STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Indiana Michigan Power Company for approval of a Power Supply Cost Recovery Plan and factors (2025).	MPSC No. U-21596

INITIAL BRIEF BY
ATTORNEY GENERAL DANA NESSEL,
SIERRA CLUB
&
CITIZENS UTILITY BOARD OF MICHIGAN

PUBLIC VERSION

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Table of Contents

I. INTRODUCTION

Attorney General Dana Nessel, the Citizens Utility Board of Michigan (CUB), and Sierra Club (collectively, AG-CUB-SC) file this brief respectfully requesting that the Michigan Public Service Commission (Commission or MPSC) amend the 2025 power supply cost recovery (PSCR) plan of Indiana Michigan Power Company (I&M or the Company) by removing above-market costs that I&M plans to incur under its Inter-Company Power Agreement (ICPA) with the Ohio Valley Electric Corporation (OVEC)[1] from the maximum PSCR factor for the plan year and reduce I&M's forecast costs accordingly. AG-CUB-SC further request that the Commission warn I&M that, in future reconciliation dockets, the Commission will disallow certain ICPA and Unit Power Agreement (UPA)[2] PSCR costs that are incurred imprudently, unreasonably, and in excess of the market price cap in the Commission's Code of Conduct.

II. LEGAL STANDARDS

In a PSCR plan case, the Commission is charged with "evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a

[1] OVEC is a joint venture among various utilities, including American Electric Power Company, Inc. (AEP), the largest shareholder. Under the ICPA, the contract that defines OVEC owners' rights and responsibilities, I&M is a "Sponsoring Company" that is responsible for a lifetime share of the costs associated with owning and running two 1950s-era coal-burning power plants – Clifty Creek in Indiana and Kyger Creek in Ohio. Specifically, I&M is contractually responsible for 7.85% of the "benefits and requirements" of OVEC—under the contract this percentage is referred to as a Power Participation Ratio. This means that I&M is entitled to 7.85% of the energy, capacity, and ancillary services from the OVEC units and, in turn, is responsible for 7.85% of total OVEC's costs, including debt and decommissioning costs. See Direct Testimony of Devi Glick, 2 Tr 172-74 for additional details.

[2] The UPA is an agreement with the AEP Generating Company (AEG) under which I&M purchases power from the coal-fired Rockport Generating Station.

utility."[3] Under the PSCR statute the Commission must consider "the cost and availability of the electrical generation available to the utility. . .[]; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors."[4] After assessing the plan's reasonableness and prudence, the Commission "shall approve, disapprove, or amend" it.[5] The Commission "may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future" – i.e., a Section 7 warning.[6]

As the Commission has repeatedly confirmed, I&M has not received Commission approval for the ICPA.[7] Where a utility seeks recovery under a contract for which it has not received Commission approval like the ICPA, to recover costs from customers the utility must show that its contract costs are "just and reasonable under current market conditions."[8]

A. Summary of Prior Commission Decisions Regarding OVEC

The Commission has issued many orders in recent years regarding the ICPA and the excessive costs of power from OVEC.

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[3] MCL § 460.6j(5).

[4] MCL § 460.6j(6).

[5] MCL § 460.6j(6).

[6] See MCL 460.6j(7).

[7] Case No. U-20529, Order, May 13, 2021, p 13; Case No. U-20530, Order, February 2, 2023, p 12.

[8] Case No. U-18404, Order, June 7, 2019, p 7.

1. 2019 General Rate Case, Case No. U-20359

In this rate case, the parties reached a settlement. The settlement agreement provided in pertinent part: "I&M will supplement its 2020 Power Supply Cost Recovery (PSCR) Plan case to provide additional details regarding the cost of I&M's participation in the Amended and Restated Inter-Company Power Agreement."[9]

2. 2020 PSCR Plan, Case No. U-20529

I&M then supplemented its testimony in the PSCR plan case, as agreed to in the rate case settlement. A party to that case, Sierra Club, argued that the costs I&M planned to incur in 2020 for OVEC energy and capacity under the ICPA were unreasonable and in excess of the market price cap in the Code of Conduct. I&M argued that the Commission could not disallow recovery of OVEC costs because the Commission had approved the ICPA by authorizing recovery of the OVEC costs in prior cases.

The Commission disagreed with I&M on all these points. First, it found that "the Commission has not reviewed the ICPA or determined the reasonableness of the 2004 or 2010 amendments."[10] The Commission held that "[m]erely approving recovery of costs under the ICPA does not amount to a finding that the ICPA, and all future costs, are reasonable."[11] The Commission also found it important that "under

[9] Case No. U-20359, Order, January 23, 2020, Attachment 1, para 10(q).

[10] Case No. U-20529, Order, May 13, 2021, p 13.

[11] *Id*.

the ICPA the contractual rates may vary from year to year…"[12] Therefore, the Commission "has the duty under statute to continuously evaluate the reasonableness of the PSCR plan and factors, including the cost arising under the ICPA and its amendments."[13] This determination "is particularly true for cases involving affiliate transactions that implicate the Code of Conduct…"[14]

As to the Code of Conduct, the Commission found that it applied to the ICPA because I&M and OVEC are affiliates.[15] Therefore, "additional scrutiny of the Code of Conduct compliance in the reconciliation proceedings is particularly applicable when the costs to be addressed have not been previously adjudicated by the Commission on the merits under the Code of Conduct or under Act 304, despite previous Commission approval for recovery of contract costs."[16]

The Commission also found that while the fact that "a long-term commitment is not economical in a given year is not determinative of the reasonableness of the costs," the benefits of a long-term agreement do not "absolve a utility from monitoring and responding to market conditions and system needs and making good faith efforts to manage existing contracts. Such efforts may entail meaningful attempts to

[12] *Id*.

[13] *Id*. at 14.

[14] *Id*.

[15] *Id*. at 16.

[16] *Id*. at 17.

renegotiate contract provisions to ensure continued value for ratepayers as market conditions change."[17] The Commission stated:

> on a going forward basis, the Commission will closely scrutinize costs incurred under this contract between affiliates, reminds I&M of its obligations under the Code of Conduct, including I&M's continuing duty to support its long-term contracts and affiliate transactions, and will expect to see evidence that the company has taken steps to minimize the cost of power, including efforts to renegotiate contracts, and will look to comparisons with other long-term supply options as informative as to whether this particular contract adheres to the requirements of the Code of Conduct.[18]

3. 2019 PSCR Reconciliation, Case No. U-20224

In this case, the Commission reaffirmed its holdings from Case No. U-20529. The Commission reaffirmed that I&M is an affiliate of OVEC and therefore I&M must demonstrate that the ICPA complies with the Code of Conduct's market price cap.[19] The Commission also continued to "disagree[] with I&M's argument that the contract can only be evaluated based on known conditions when it was extended in 2004 and again in 2011 and reiterates that I&M remains under a continuing obligation to demonstrate the reasonableness and prudence of its power supply arrangements, especially when the transaction is between affiliates."[20]

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[17] *Id*. at 14-15.

