STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **INDIANA MICHIGAN POWER COMPANY** for reconciliation of its power supply cost recovery plan (Case No. U-21261) for the 12 months ended December 31, 2023.	))))))	Case No. U-21262

At the July 10, 2025 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 28, 2024, Indiana Michigan Power Company (I&M) filed an application in this docket pursuant to Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j, with supporting testimony and exhibits, requesting approval to reconcile revenues collected pursuant to its power supply cost recovery (PSCR) plan for the 12-month period ended December 31, 2023. I&M's application indicated that the company recorded a PSCR underrecovery of $18,431,830. Application, p. 4.

A prehearing conference was held on May 8, 2024, before Administrative Law Judge Lesley C. Fairrow (ALJ). I&M and the Commission Staff (Staff) participated in the proceeding. The ALJ recognized the intervention of the Michigan Department of Attorney General (Attorney

General) and granted petitions to intervene filed by the Sierra Club and the Citizens Utility Board of Michigan (CUB).

On December 11, 2024, the ALJ conducted an evidentiary hearing at which testimony and exhibits were bound into the record and cross-examination was conducted. On January 16, 2025, the parties filed initial briefs, and on February 13, 2025, the parties filed reply briefs.

On March 28, 2025, the ALJ issued a Proposal for Decision (PFD) in this matter. On April 18, 2025, I&M filed exceptions to the PFD, and on May 2, 2025, the Attorney General, Sierra Club, and CUB jointly filed replies to the company's exceptions.

The record in this case consists of 299 pages of transcript and 35 exhibits.

Proposal for Decision

The ALJ provided an overview of the testimony and positions of the parties in this case at pages 3-23 of the PFD, which will not be extensively repeated here. The ALJ found that there were five contested issues in the case: (1) beginning balance and PSCR calculations, (2) solar power purchase agreement (PPA) costs, (3) future energy-related demand response program costs, (4) the Intercompany Power Agreement (ICPA) with Ohio Valley Electric Corporation (OVEC) costs, and (5) the Unit Power Agreement (UPA) costs. Similar to the ALJ, the Commission will further address each disputed item below.

Discussion

1. Beginning Balance and Power Supply Cost Recovery Calculations

The company and the Staff began with different beginning balances for their calculations in this case. The ALJ noted that this was reasonable given that the filing occurred prior to the completion of the reconciliation proceeding for 2022. PFD, p. 26. I&M calculated a total underrecovery of $18,436,839, inclusive of interest. 2 Tr 84; Exhibit IM-3. The Staff, relying

upon the September 26, 2024 order in Case No. U-21053 (September 26 order), utilized the Commission-approved beginning underrecovery balance of $8,855,873. 2 Tr 274; September 26 order, p. 21.

The ALJ recommended that the Commission, consistent with past practice, adopt "the Commission-approved beginning net under recovery amount of $8,855,873 as the Company's 2023 power supply cost recovery reconciliation beginning balance." PFD, p. 26.

No exceptions were filed on this issue.

The Commission finds that the ALJ's conclusion is supported on the record and the beginning balance for this proceeding is a net underrecovery of $8,855,873. *See*, September 26 order, p. 21; 2 Tr 274.

2. Solar Power Purchase Agreement Costs

The company requested approval of development costs associated with a capacity purchase agreement and solar PPAs as approved in Case No. U-21189, I&M's Integrated Resource Plan (IRP) proceeding. The Staff disputed the inclusion of the costs in this proceeding, arguing that MCL 406.6j governs the costs to be recovered in a PSCR reconciliation proceeding and that the requested development costs are not included. Therefore, the Staff argued that these costs should be reviewed by the Commission as part of I&M's next general rate case. 2 Tr 101.

The ALJ found that the company requested to recover development costs pertaining to the PPAs in its IRP filing in Case No. U-21189. The ALJ reasoned that the Commission, in its October 10, 2024 order in Case No. U-21189 (October 10 order) "authorized recovery of those costs through the PSCR clause and factors in the PSCR case." PFD, p. 27 (citing October 10 order, p. 4).

No exceptions were filed on this issue.

The Commission finds that the ALJ's recommendation is supported on this record. Therefore, the Commission adopts the ALJ's recommendation and finds that, consistent with the October 10 order, I&M is allowed to recover the development costs associated with the PPAs through the PSCR clause and factors over a period of two years. *See*, October 10 order, p. 4.

