ALJ’s recommended disallowance for three reasons:

- (i) disallowing PSCR cost based on a market proxy and the application of the Commission-created Code of Conduct exceeds the scope of Act 304; (ii) if the Commission disregards the plain language of Act 304 to apply the Code of Conduct’s price cap, then the Commission should refer to the Company’s proposed market comparator, the Lake Trout PSA [purchase and sale agreement], which demonstrates I&M’s 2021 ICPA costs are reasonable and prudent; and
- (iii) alternatively, the Commission should disregard the [ALJ]’s adjustments to the MPPA-Belle River and MPPA-Campbell Unit 3 pricing and adopt the analysis conducted by Company witness Stegall, which demonstrates that I&M’s 2021 ICPA costs are reasonable and prudent.

I&M’s exceptions, p. 5; *see also, id.*, pp. 5-24, 30-38.

In reply, the Attorney General argues that the ALJ correctly dismissed I&M’s arguments against applying the Code of Conduct and the market price cap to the ICPA per Commission precedent and now Michigan law, that the ALJ correctly rejected the company’s proposal to use its Lake Trout solar PSA as a benchmark for evaluating the reasonableness and prudence of the company’s ICPA costs, and that the company has shown no error in the ALJ’s calculation of the

MPPA/Campbell Unit 3 and MPPA/Belle River costs for comparison to OVEC costs. Attorney General’s replies to exceptions, pp. 2-31.

In support, the Attorney General notes the Michigan Court of Appeals’ decision in *In re Indiana Michigan Power Co.*,<sup>3</sup> which adopted the Commission’s disallowance for ICPA costs that exceeded the Code of Conduct’s market cap in Case No. U-20530 and which now, per the Attorney General, “forecloses I&M’s arguments against the application of the Code of Conduct and its market price cap in this proceeding.” Attorney General’s replies to exceptions, p. 2. The Attorney General further asserts that I&M offered no persuasive counterarguments to the ALJ’s rejection of the company’s Lake Trout solar project as a comparator and likewise failed to show any error in the ALJ’s recommended adjustments to the MPPA/Belle River and MPPA/Campbell Unit 3 contracts, calculations which the Attorney General asserts the Commission should adopt. *Id.*, pp. 3-4. The Attorney General states that the company repeats nearly all the arguments made in its initial brief—arguments that she thoroughly rebutted in her reply brief and arguments that the Commission has already addressed, now along with the Michigan Court of Appeals (aside from the company’s constitutional arguments since not properly raised on appeal). Attorney General’s replies to exceptions, p. 4.

The Attorney General further states that I&M raises four arguments to which she has not yet had the opportunity to reply. Per the Attorney General:

I&M argues as it did in its Reply Brief that, because the PSCR statute and MCL 460.10ee authorizing the Code of Conduct are unambiguous, the doctrine of *in pari materia* cannot be used to harmonize them; that the Code of Conduct is meant to address value-added programs and services (VAPS); and that the Code of Conduct can only be enforced in complaint proceedings under MCL 460.10ee. Its *in pari materia* argument is an extension of its theory that the PSCR statute and the Code of Conduct conflict, and essentially a misplaced request for reconsideration of

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<sup>3</sup> *In re Indiana Michigan Power Co.*, \_\_\_ Mich App \_\_\_; \_\_\_ NW3d \_\_\_ (2024) (Docket No. 365180) (*In re Indiana Michigan Power Co.*).

the Commission's decision in Case No. U-20530. Its VAPS and complaint proceeding arguments are a new twist on its theory that applying the Code of Conduct in PSCR proceedings would exceed the Legislature's delegation of authority to the Commission, and are grounded in a misreading of MCL 460.10ee. The [ALJ] did not err in dismissing these repackaged versions of legal theories the Commission has already dismissed. The Court of Appeals has rejected all these arguments.

I&M also asserts that the [ALJ] did not apply the PSCR statute's reasonableness and prudence standard. This assertion is grounded in a combination of its rejected legal theories, particularly the argument that the Code of Conduct and PSCR statute conflict. The [ALJ] applies the PSCR statute's reasonableness and prudence standard and evaluates the ICPA costs for compliance with the Code of Conduct and its market price cap. There is no conflict, and there is no error in the [ALJ]'s decision to recommend a disallowance of the portion of ICPA costs that exceed the market price cap.