[18] *Id*. at 18. I&M also argued that because the ICPA was a wholesale power agreement approved by the Federal Energy Regulatory Commission (FERC), the OVEC costs were not subject to Commission review in the PSCR. The Commission held that its authority to approve or disallow I&M's recovery of OVEC costs from retail customers under The ICPA is not preempted by the "FERC filed rate doctrine." *Id*. at 21.

[19] Case No. U-20224, Order, June 23, 2021, pp 11-12.

[20] *Id*. at 12.

4. 2021 PSCR Plan, Case No. U-20804

In this case, the Commission issued a statutory waring to I&M under section 7 of the PSCR statute that on the basis of present evidence, I&M may not be able to recover the full amount of the OVEC costs.[21] The Commission reaffirmed its decisions that OVEC is an affiliate of I&M;[22] that the Code of Conduct applies to the ICPA;[23] and that I&M never presented the ICPA to the Commission for approval.[24]

The Commission also reiterated its earlier statement that "while long-term contracts are encouraged, this does not absolve a utility from monitoring and responding to market conditions and system needs and making good faith efforts to manage existing contracts."[25] The Commission also stated that it "will expect to see evidence that utilities have taken steps to minimize costs, including efforts to renegotiate contracts, and will look to comparisons with other long-term supply options as informative as to whether this particular contract adheres to the requirements of the Code of Conduct."[26] The Commission further noted:

> The Commission does not control the business judgment or decisions of utilities, but the Commission has a duty to customers to assure utilities are not subsidizing uneconomic, unreasonable, and imprudent decisions through customer rates. The Commission's decision does not prevent the

[21] Case No. U-20804, Order, November 18, 2021, p 26, para C. See MCL 460.6j(7) for the statutory Section 7 warning.

[22] *Id*. at 13-15.

[23] *Id*. at 15-16.

[24] *Id*. at 13 and 17.

[25] *Id*. at 19.

[26] *Id*.

company from fulfilling their contractual duties under the ICPA, but establishes what costs are appropriate to recover from ratepayers.[27]

5. 2020 PSCR Reconciliation, Case No. U-20530

In this case, the PFD began with a detailed recitation of the Orders from Case Nos. U-18404, U-20529, and U-20224.[28] The PFD also recited the statements in these Orders that the Code of Conduct applied to wholesale PPAs with affiliates and that the Commission sought comparisons with other long-term supply agreements to determine whether I&M's agreements met the market price requirements of the Code of Conduct.[29]

Having recited the applicable instructions from the Commission, the ALJ reviewed the comparable long-term supply agreements put forward by the Attorney General. The PFD found that "the Attorney General provided costs for a variety of long-term supply resources for comparison to the ICPA OVEC costs as requested by the Commission."[30] The ALJ identified seven cost comparisons, including PPAs held by the Michigan Public Power Agency for coal-fired generation at Campbell Unit 3 and Belle River; Consumers Energy's cost for energy and capacity from the Midland Cogeneration Venture (MCV) gas-fired plant; Cost of New Entry (CONE) for a natural gas combined cycle plant and for gas combustion turbine (CT); I&M's RFP for

[27] *Id*.

[28] Case No. U-20530, PFD, April 18, 2022, pp 24-29.

[29] *Id*.

[30] *Id.* at 30.

new renewable resources, conducted for its IRP case; and Northern Indiana Public Service Commission's recent renewable RFP results.[31]

The ALJ found that these cost benchmarks "make up a reasonable and relatively narrow range, with the exception of the MPPA's cost from Consumers Campbell 3, which cost amount is rejected from consideration as an outlier."[32] The ALJ found that "each of these various categories of cost comparisons—prior power transactions, CONE, and RFPs—are supported by the record evidence in this case and are appropriate benchmarks for the Commission to consider in calculating any disallowance."[33] The ALJ found that the power transaction costs—specifically Belle River and MCV—were the "most appropriate for comparison purposes."[34] The ALJ recommended a disallowance of $1.347 million based on the amount by which the ICPA costs exceeded the average of the Belle River and MCV costs.[35]

The Commission adopted the PFD's proposed disallowance of OVEC costs.[36] The Commission explained that it "agrees that cost comparison of prior power transaction costs are the fairest benchmarks for calculating the disallowance."[37] The Commission affirmed again that "the ICPA has never been approved by the Commission, and therefore each time associated costs are submitted, they must be

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[31] *Id*. at 30-31.

[32] *Id*. at 61.

[33] *Id*.

[34] *Id*. at 62.

[35] *Id*.

[36] Case No. U-20530, Order, February 2, 2023, pp 3-13.

[37] *Id*. at 11.

reviewed for reasonableness and prudence."[38] The Commission further explained that the "very purpose of the Commission's Code of Conduct is to protect customers from exactly this type of arrangement, namely where a utility contracts with an affiliate for above-market-cost power to the detriment of its customers."[39]

The Michigan Court of Appeals affirmed the Commission's decision in a published opinion.[40] I&M applied for leave to the Michigan Supreme Court, which denied leave.

6. 2022 PSCR Plan, Case No. U-21052

In this case, the Commission once again issued a Section 7 warning to I&M regarding the OVEC costs, stating that "[t]he Commission agrees that a Section 7 warning is appropriate for uneconomic power supply costs associated with the ICPA without good faith efforts by I&M to minimize costs or to renegotiate the contract to achieve positive value for its ratepayers."[41]

The Commission found that the record included "multiple long-term supply alternatives with which to compare the cost of the ICPA, and the Commission agrees with the ALJ that these comparisons sufficiently demonstrate that the ICPA costs are excessive."[42] The Commission noted that all benchmarks need not be "perfect

[38] *Id.* at 12.

[39] *Id.* at 12-13.

[40] *In re Indiana Michigan Power Co*, ___ Mich App ___ (January 18, 2024), 2024 Mich App LEXIS 470.

[41] Case No. U-21052, Order, June 22, 2023, p 19.