3. Future Energy-Related Demand Response Program Costs

I&M requested recovery of energy-related costs associated with demand response programs to be approved in PSCR proceedings going forward. Specifically, the company acknowledged that there were no such costs during the reconciliation period, but claimed that "[t]he risk of over-recovering is minimized in a PSCR proceeding where costs are trued-up annually with the actual incurred costs. The Commission should, therefore, approve the Company's proposal to recover energy related demand response costs in PSCR proceedings moving forward." I&M's initial brief, p. 22. The Staff disagreed with I&M's request, setting forth that it is standard practice to review these costs as part of operation and maintenance expenses in a general rate case proceeding. *See*, 2 Tr 295.

The ALJ found persuasive the Staff's position and held that "only PSCR costs should be included in a PSCR reconciliation case." PFD, p. 28. As such, the ALJ recommended that the Commission deny the company's request and not include energy-related demand response program costs in future PSCR proceedings.

In exceptions, I&M argues that the ALJ erred in recommending a finding that the company should request recovery of the energy-related demand response costs in a general rate case. The company acknowledges that while "[t]hese costs are not 'PSCR costs' *per se* [they] are costs incurred as a result of energy usage or non-usage" and that "[t]hese costs are the compensation for customers that participate in demand response programs, like the Voluntary Curtailment Service,

and curtail their energy usage during periods of high energy prices, high system demand, and during PJM [PJM Interconnection LLC] or I&M system emergencies to supplement the energy purchase I&M would otherwise incur." I&M's exceptions, p. 10 (citing 2 Tr 88-89).

The Commission has reviewed the arguments on this issue and finds that the ALJ's analysis is correct and only PSCR costs should be included in PSCR reconciliation proceedings, as required by MCL 460.6j. Given the company's acknowledgement that no costs were incurred during the reconciliation period at hand, no disallowance is warranted at this time. The Commission also declines to prospectively approve a class of expenditures for future PSCR proceedings. The Commission will continue to review each case, and the record established in that proceeding, to determine the reasonableness and prudence for recovery, whether that is in a general rate case or PSCR proceeding.

4. Intercompany Power Agreement with the Ohio Valley Electric Corporation

I&M again requested recovery of its costs associated with the ICPA in this proceeding. The company contends that it "engaged in good faith efforts to manage the ICPA during the Reconciliation Period and, under current market conditions, the ICPA remains a reasonable and economic resource for providing power to customers." I&M's initial brief, p. 23. The Staff noted that, consistent with prior Commission and Michigan court rulings, "I&M is required to demonstrate that the amended ICPA costs comply with Rule 8(4) [Mich Admin Code, R 460.10108(4)] of the Commission's Code of Conduct." Staff's initial brief, p. 7. The Staff, therefore, argued that the company's failure to provide proper comparisons for the ICPA costs requires a disallowance in this proceeding. In rebuttal, the Staff acknowledged that it erred in the original calculation of its ICPA disallowance and accepted "the disallowance calculation of

$2,250,305 proposed by the Company . . . ." *Id*., p. 23 (citing 2 Tr 175-176). The Attorney General offered an alternative proposed disallowance of $5 million, which she claimed:

> is Michigan's jurisdictional share of the total $33.2 million in excess compensation that I&M paid for OVEC services under the ICPA (relative to the market value of the services). This represents the difference between what I&M charged customers for OVEC power, and the equivalent price that I&M would pay to procure the energy and capacity from the PJM market in 2023.

2 Tr 255.

The ALJ found that "[t]he Commission has addressed the Company's ICPA with the OVEC multiple times." PFD, p. 30. In reviewing prior holdings and the record, the ALJ found that the requested ICPA costs in this case are subject to the Commission's Code of Conduct and that a disallowance is warranted due to non-compliance with the Code of Conduct. In that regard, the ALJ agreed with the Staff's analysis, as revised consistent with the company's rebuttal, and applied "the methodology used in Case Nos. U-20805 and U-21053," concluding that "disallowances of $2,250,305 are appropriate for the 2023 plan year." PFD, p. 31. Further, the ALJ rejected the Attorney General's recommendation "because specific evidence that the Company acted unreasonably or imprudently is absent from the record." *Id*.

No exceptions were filed on this issue.