Attorney General's replies to exceptions, pp. 5-6 (footnote omitted); *see also, id.*, pp. 6-18. The Attorney General clarifies:

This case is not about the reasonableness and prudence of I&M's 1953 decision to enter into the ICPA or its 2004 and 2011 decisions to agree to the ICPA's amendment and extension. It is about whether I&M's decisions to continue purchasing above-market OVEC power in 2021 while ignoring its obligation to take meaningful steps to reduce costs to ratepayers were reasonable and prudent. The [ALJ] determined that the most fair and reasonable benchmark against which to evaluate this question was the cost of power under two non-affiliate long-term supply contracts and reasonably concluded that the amount by which the ICPA costs exceeded this benchmark represents costs I&M had not reasonably and prudently incurred.

*Id.*, pp. 8-9.

The Attorney General maintains that applying the Code of Conduct to costs incurred in 2021 is not retroactive, consistent with the Commission's decisions in Case Nos. U-20804 and U-21052 and the Michigan Court of Appeals' decision in *In re Indiana Michigan Power Co.* The Attorney General states that "[t]he market price rule (2001) precedes the current ICPA (2011), not the other way around. I&M has no vested right to charge customers above-market costs for power from its

affiliate, nor could I&M have a reasonable expectation that it should be able to do so.” Attorney General’s replies to exceptions, p. 19.

The Attorney General further maintains that the ALJ’s recommended disallowance does not violate the Contracts Clause or the Takings Clause. With regard to the Contracts Clause, the Attorney General highlights the Section 7 warning from Case No. U-20804 and asserts that “I&M’s inability to recover from ratepayers costs incurred in excess of the market price cap does not affect, let alone impair, its contractual relationship with OVEC” but rather, as observed by the Michigan Court of Appeals with regard to Case No. U-20530, passes losses associated with the ICPA onto shareholders instead of ratepayers. Attorney General’s replies to exceptions, p. 20.

More understandably:

The recommended disallowance will serve to protect ratepayers from having to bear the cost of I&M’s excessive payments to affiliates and its unreasonable and imprudent failure to take meaningful action to manage its long-term contracts to minimize costs. That is a legitimate purpose, and it is the purpose for which the Legislature enacted both the PSCR statute and MCL[ ] 460.10ee.

*Id.*, p. 21 (footnote omitted). And with I&M’s Takings claim, the Attorney General states:

I&M fails to argue that the recommended disallowance meets the “confiscatory” standard. Piecemeal application of the Takings Clause, coupled with vague assertions of economic impact, do not establish a Takings violation.

*Id.*, p. 22.

Lastly, the Attorney General elaborates on why the ALJ correctly rejected I&M’s proposal to use the Lake Trout solar PSA as a benchmark for evaluating the reasonableness and prudence of the company’s ICPA costs and how the company has shown no error in the ALJ’s calculation of the MPPA/Campell Unit 3 and MPPA/Belle River costs for comparison to OVEC costs (in terms of removing MPPA administrative costs and not including I&M’s assumed additional financing charges, to ensure a more apples-to-apples comparison). *Id.*, pp. 23-31.

The Staff likewise argues that I&M's arguments against applying the Code of Conduct to the ICPA-related costs in this case should once again be rejected, pointing to Commission precedent and now also to *In re Application of Indiana Michigan Power Co* in support. The Staff further highlights that, contrary to I&M's arguments otherwise, "the Company has been on notice for years that the Commission would scrutinize [the ICPA] costs arising out of its affiliate contracts under the Code of Conduct" and "the Court's Opinion succinctly captured this point, stating, 'the Commission's order advised of its previous statements, addressing a utility's obligation to monitor and respond to market conditions, noting that this might include meaningful attempts to renegotiate contracts.'" Staff's replies to exceptions, pp. 3-4 (quoting *In re Application of Indiana Michigan Power Co*, \_\_\_ Mich App at \_\_\_; slip op at 11).

The Staff further asserts that the Commission should also reject I&M's argument that the application of the Code of Conduct to ICPA-related costs in this case is retroactive and impermissible. The Staff, in this regard, argues that the Code of Conduct is not applied retroactively and does not violate the Contracts Clause or the Takings Clause. Staff's replies to exceptions, pp. 5-6; *see also, id.*, pp. 6-11.