[42] *Id.* at 20.

apples-to-apples comparison" to serve as "reasonable" long-term benchmarks for the OVEC costs for purposes of the Code of Conduct.[43]

The Commission noted "its previous directives to I&M to uphold its obligation to assess its existing contracts as market conditions or other factors change over time and to pursue amendments or new contractual agreements that may include taking meaningful steps to renegotiate provisions of the ICPA."[44] The Commission found that I&M's statements that it was "evaluating options related to OVEC" and that "potential action is under consideration with regard to renegotiation" were insufficient to meet the Commission's prior directives, and adopted the ALJ's Section 7 warning.[45] The Commission also rejected I&M's legal arguments regarding the Code of Conduct once again.[46]

7. 2021 PSCR reconciliation, Case No. U-20805

In this case, the Commission held 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.*"[47] The Commission found "the MPPA/Belle River and MPPA/Campbell Unit 3 contracts along with the MCV contract to be appropriate benchmarks," and therefore found "a disallowance of $1,025,628 in ICPA costs to be reasonable and prudent in this case

[43] *Id.*

[44] *Id.*

[45] *Id.* at 20-21.

[46] *Id.* at 21-23.

[47] Case No. U-20805, Order, April 11, 2024, p 13.

pursuant to the Code of Conduct and Act 304."[48] The Commission also adopted – or at least did not disturb – the ALJ's rejection of the transfer price and the Lake Trout solar purchase and sale agreement as proxies for the OVEC costs.[49]

8. 2023 PSCR Plan, Case No. U-21261

In this case, the Commission once again affirmed that I&M is paying "over-market prices for the ICPA in violation of the Code of Conduct," that "the capacity cost comparison based on economic evaluations of the PJM BRA capacity price is a reasonable point of comparison on which to judge the reasonableness of the ICPA."[50] The Commission once again issued a Section 7 warning "with respect to the above-market value costs of the ICPA."[51]

9. 2022 PSCR Reconciliation, Case No. U-21053

In this case, the Commission once again affirmed that the Code of Conduct applies to the ICPA and the OVEC costs and rejected I&M's legal arguments to the contrary.[52] The Commission also held that "the Lake Trout and Mayapple solar projects are not appropriate benchmarks in the market analysis regarding the PSCR period ended December 31, 2022. These solar resources will not be online until 2026 to 2028 and, as such, are not appropriate for the timeframe at issue in this

[48] *Id*. at 14. The Commission also issued a disallowance under the Code of Conduct for the UPA with AEP Generation for the sale of its share of Rockport power to I&M.

[49] *Id*. at 9-14; Case No. U-20805, PFD, December 2, 2023, pp 43-45.

[50] Case No. U-21261, Order, May 23, 2024, p 19-20.

[51] *Id*. at 21.

[52] Case No. U-21053, Order, September 26, 2024, pp 3-7.

proceeding."[53] The Commission also rejected I&M's argument to include a rate of return adjustment in the cost of the MPPA benchmarks.[54] The Commission did agree to weight the average cost of the MPPA benchmarks based on the amount of energy that each provided to MPPA, and agreed to remove the cost of taxes from the ICPA when comparing it to the MPPA benchmarks.[55]

10. 2024 PSCR Plan, Case No. U-21427

In this case, the Commission once again issued a Section 7 warning on the OVEC costs.[56] The Commission reviewed benchmarks proposed by Sierra Club that included CONE for a combined-cycle plant; gross avoidable costs for existing coal and gas generation; and the PJM Base Residual Auction capacity price.[57] The Commission was unpersuaded by I&M's argument that Sierra Club's methodology of converting dollars per MW-day to dollars per MWh was in error and noted that it had previously found the methodology to be acceptable.[58] The Commission found: "As to price comparisons, the Commission agrees that, while not perfect direct comparisons, the benchmarks provided by the Sierra Club in this case are appropriately relied upon to determine comparable market prices."[59] The Commission found that "The record in this case demonstrates that the ICPA continues to be a costly supply choice when

[53] *Id*. at 9.

[54] *Id*. at 10.

[55] *Id*. at 11-12.

[56] Case No. U-21427, Order, October 10, 2024, p 23.

[57] *Id*. at 7.

[58] *Id*. at 16.

[59] *Id*. at 16.

compared to other currently available long-term supply options…"[60] The Commission also noted that it had previously rejected I&M's argument regarding federal preemption under the Federal Energy Regulatory Commission (FERC) filed rate doctrine.[61] "Thus, the Commission concludes that the question of the application of the Code of Conduct to the ICPA is well-settled and adopts the PFD on this issue."[62]

. . .

In sum, the Commission has a responsibility to review the reasonableness and prudence of I&M's OVEC costs based on current market conditions; the Commission has consistently done so in I&M's PSCR cases; the Commission has continuously rejected I&M's legal arguments and much of the Company's evidence; and I&M continues to disregard the Commission's directives and concerns.

III. THE COMMISSION SHOULD DISALLOW I&M'S EXCESSIVE OVEC COSTS.

I&M cannot meet its burden to show that its OVEC contract costs are reasonable for either the PSCR plan year or the 5-year forecast period.

Relying on I&M's and OVEC's own forecast projection data, AG-CUB-SC witness Glick shows that during the plan year 2025 and the forecast years 2025-2029, OVEC will cost substantially more than equivalent market services. In further support of the imprudence of OVEC costs in both the plan year and forecast period,

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[60] *Id*. at 15.

[61] *Id*. at 21.

[62] *Id*.

Ms. Glick points to the public projections of OVEC value offered by other OVEC owners and by the rating agency Moody's—all of which show negative valuations that confirm Ms. Glick's findings that rely on I&M's and OVEC's own data.

Ms. Glick's testimony also includes benchmarks, several of which, as noted above, the Commission has previously recognized as reasonable comparators for OVEC costs. The benchmarks provided in Ms. Glick's testimony show that the OVEC's costs are excessive. In sum, the evidence is overwhelming that OVEC has negative value.

A. I&M's OVEC costs are excessive.

The ICPA has a substantially higher cost than the value of the products and services provided by OVEC to I&M and therefore the OVEC contract is not reasonable or prudent under current market conditions for the 2025 plan year and the forecast years 2025-2029. Multiple lines of evidence support this conclusion.