As noted by the ALJ, the Commission has previously discussed, in great detail, many of the same issues raised by I&M relating to the ICPA in prior proceedings. *See*, September 26 order, pp. 3-12. In that regard, the Commission adopts the ALJ's incorporation of "the past holdings of the Commission and Michigan Court of Appeals." PFD, p. 31 (footnote omitted). Specifically, as discussed in the Staff's initial brief at pages 7 to 9, the company failed to provide appropriate comparison for the ICPA costs, relying once again upon recently approved solar resources that have been previously analyzed and rejected by the Commission. *See*, 2 Tr 123; *see also*,

September 26 order, p. 9. The Commission also finds that the ALJ properly concluded that the ICPA costs are not compliant with the Code of Conduct and as such, a disallowance is warranted. Therefore, the Commission adopts the Staff's proposed disallowance, as modified by the company's rebuttal testimony, of $2,250,305. *See*, Staff's initial brief, pp. 8-9.

5. Unit Power Agreement Costs

The company requested approval of UPA costs for 2023 and requested that the Commission find that I&M's operation and management of Rockport Unit 1 was reasonable and prudent to permit recovery of UPA costs in this proceeding. *See*, I&M's initial brief, pp. 36-37. The Attorney General responded that a portion of the Rockport Unit 1 costs should be disallowed under the Code of Conduct as they exceed the market price cap. *See*, 2 Tr 257-265. In rebuttal, the company disputed the Attorney General's proposed disallowance arguing that her calculations inappropriately include disallowances for both energy and capacity costs. In that regard, I&M provided rebuttal testimony that the appropriate disallowance under the Code of Conduct for the energy-only costs would be $793,238. The Staff did not set forth a position in testimony; however, upon briefing, stated that when considering the company's rebuttal testimony the:

> Staff finds the Company's reasoning and analysis of its UPA costs reasonable for the purposes of determining compliance with the Commission's Code of Conduct. If the Commission finds that a disallowance of UPA costs is warranted due to non-compliance with the Code of Conduct, Staff accepts the Company's energy-only disallowance amount of $793,238.

Staff's initial brief, p. 10.

The ALJ concluded that the evidence on the record supported a finding that the UPA costs associated with Rockport Unit 1 were not reasonable and prudent. Specifically, the ALJ pointed to I&M's rebuttal testimony to indicate that a disallowance is appropriate under the Code of Conduct. PFD, p. 33 (citing 2 Tr 162, 183-186). The ALJ further found the Attorney General's position that

the Rockport Unit 1 capacity costs were not previously approved by the Commission persuasive; therefore, she reasoned that, unlike Rockport Unit 2 in Case No. U-20805, the disallowance need not be limited to energy-only costs. Overall, the ALJ recommended that "the Commission disallow approximately $10.18 million in excess capacity and fuel costs associated with Rockport Unit 1 by using the same comparison benchmarks to evaluate the reasonableness of the ICPA costs." PFD, p. 33.

I&M takes exception to the ALJ's recommendation, arguing that the ALJ erred in three ways: (1) finding that the Rockport Unit 1 capacity costs were not previously approved by the Commission, (2) rejecting the energy-cost methodology to determine the appropriate disallowance under the Code of Conduct, and (3) recommending the disallowance of fuel costs that are not subject to the UPA and should not be reviewed for compliance with the Code of Conduct. I&M's exceptions, p. 3.

With respect to the Rockport Unit 1 capacity costs being previously approved, the company contends that in Case Nos. U-20805 and U-20530 the Commission did not distinguish between costs relating to Rockport Unit 1 and Unit 2, but rather "referred to all costs incurred under the UPA." *Id*., p. 4. I&M specifically indicates that the Commission cited to Case No. U-9656 in each case, emphasizing that "the Commission did not distinguish between Rockport Units 1 and 2 nor did the Commission need to do so." *Id*. Continuing, the company argues that the UPA for Rockport Unit 1 was reviewed by the Commission in Case No. U-8037, wherein the Commission approved a settlement agreement that pertained specifically to Rockport Unit 1. Further, I&M states that the actual capacity costs are reviewed by the Commission as capital expenditures in each general rate case. *Id*., p. 5 (citing 2 Tr 139-141). More specifically, the company contends that:

> [t]he Commission did not simply review the Rockport capacity costs once and approve those costs. Rather, the Commission has reviewed the Company's capital investments and fixed costs associated with operating and maintaining Rockport in every I&M base rate case; most recently in Case No. U-21641. It is illogical to say the Rockport capital costs are reasonable under base rates but somehow the capacity charges are unreasonable under the PSCR clause – the Commission previously acknowledged this when the UPA was first executed, and those orders are why the Commission only disallowed energy costs in Case No. U-20805.

I&M's exceptions, p. 6.