The Staff also argues that the company's Lake Trout Solar Project is not an appropriate market proxy, largely agreeing with the ALJ's analysis in the PFD. *Id.*, pp. 12-13.

The Commission agrees with the ALJ, the Attorney General, and the Staff and finds that the application of the Code of Conduct and the market-price cap to the ICPA in this case is not only well-settled per Commission precedent but now also affirmed in *In re Indiana Michigan Power Co*. The remaining decision on this issue is thus determining the appropriate proxies or benchmarks for purposes of addressing the affiliate pricing provision under Rule 8(4).

In this regard, recognizing the benefit customers receive because of a long-term agreement like the ICPA, the Commission finds it appropriate to compare the ICPA to other comparable long-term agreements, adjusted as necessary to ensure a fair comparison to appropriately determine reasonableness and prudence of expenses charged to I&M's customers in 2021. Thus, finding the MPPA/Belle River and MPPA/Campbell Unit 3 contracts along with the MCV contract to be appropriate benchmarks, the Commission finds a disallowance of \$1,025,628 in ICPA costs to be reasonable and prudent in this case pursuant to the Code of Conduct and Act 304.

## 2. Rockport

I&M included, in this reconciliation, costs from the Rockport generating unit that I&M obtains through its Unit Power Agreement (UPA) with its affiliate, American Electric Power Generating Company, Inc. (AEG), in the amount of \$217,849,997 for 1,680,933 MWh (or \$129.60 per MWh). Exhibit IM-4, p. 3, line 12. The Attorney General argued that the Commission should disallow a portion of these costs as unreasonable and in excess of the market price cap in the Code of Conduct and because 2021 was not a year of unique circumstances like 2020 as evaluated in Case No. U-20530. Attorney General's initial brief, pp. 39-45.

The ALJ concluded that there is no substantial basis on the record to reach a different conclusion from that decided by the Commission in Case No. U-20530 and thus did not recommend a disallowance for the Rockport costs in the instant case. In her reasoning, the ALJ stated that "[t]he amount of generation increased [from 721,476 MWh in 2020 to 1,680,933 MWh in 2021], as did market values [from \$40.79/MWh in 2020 to \$60.35/MWh in 2021], such that the amount by which the Rockport UPA costs exceeded the PJM [PJM Interconnection, L.L.C.] energy and capacity value in 2021 was very slightly less in total for Michigan customers than in

that case [\$16.1 million in 2020 versus \$15.9 million in 2021].” PFD, pp. 65-66. Nevertheless, per the ALJ:

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.

*Id.*, p. 66.

The Attorney General asserts that the ALJ erred by not recommending a disallowance for the 2021 Rockport UPA costs based on the ALJ’s comparison to 2020 Rockport UPA costs in Case No. U-20530. The Attorney General states that she specifically addressed the Commission’s reasons for not disallowing some of the 2020 costs in Case No. U-20530 and argues that a comparison of 2021 costs in the instant case to the 2020 costs in Case No. U-20530 cannot relieve the company of its burden to prove that the 2021 costs were reasonable and prudent and in compliance with the Code of Conduct, which I&M failed to do. In this regard, the Attorney General sets forth four reasons in support of her position that the Commission should disallow the Michigan share of Rockport UPA costs that exceed the Code of Conduct market price cap:

1) I&M has not met its burden of proving the costs are reasonable and prudent and in compliance with the Code of Conduct; 2) I&M has done nothing to pursue changes to the Rockport UPA to minimize costs to ratepayers as directed by the Commission [in Case No. U-18404]; 3) to the extent some costs were previously reviewed and approved, they are subject to reevaluation because ratepayers are no longer fairly compensated for them; and 4) the Commission’s primary justification for declining to adopt a disallowance in 2020 – i.e., the “unique circumstances” of COVID-19 – are not present in 2021 and do not preclude evaluation of the costs in this proceeding.

Attorney General’s exceptions, pp. 2-3; *see also, id.*, pp. 6-10.