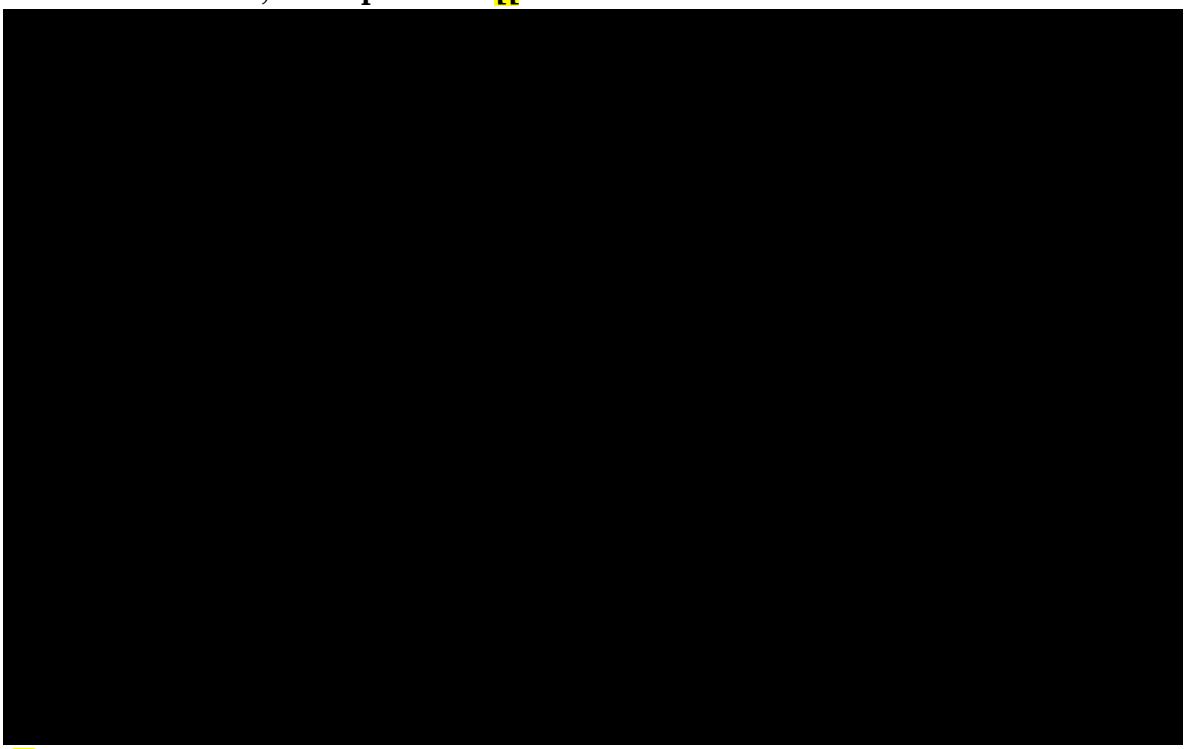
1. <u>OVEC costs exceed the market value of their services.</u>

Relying on projections from OVEC (costs) and I&M (market prices), including the most-recent AEP fundamentals forecast of capacity prices, AG-CUB-SC witness Devi Glick found that over the PSCR forecast period from 2025 to 2029, the OVEC ICPA is expected to cost I&M $48.1 million in present value terms more than the market value of services provided, or an average of $11.6 million per year.[63] This works out to a total of $6.0 million over the PSCR period or $1.4 million per year for

[63] Direct Testimony of Devi Glick, 2 Tr 180.

the Michigan jurisdictional share of I&M share of OVEC.[64] Importantly, this negative projected value assumes a large increase in capacity value (as evidenced by the larger blue bar in the out years in Ms. Glick's Figure 3 below) because AEP is assuming higher PJM capacity prices and, as such, Ms. Glick's calculation is generous to I&M. Further, this negative value, shown in Ms. Glick's Figure 3 below,[65] would be remarkable if it represented the entire annual OVEC losses, but again, these figures represent just I&M's 7.85% share of those losses.

Glick Direct, Figure 3: CONFIDENTIAL Net forecasted OVEC revenues, I&M portion [[



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Ms. Glick derived this valuation by using OVEC's and I&M's own data: she compared the projected cost of the OVEC ICPA, as projected by OVEC, and the value of the

[64] *Id.*

[65] Glick Direct (CONF), 2 Tr 259.

energy, capacity, and ancillary services as projected by I&M during these years, using I&M's forecast of PJM capacity auction prices as a proxy for the value of OVEC's capacity.[66]

AG-CUB-SC witness Glick offers the only complete evaluation of the OVEC contract's overall PSCR value during the years at issue in this case, and she relies substantially on I&M's and OVEC's own assumptions. In every year at issue in this PSCR proceeding, the OVEC costs are projected to be excessive compared to alternatives for power.

2. AEP's own 2016 economic assessment of OVEC demonstrates the long-term negative economics of the OVEC units.

In 2016, AEP Services Corp. conducted an analysis of forward-looking costs of the ICPA against the market value of OVEC on an energy and capacity basis. The 2016 analysis, which AEP Services Corp. presented to the OVEC Board of Directors, assessed a negative valuation of the ICPA.[67]

3. Economic assessments of other utilities that are parties to the ICPA also demonstrate the long-term negative economics of the OVEC units.

In addition, conclusions reached by other entities support Ms. Glick's findings. Forecasts from other OVEC owners and a credit rating agency confirm that the plants are expected to remain high cost compared to alternatives. In a proceeding before the

[66] OVEC bills I&M for an energy charge and a demand charge. Generally speaking, the energy charge is comprised of pass-through variable costs (e.g., fuel) and is supposed to be offset by energy revenues produced by the OVEC units. The demand charge is comprised of fixed costs and supposed to provide capacity value to the Sponsoring Companies. Glick Direct, 2 Tr 172, 181-182.

[67] Glick Direct, Table 4, Summary of prior OVEC and ICPA studies, 2 Tr 192.

Ohio Public Utilities Commission, Duke Energy Ohio, an OVEC co-owner, provided a valuation of OVEC, scaled to I&M's share, that suggests that I&M ratepayers would lose $67 million relative to market alternatives from 2020 to 2025, or approximately $11 million per year.[68] In its bankruptcy proceeding, FirstEnergy Solutions, another OVEC co-owner, demonstrated that the ICPA had a negative value of $267 million through 2040, scaled to I&M's share.[69] Finally, the credit rating agency Moody's assessed the creditworthiness of OVEC and produced a brief assessment of the net market liability of the OVEC units. Scaled to I&M's share, Moody's assessment indicates that I&M's ratepayers could be expected to lose about $16-21 million per year relative to market alternatives[70] Each of these forecasts of OVEC's value confirms the negative evaluation Ms. Glick performed relying on I&M's and OVEC's current data.

4. Other power supply benchmarks confirm that OVEC's costs are excessive.

As noted above, the Commission stated in I&M's 2020 and 2021 PSCR Plan cases that it would "closely scrutinize costs incurred under this contract between affiliates;" and "will look to comparisons with other long-term supply options as informative as to whether this particular contract adheres to the requirements of the Code of Conduct."[71] In its May 2024 final order in the I&M PSCR Plan 2023

[68] *Id*.

[69] *Id*.