The company continues, arguing that the ALJ erred in failing to apply the Commission-approved methodology for an energy-only disallowance. Specifically, I&M states that "[t]he Company and Staff agree: should the Commission determine the Company's UPA costs do not comply with the Code of Conduct, the appropriate disallowance is energy-only costs in the amount of $793,238 as explained by Company witness Stegall." *Id*., p. 7 (citing Staff's initial brief, p. 10). Finally, the company avers that the record reflects relevant and undisputed evidence that I&M acted reasonably in the management of Rockport, and therefore, the ALJ erred in recommending a fuel disallowance. Given this, the company argues that the Commission should reject the ALJ's "recommendation and find that I&M's operation and management of Rockport, including the Company's good faith efforts to minimize costs, were reasonable and prudent and permit I&M's recovery of Rockport fuel costs." *Id*., p. 9.

The Attorney General replies to I&M's exceptions, stating that the company's reliance upon references to Case No. U-9656, which referenced only capacity costs for Rockport Unit 2, "did not address Rockport Unit 1 and did not approve capacity charges from Rockport Unit 1." Attorney General's replies to exceptions, p. 7. Moreover, the Attorney General quotes the settlement agreement, highlighting language that specifically indicates capacity charges may be challenged in future proceedings. *Id*., p. 8. Continuing, the Attorney General states:

> I&M ignores these important details and relies solely on the fact that, when the Commission referenced Case No. U-9656 in Case Nos. U-20530 and U-20805, it "made no distinction between Rockport Units 1 and 2." That is a far cry from the Commission *finding* that it had previously approved Rockport Unit 1 capacity charges, and even farther from having *actually approved* Rockport Unit 1 capacity charges. At most, I&M has identified an order (U-9656) in which the Commission stated in U-20530 that it had found that it had approved Rockport capacity costs, and the U-20530 order states only that unspecified UPA costs have been "at least partially approved." None of the orders in the aforementioned cases approved any capacity charges except those for Rockport Unit 2.

Attorney General's replies to exceptions, p. 8-9 (footnote omitted) (emphasis in original).

The Attorney General also points out that I&M, for the first time in exceptions, cites to Case No. U-8037 to claim that the Commission approved the Rockport Unit 1 capacity charges and selectively quotes the settlement agreement. The Attorney General again quotes and highlights the settlement agreement language noting that the "Commission's approval of Rockport Unit 1 capacity charges in U-8037 was limited to the years 1985 and 1986 and that future Rockport Unit 1 capacity charges will be subject to review and approval in PSCR cases like this one . . . ." *Id*., p. 10. Therefore, the Attorney General contends that the ALJ did not err in finding that the Commission had not previously approved the Rockport Unit 1 capacity charges at issue. The Attorney General further disputes the company's claim that the disallowance must be limited to energy-only charges. *Id*., p. 13. In addition, the Attorney General rejects any claim that the reasonableness of the Rockport Unit 1 fuel costs were not disputed and argues that the ALJ's conclusion to disallow fuel costs "is supported by substantial evidence in the record and the Commission should adopt it." *Id*., p. 15.

The Commission is unconvinced by the company's claim that the capacity costs for Rockport Unit 1 were previously approved on a going forward basis. Specifically, as highlighted by the Attorney General in replies to exceptions, the settlement agreement approved in Case No. U-8037 was limited and a mere failure to distinguish between Rockport Unit 1 and Unit 2 in subsequent

orders does not amount to Commission approval of the capacity charges. Similarly, the Commission finds that the capacity charges specifically incurred with respect to the 2023 UPA capacity charges are not the same costs that had been approved in a general rate case.

Notwithstanding the above, the Commission nevertheless finds that the most reasonable disallowance in this case is the company's energy-only disallowance amount of $793,238. While the Commission declines to set a bright-line rule that the sole appropriate disallowance under the Code of Conduct is regarding energy-only costs, the company's methodology upon rebuttal is consistent with prior Commission orders and is well-supported on this record. The Commission again emphasizes that it will continue to review the record established in each proceeding on a case-by-case basis to determine the reasonableness and prudence for recovery or disallowance whether that is in a general rate case or PSCR proceeding.

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, 2023, is approved, as modified by this order.

B. Indiana Michigan Power Company's net underrecovery of $16,286,307, inclusive of interest, shall be reflected as the company's 2024 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 LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at sheac1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of July 10, 2025.

Lisa Felice, Executive Secretary

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

STATE OF MICHIGAN)

Case No. U-21262

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on July 10, 2025 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 10th day of July 2025.

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

Service List for Case: U-21262

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