If the Commission, however, does not disallow these costs, the Attorney General asserts that the Commission should at least adopt the ALJ’s recommendation to open a separate docket to

review the costs that the company recovers attributable to its Rockport ownership interest and the costs the company recovers through the PSCR factor attributable to the UPA. Per the Attorney

General:

The Rockport UPA costs are astronomical – they are far above the market price for energy and capacity, and far above the cost of any comparable long-term supply arrangement. If the Commission does not adopt a disallowance in this proceeding, Michigan ratepayers will bear the cost of I&M paying its affiliate more than double the market value for Rockport energy and capacity.

*Id.*, p. 10.

I&M responds and contends that the Commission should adopt the ALJ’s well-reasoned recommendation to reject the Attorney General’s proposed disallowance. I&M argues that the Code of Conduct does not apply to the UPA, that the record clearly shows that the unique circumstances of COVID-19 that precluded evaluation of Rockport UPA costs in 2020 remained present in 2021, and that the Attorney General fails to account for the nature of the UPA as a long-term financing arrangement, which cannot be simply compared with short-term PJM capacity. I&M also asserts that the Commission should decline to open a separate docket to review the UPA costs, arguing that to do so would be unnecessary (considering the evidence already provided in this case), would be duplicative (considering capital investments and operations and maintenance costs associated with the Rockport UPA in base rates which the Commission has already found to be reasonable and necessary), and would violate fundamental principles concerning the Commission’s role and authority pursuant to case law. I&M’s replies to exceptions, pp. 2-3; *see also, id.*, pp. 3-20.<sup>4</sup>

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<sup>4</sup> Much of the arguments in I&M’s replies to exceptions on this issue repeat similar legal arguments made by the company about the Code of Conduct and its applicability to the ICPA under Act 204, discussed above. Although not repeated in detail here, the Commission acknowledges their incorporation by reference and considered the same in the rendering of this order. *See*, I&M’s replies to exceptions, p. 4.



The Commission finds the application of the Code of Conduct and the market-price cap to the UPA in this case is also settled per Commission precedent and consistent with the decision in *In re Application of Indiana Michigan Power Co.* As the Commission noted in the February 2 order:

[T]he UPA is subject to the pricing provisions of the Code of Conduct. I&M and AEG are wholly owned subsidiaries of AEP [American Electric Power Company], and the agreement provides for I&M to compensate AEG for power and energy. . . . [T]he transactions for power and energy equate to affiliate transactions for products and possibly services and are thus subject to Rule 8(4).

February 2 order, p. 15. Further, the Commission agrees with the Attorney General that a disallowance is warranted in this case pursuant to the Code of Conduct and Act 304. In the February 2 order, the Commission found that it had previously approved the Rockport capacity costs in Case No. U-9656 and that, given “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,” the evidence in that case supported the Commission’s determination that “I&M’s energy costs associated with the UPA were not unreasonable” for that PSCR period. February 2 order, p. 16. In the present case, however, the Commission finds the evidence involving other long-term supply benchmarks provided by the Attorney General in relation to the market-price cap provision set forth in Rule 8(4) to be persuasive. The Commission further agrees with the Attorney General that “the Commission’s primary justification for declining to adopt a disallowance in 2020 – i.e., the ‘unique circumstances’ of COVID-19 – are not present in 2021 and do not preclude evaluation of the costs in this proceeding.” Attorney General’s exceptions, p. 3. Based on this evidence and the fact that Rockport capacity costs were approved in Case No. U-9656, the Commission finds a disallowance of energy-only costs reasonable and prudent in this case, in the amount of \$10,149,232. *See*, 2 Tr 181, 192-193; Attorney General’s initial brief, p. 42. This amount represents the energy value of the approximate \$15.9 million premium the Attorney General

asserted will be passed on to Michigan customers in this case. *See*, 2 Tr 192-193; Attorney General's initial brief, p. 41.