[70] *Id*. Moody's projected an overall loss of $206-268 million in the years at issue. Scaled to I&M's share these projections equate to $16-20 million.

[71] Case No. U-20529, Order, May 13, 2021, p 18.

proceeding, the Commission held that "the capacity cost comparison based on economic evaluations of the PJM BRA capacity price is a reasonable point of comparison on which to judge the reasonableness of the ICPA."[72] AG-CUB-SC witness Glick has provided ample evidence of comparable benchmarks that confirm that OVEC's costs are excessive.

Glick Direct Table 3: OVEC cost benchmarks[73]

	Capacity cost ($/MWh)	Energy cost ($/MWh)	Total cost ($/MWh)	Excess costs based on benchmark ($million)
OVEC 2023 PSCR cost[1]	$46.80	$37.28	$79.11	NA
OVEC 2024 PSCR cost[2]	$44.94	$37.37	$82.31	
Cost of similar services				
In-year transfer price[3]	n/a	n/a	$62.32	$16.95
Value of CONE & PJM BRA				
CONE – CC plant coming online in 2026[4]	$33.87	$24.48	$58.36	$20.06
PJM base residual auction (BRA)[6]	$2.40	$37.37	$39.77	$34.63

At a total cost of **$82.31** per MWh, the OVEC ICPA was *much* higher in 2024 than any of these other sources of long-term supply. Ms. Glick estimated OVEC's total excess costs for 2024 compared to each of these resources in Table 3 of her testimony.

I&M has attempted to argue that none of these resources should be considered comparable to OVEC. As the Commission has observed "it would be difficult to

[72] Case No. U-21261, Order, May 23, 2024, p 19.

[73] Glick Direct, 2 Tr 188, Table 3.

produce comparisons that are 100% identical to the OVEC units," but "comparisons can be made."[74] The Company has disputed the relevance of the PJM auction price, but in a recent settlement, I&M did in fact agree to recover the cost of its FRR capacity for another resource, Rockport unit 2, at the RPM auction clearing price.[75] And, in any event, the Commission has endorsed the use of the PJM capacity as a "reasonable point of comparison on which to judge the reasonableness of the ICPA."[76]

Further, the Commission in U-20804 specifically held that net CONE may be one of the "appropriate proxies for calculating market price and I&M's resulting PSCR factor."[77] The CONE comparison shows that I&M could build a new power plant at a lower fixed cost than paying the OVEC demand charges.

5. I&M's IRP analysis does not refute the excessiveness of the OVEC costs.

In defense of its OVEC costs, I&M points to the analysis it performed as part of its integrated resource plan (IRP) to claim that OVEC is an economic resource for customers.[78] In May 2021, the Commission issued an order in Case No. U-20529 that required I&M to file in its next IRP a net present value analysis of the revenue

[74] Case No. U-20530, Order, February 2, 2023, p 11.

[75] Indiana Utility Regulatory Commission, Case No. U-45546, Renewed Joint Motion for Leave To File Settlement Agreement and Request for Settlement Hearing, Sept 13, 2021, p 3 (stating that "I&M shall be allowed to recover costs for the capacity used from Rockport Unit 2 in the FRR plan at a rate that equals PJM's Base Residual Auction ("BRA") Reliability Pricing Model ("RPM") clearing price for the respective PJM Planning Years (i.e., 2022/2023 and 2023/2024).").

[76] Case No. U-21261, Order, May 23, 2024, p 19.

[77] Case No. U-20804, Order, November 18, 2021, p 22.

[78] Johnston Direct, 2 Tr 116.

requirement to terminate the ICPA.[79] In November 2021, I&M presented the results of this analysis, which purported to show that terminating the ICPA in 2030 would cost $28 million more than continuing under it until 2040. The Company subsequently updated its analysis to correct numerous errors and found a cost savings of $54 million.[80] I&M's IRP does not show that OVEC is a good resource for Michigan customers for several reasons.

First, I&M assumed ratepayers were responsible for all outstanding debt after the ICPA's termination,[81] an unreasonable assumption given that I&M never received approval from the Commission for the ICPA. This modeling assumption fails to adhere to Michigan law, as the Commission has repeatedly made clear that all OVEC costs must be specifically supported as reasonable, and in compliance with Code of Conduct, to be recovered from customers in each PSCR proceeding.[82] Michigan customers should not be required to bail out the OVEC owners and sponsors by paying off the cost of their historic and ongoing capital investments. As Ms. Glick has shown in Figure 4, OVEC intends to front-load its debt recovery (rather than recover it through 2040 in a level manner), such that these debt-related assumptions are especially consequential for I&M's customers, absent protection from this Commission.

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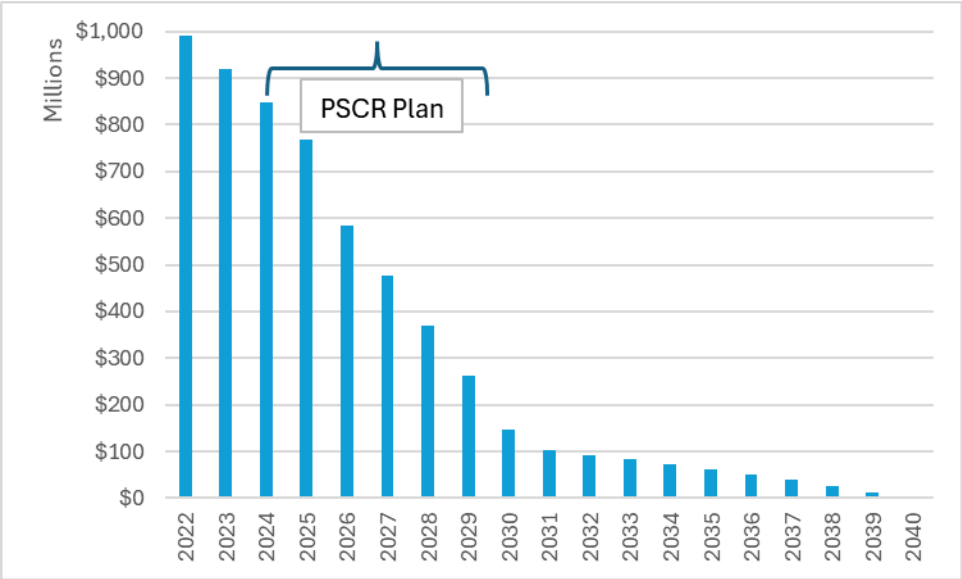
[79] Case No. U-20529, Order, May 13, 2021, p 22.

[80] Glick Direct, 2 Tr 195.

[81] See Case No. U-20529, Order, May 13, 2021, p 13; Case No. U-20530, Order, February 2, 2023, p 12; and Case No. U-18404, Order, June 7, 2019, p 7.

[82] *See* Section II above.

Glick Direct Figure 1. Projected long-term debt costs to be included in the demand charges billed under the ICPA[83]



I&M's inappropriate assumption that Michigan customers must bail out OVEC owners by paying off their unregulated debt alone renders the I&M IRP modeling useless as evidence in a PSCR proceeding.

Second, the IRP analysis assumes also that OVEC will install upgrades to comply with ELG and CCR requirements to keep the units online through the end of the ICPA in 2040.[84] But the I&M IRP studies failed to consider a scenario by which the ELG and CCR costs were avoided, which is another fundamental flaw in the analysis.[85] The Commission does not directly regulate specific investments at the OVEC plants and as such, the Commission has neither approved nor disapproved of

[83] Glick Direct, 2 Tr 196.

[84] Glick Direct, 2 Tr 194, 197-99

[85] Glick Direct, 2 Tr 197-99.

the ELG and CCR investments. Therefore, I&M cannot presume it is entitled to cost recovery from Michigan ratepayers for the ELG and CCR investments.

These flaws highlight how much of an outlier I&M's IRP analysis is based on how much the results deviate from (1) the data that I&M provided in this PSCR docket, (2) the results of every study conducted by OVEC owners in recent years, and (3) the actual experience of OVEC sponsors since at least 2017. I&M's IRP study is not directionally credible and should not be relied upon.

6. OVEC and AEP's 2011 and 2004 benchmark studies do not support I&M's recovery of OVEC costs today.

The Commission should not put any weight on I&M witness Johnston's reference to the historic benchmark studies that OVEC submitted to FERC in 2011 or 2004.[86] First of all, Mr. Johnston incorrectly refers to these studies as having been performed by "the Company" and falsely states that "the Company" filed them with FERC.[87] In fact, OVEC submitted the studies to FERC and they were performed by American Electric Power Services Corp.[88] There is no record evidence that I&M had *any* involvement in these studies.

More importantly, OVEC's and AEP's 2004 and 2011 benchmark studies do not show that investing in OVEC at the time was a reasonable decision and has no relevance to the costs at issue in this PSCR Plan case. The 2011 benchmark study,

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[86] Direct Testimony of Todd A. Johnston, 2 Tr 119.

[87] Johnston Direct, 2 Tr 115 ("***The Company*** conducted its first such evaluation, a benchmark study, when analyzing whether to extend the ICPA. ***The Company*** filed that benchmark study with the FERC in November 2004.") (emphasis added).

[88] Ex. AG-10, 2011 OVEC Benchmark Study.

which appears to have been conducted and submitted to FERC *after* I&M agreed to an extension of the ICPA, was a mere seven-page document that compared the cost of OVEC to the levelized cost of new fossil fuel resources. The analysis did not consist of robust forward-looking analysis, did not consider I&M's actual system needs or I&M's circumstances at all, and did not consider the lowest-cost way to meet those needs. In addition, the Company failed to disclose critical assumptions used by the modelers that were essential to evaluating the reasonableness of the analysis[89] (likely because I&M never had access to any of these assumptions). Further, it is impossible that an analysis conducted after a decision was made could have informed the reasonableness of the decision.

To evaluate such a long-term spending decision, I&M should have engaged in an optimized resource-planning exercise. As part of this exercise, I&M should have evaluated system needs, estimated the forward-going cost to operate the units under the ICPA, estimated the likely costs of alternatives, and evaluated risk and uncertainty from, among other things, fuel price volatility and carbon dioxide prices.[90] This type of exercise is typically performed by utilities and requested by state utility commissions whenever utilities make substantial resource planning decisions. The OVEC/AEP historic benchmark studies exhibited none of these features.

7. Witness Johnston's energy-only analyses are irrelevant to the Commission's review.

[89] Glick Direct, 2 Tr 186.

[90] Glick Direct, 2 Tr 187.

The Commission should give no weight to I&M witness Johnston's comparison of OVEC energy charges to the PJM energy market price.[91] Witness Johnston's observation that PJM energy prices have exceeded OVEC energy costs in some years is misleading and irrelevant to the overall reasonableness of the ICPA to Michigan customers because I&M seeks to charge total OVEC costs—including *demand* and transmission charge costs[92]—to customers through the PSCR clause. Witness Johnston's comparison of OVEC energy charges to prevailing energy prices is unavailing for the same reason.[93] The Commission has repeatedly rejected this 'energy-only' comparison, finding that "the energy-only comparison presented by I&M does not demonstrate that the ICPA is an economic contract[.]"[94]

B. Further supporting the appropriateness of a disallowance here, the Company has known for many years that the OVEC plants are projected to lose significant money year after year and it has failed to minimize those losses.

Despite the dismal economics of the OVEC units, I&M has not taken steps to minimize losses for customers associated with the operation or investment decisions at the OVEC units. I&M's most blatant failure in this regard is its unwillingness to take any steps to reign in continued capital spending at these 1950s-era coal-burning plants. I&M has either known or should have known that the OVEC units are not

[91] Johnston Direct, 2 Tr 119.

[92] Glick Direct, 2 Tr 181.

[93] Johnston Rebuttal, 2 Tr 134.

[94] Case No. U-21261, Order, May 23, 2024, p 19.

economic under current market conditions since at least 2016, when AEP Services studied the economics of the units, or since 2017, when its own billing showed persistently high costs compared to the value provided by OVEC. Yet I&M can point to no actions that it is taken to protect customers from the harm caused by retention of the units. In fact, I&M has not even studied the economics of the major retrofit-or-retire decision facing the OVEC units. I&M seeks to recover costs for major new environmental capital expenditures in the PSCR factor without having first evaluated their economics or brought them before the Commission.

I&M has apparently supported—or at least acquiesced in—OVEC's decisions to incur new capital costs to comply with environmental rules known as the Effluent Limitations Guidelines (ELG) and Coal Combustion Residuals (CCR) requirements. AEP, I&M, and the other OVEC owners have chosen to proceed with ELG and CCR expenditures in order to continue operating these 1950s-era coal units beyond 2028.[95] The cost of these projects is over $100 million.[96]

When asked about its role and knowledge of CCR and ELG investments and decisions, I&M claimed that OVEC and not I&M controlled the decision on whether to move forward with environmental upgrades. I&M provided no information to the Commission on estimated CCR and ELG project costs or what retrofit decisions had been made.[97]

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[95] Glick Direct, 2 Tr 198.

[96] *Id.*

[97] *Id.* at 200.