### 3. Energy Waste Reduction Deficiency

In response to the Commission's directive in Case No. U-20867, I&M provided its analysis quantifying and determining the impacts of its EWR shortfall for 2020 on power supply fuel costs and market purchase costs in this case. Using 2021 PSCR costs in the analysis, the company argued that the EWR shortfall actually provided financial savings to PSCR customers. 2 Tr 145-148; Exhibits IM-7, IM-8. The Staff argued that I&M's analysis failed to account for all impacts that the company's EWR shortfall had on its customers and provided several options for the Commission's consideration as a result of this unprecedented failure by any rate-regulated utility in Michigan to comply with the statutory EWR requirements, with the Staff ultimately recommending its seventh option as an appropriate way for I&M's customers to be fully compensated for the shortfall.<sup>5</sup> 2 Tr 206-215. I&M disagreed, arguing that it complied with what the Commission directed in Case No. U-20867 and that the Staff's recommendation for a disallowance based on the company's 2020 EWR shortfall in this PSCR case exceeds the Commission's statutory authority. 2 Tr 150-162. The Attorney General supported the Staff's recommendations. Attorney General's reply brief, p. 38.

The ALJ found that only PSCR costs should be considered in this reconciliation and in this regard found that, unless the Commission desires for the company to provide a more thorough analysis, PSCR costs should be reduced by \$496,820 (for the total energy and capacity value of the savings shortfall of 10,393,715 kilowatt-hours (kWh) that would have been avoided had I&M met

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<sup>5</sup> The Staff's seventh option is a blended option incorporating several other Staff options and taking into consideration all impacts that the shortfall had on customers. *See*, 2 Tr 207-208, 213-214; Staff's initial brief, p. 14.

the 1% target in its approved EWR case in Case No. U-20867). PFD, pp. 77, 83-84. The ALJ further provided that, “[u]nless 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.” *Id.*, p. 84.

I&M objects and argues that the ALJ’s conclusion is neither supported by statute nor substantial evidence on the record as a whole. The company argues that the Commission should reject the ALJ’s recommended disallowance and find that I&M complied with Case No. U-20867. To the extent, however, that the Commission directs the company to conduct an alternative analysis as recommended by the Staff, I&M states that it is willing to do so but maintains, contrary to the ALJ’s conclusion, that neither Act 304 nor Public Act 295 of 2008 contemplate a disallowance of PSCR costs as an appropriate remedy for failure to achieve the EWR savings target. I&M’s exceptions, pp. 38-41.

In response, the Attorney General asserts that the Commission should adopt and uphold the ALJ’s recommendation to disallow EWR costs that the company would not have incurred had it met its EWR target. Attorney General’s replies to exceptions, p. 1.

The Commission agrees with the ALJ and the Attorney General and finds it appropriate to disallow PSCR costs that would have been avoided had I&M met the 1% target in its approved EWR plan. Based on the Commission’s calculations, using figures provided by the parties and applied by the ALJ,<sup>6</sup> the Commission finds a disallowance of \$496,716 for the 2021 kWh savings shortfall of 10,393,715 kWh to be reasonable and prudent in this case under Act 304. *See*, 2 Tr 109, 176, 209; Staff’s initial brief, pp. 13-15; PFD, pp. 83-84.

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<sup>6</sup>  $(\$0.039/\text{kWh} \times 10,393,715 \text{ kWh}) + (\$0.00879/\text{kWh} \times 10,393,715 \text{ kWh}) = \$496,716.$

THEREFORE, IT IS ORDERED that:

A. Indiana Michigan Power Company's application to reconcile its power supply cost recovery plan costs and revenues for the 12-month period ended December 31, 2021, is approved, as modified by this order.

B. Indiana Michigan Power Company's net underrecovery of \$4,386,719, inclusive of interest, shall be reflected as the company's 2022 power supply cost recovery reconciliation beginning balance.

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](mailto:mpscedockets@michigan.gov) and to the Michigan Department of Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@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

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Daniel C. Scripps, Chair

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Katherine L. Peretick, Commissioner

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Alessandra R. Carreon, Commissioner

By its action of April 11, 2024.

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Lisa Felice, Executive Secretary


# PROOF OF SERVICE

STATE OF MICHIGAN )

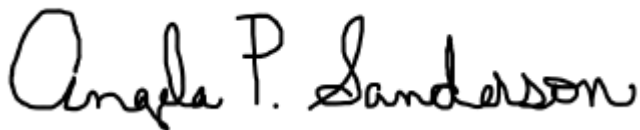
Case No. U-20805

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on April 11, 2024 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 Brown

Subscribed and sworn to before me  
this 11<sup>th</sup> day of April 2024.



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

**Service List for Case:****U-20805**

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<b>Name</b>	<b>On Behalf Of</b>	<b>Email Address</b>
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