Here it is worth recalling that AEP has the single largest representation on the OVEC board.[98] The record contains no evidence that any AEP or I&M representatives on either the OVEC or IKEC Boards of Directors voted against these CCR/ELG expenditures or even requested any contemporaneous analysis of whether this spending was economic. The failure to even study the economics of nine-figure capital expenditures on power plants that are already uneconomic is a blatant failure of oversight or reasonable and prudent decision-making.

Because I&M has never received Commission approval for taking on its share of the ELG and CCR capital costs at OVEC, it would be inappropriate to permit recovery of these costs from captive Michigan customers. Thus under the Commission's standard—that because "the ICPA has never been approved by the Commission" therefore "each time associated costs are submitted, they must be reviewed for reasonableness and prudence"[99]—I&M's share of these costs are not permissible in customers' rates.

With high-cost power plants like the OVEC units, utilities will generally consider retiring the plants rather than incurring additional capital investments to keep the plants online. But, in this case, I&M is simply proposing to charge its Michigan customers for a pro rata share of the cost of ELG and CCR compliance at OVEC without having presented any evidence that it evaluated these expenditures

[98] *Id.* at 197.

[99] Case No. U-20530, Order, February 2, 2023, p 12.

and concluded that customers benefit from continued operation of these plants. This approach should not be permitted.

IV. THE COMMISSION SHOULD ISSUE A SECTION 7 WARNING FOR EXCESSIVE OVEC COSTS.

Because the record is clear that OVEC costs greatly exceed the equivalent market value of the services provided by OVEC to I&M, the Commission should find that the OVEC contract is not reasonable or prudent under current market conditions for the 2025 plan year and for the forecast years 2025-2029. The Commission should issue a Section 7 warning to I&M that on the basis of present evidence it will likely disallow I&M's recovery of the Michigan jurisdictional share of compensation for the ICPA in 2025-2029.

V. THE COMMISSION SHOULD REMIND I&M THAT IT WILL DISALLOW RECOVERY OF COSTS ASSOCIATED WITH IMPRUDENT SELF-COMMITMENT DECISIONS AT ROCKPORT IN FUTURE RECONCILIATION PROCEEDINGS.

The Rockport plant is a two-unit coal-fired power plant located in Indiana and operated by I&M.[100] I&M and AEP Generating Company (AEG) each own 50% of Unit 1, and AEG sells 100% of its share of power from Unit 1 back to I&M.[101] I&M has owned 100% of Unit 2 since December 2022.[102]

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[100] Glick Direct, 2 Tr 207.

[101] *Id.*

[102] *Id.*

For the 50% share of Unit 1 that I&M owns, I&M recovers its fuel costs through the PSCR process and its non-fuel costs through rate and other cases.[103] For the 50% share of Unit 1 that AEG owns, I&M buys the AEG power through a power purchase agreement (PPA) called the Unit Power Agreement (UPA).[104] This means that I&M recovers the entire cost of the energy and capacity it buys from AEG – not just the fuel costs – through the PSCR process.[105] Now that I&M owns Unit 2, it recovers no portion of those costs in PSCR proceedings.[106]

The Commission has held that AEG and I&M, which are both AEP subsidiaries, are affiliates and that I&M's purchase of power from AEG under the UPA is an affiliate transaction governed by the Commission's Code of Conduct and its market price cap at Rule 8(4).[107]

For PSCR planning purposes, "I&M models the Rockport units as committed and dispatched economically into the market and operating only when market revenue exceeds unit costs."[108] For this year's PSCR plan, I&M has projected that Rockport power will be much cheaper than it projected last year.[109] This is largely

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[103] *Id.* at 208.

[104] *Id.*

[105] *Id.*

[106] *Id.* at 207.

[107] See, e.g., Case No. U-20805, Order, April 11, 2024, p 17 ("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.*).

[108] *Id.* at 208.

[109] *Id.* at 209.

due to I&M's projection that Rockport's capacity factor, which was 25.43% in 2024,[110] will increase significantly.[111] The lower projected costs also reflect that, in 2024, I&M made a large buy-out payment to a coal supplier to reduce its obligation to buy coal it no longer needed, and those costs are not included in the future plan period.[112]

In an abrupt turnaround from last year's PSCR plan, I&M's current plan projects that Rockport Unit 1 will be operated economically going forward. Specifically, I&M projects that Rockport Unit 1 will earn $53.7 million from 2025 through its planned retirement in 2028, or an average of $17.3 million per year.[113] This is a "marked contrast" from last year's projections, which indicated that Rockport would incur $466.3 million in excess costs relative to the market value of energy and capacity.[114]

I&M also projects that Rockport's utilization will increase significantly as a result of higher projected energy market revenues. Noting the "substantial deviation" between I&M's energy market forecast for this year's PSCR plan and prior year plans, as well as historical Rockport performance, Ms. Glick expressed concern that I&M is "substantially overestimating" Rockport's performance.[115]

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[110] *Id.* at 207.

[111] *Id.* at 209.

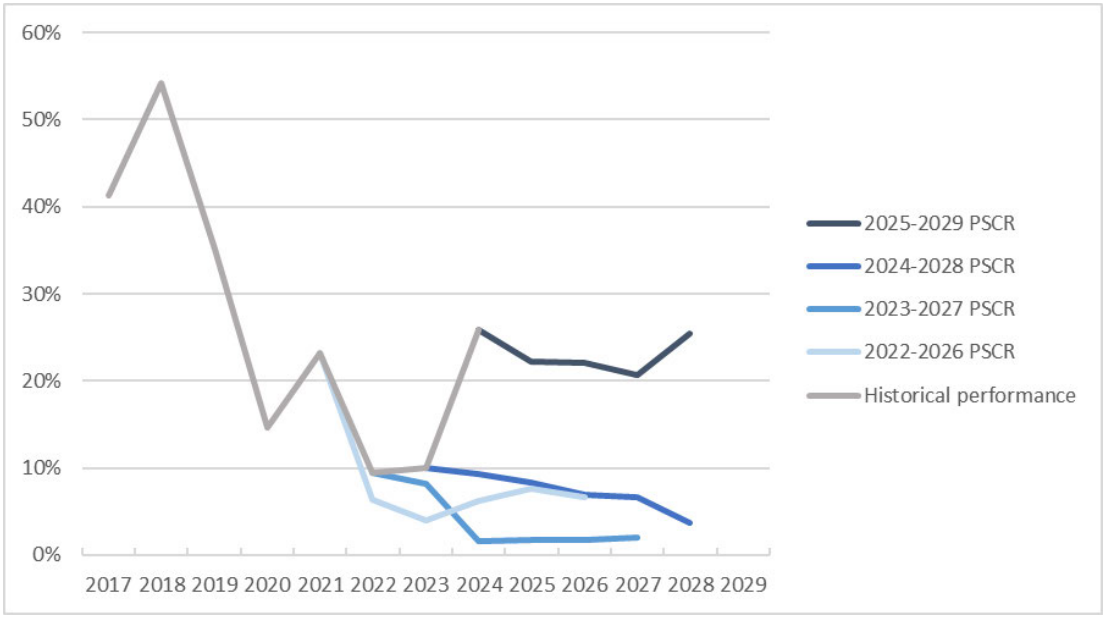
[112] *Id.*

[113] *Id.* at 210.

[114] *Id.* at 210-12 (citing Case No. U-21427, Glick Direct, 2 Tr 255).

[115] *Id.* at 212.

Glick Direct, Figure 2, Rockport capacity factor projections



[116]

Ms. Glick recommended that the Commission "only approve I&M's PSCR plan to the extent it is developed around assumptions that Rockport 1 is operated economically (i.e., using an economic commitment status) and that the modeled assumptions are consistent with how the Company actually operates Rockport 1."[117] Ms. Glick further recommended that the Commission "signal to I&M that in future reconciliation dockets it will disallow costs incurred at Rockport 1 as a result of uneconomic commitment practices."[118]

In rebuttal, in response to being asked whether the Commission had "addressed" I&M's Rockport self-commitment practices, Company witness Todd

[116] *Id.* at 213, Figure 6.

[117] *Id.* at 213.

[118] *Id.*

Johnston testified that the Commission required the Company in Case No. U-20224 to document the basis for its self-commitment decisions and that the Company has been doing so.[119] To the extent that Mr. Johnston meant to suggest that I&M need not do more, he is wrong. The Commission imposed the documentation requirement to "better allow the Commission to evaluate the reasonableness and prudence of future must run commitment decisions" and recognized the need to "balance[] the utility's operational needs with protections for customers against unreasonable commitment decisions that result in higher costs."[120] Merely documenting the basis for its self-commitment decisions does not relieve the Company of its burden of proving in future PSCR reconciliation dockets that those decisions were reasonable and prudent.

Mr. Johnston also claimed that the Commission has "rejected the applicability of the RPM auction prices when comparing resources," so it should reject Ms. Glick's comparison of Rockport's costs to their market value, which Ms. Glick calculated based on auction prices.[121] But the Commission has only found that one previous analysis by Ms. Glick "of the short-term PJM market *standing alone* d[id] not adequately measure the reasonableness of the OVEC ICPA."[122] The Commission has not rejected auction prices as a market comparator. In I&M's 2023 PSCR Plan case, the Commission found that a "capacity cost comparison based on economic

[119] Revised Rebuttal Testimony of Todd A. Johnston, 2 Tr 147.

[120] Case No. U-20224, Order, June 23, 2021, pp 15-16.

[121] Johnston Rebuttal, 2 Tr 147-48.

[122] Case No. U-20224, Order, June 23, 2021, p 9 (emphasis added).

evaluations of the PJM BRA capacity price is a reasonable point of comparison on which to judge the reasonableness of the ICPA" and issued a Section 7 warning "with respect to the above-market value costs of the ICPA."[123] In I&M's 2024 PSCR Plan Case, the Commission considered proposed benchmarks that included the PJM BRA capacity price and found that, "while not perfect direct comparisons," such benchmarks "are appropriately relied upon to determine comparable market prices."[124]

Next, Mr. Johnston testified that he did not believe the Company is "overstating Rockport's future performance," that I&M's forecast was based on the tightening PJM capacity market and other factors that I&M had accounted for in its forecasting methods, and that Ms. Glick's concerns "are not based on evidence."[125] On the contrary, Ms. Glick's concerns are based on evidence that I&M's forecast in this case deviates substantially from prior forecasts and historical performance, and the Commission should consider them.

Finally, Mr. Johnston testified that the Commission need not warn I&M that it will disallow costs incurred pursuant to imprudent self-commitment decisions because "the Company recognizes its obligation to operate the Rockport units in customers' best interest."[126] Mr. Johnston also stated that reconciliation proceedings are the "appropriate" forum for addressing commitment decisions. AG-CUB-SC

[123] Case No. U-21261, Order, May 23, 2024, p 19-21.

[124] Case No. U-21427, Order, October 10, 2024, pp 7, 16.

[125] Johnston Rebuttal, 2 Tr 148.

[126] *Id.*

recognize that the Commission has found that "I&M's operational decisions pertaining to the Rockport unit are best evaluated in the company's corresponding PSCR reconciliation case."[127] AG-CUB-SC, however, ask the Commission to recognize that they have raised concerns about I&M's potential overestimation of Rockport's performance and remind I&M that it will disallow recovery of costs associated with imprudent self-commitment decisions at Rockport in future reconciliation proceedings.

VI. CONCLUSION

For the reasons discussed above, AG-CUB-SC respectfully request that the Commission make these holdings with respect to I&M's PSCR plan and the Code of Conduct:

1. The ICPA is substantially higher cost than the value of the products and services provided by OVEC to I&M and therefore the OVEC contract is not reasonable or prudent under current market conditions for the 2025 plan year.

2. The OVEC contract is likely to cost more than equivalent market products and services during the five-year forecast period from 2025 to 2029, based on I&M's own forecasts of PJM market prices (energy and capacity) and from other power purchase benchmarks and agreements.

3. I&M and has not demonstrated reasonable management of its OVEC contract, including by remaining ignorant of the ELG/CCR retrofit decision and its impact on future PSCR costs.

[127] Case No. U-21261, Order, May 23, 2024, p 21; see also Case No. U-21427, Order, October 10, 2024, p 22.

4. The Commission should issue a Section 7 warning to I&M that on the basis of present evidence it will likely disallow I&M's recovery of the Michigan jurisdictional share of compensation for the ICPA in 2025-2029.

5. The Commission should affirm its finding that OVEC is an "affiliate" of I&M under the Michigan Code of Conduct.

6. The Commission should apply the Code of Conduct and direct a disallowance equal to the difference between the payments I&M makes under the ICPA and the costs that I&M ratepayers would pay for the same amount of energy and capacity at market prices.

7. The Commission should recognize the concerns about I&M's potential overestimation of Rockport's performance and remind I&M that it will disallow recovery of costs associated with imprudent self-commitment decisions at Rockport in future reconciliation proceedings.

Respectfully Submitted,

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The undersigned certifies that a copy of the ***Public Initial Brief by the Attorney General, Sierra Club, and CUB*** was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 9th day of June 2025.

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