

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)

Case No. U-21596
(e-file paperless)

**THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
REPLY TO EXCEPTIONS TAKEN TO THE
PROPOSAL FOR DECISION**

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

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DATED: October 3, 2025

I. Introduction

The Michigan Public Service Commission Staff (Staff) files the following reply to Indiana Michigan Power Company's (I&M or the Company) exceptions consistent with the Notice of Proposal for Decision (PFD) that was issued on August 29, 2025. Staff's silence on any matter should not be taken as a change in Staff's position.

Pursuant to Mich Admin Code R 792.10435, parties may file exceptions to a proposal for decision and replies to exceptions. Those exceptions and replies "must be supported by reasoned discussion of the evidence and the law" and, when "containing factual allegations claimed to be established by the evidence must include a reference to the specific portions of the record where the evidence may be found." Mich Admin Code R 792.10435(3). Pursuant to the Administrative Procedures Act and the Michigan Constitution, Commission decisions generally must be based on record evidence. MCL 24.285; Const 1963, art 6, § 28. Though, the Commission may take notice of some facts under certain circumstances. MCL 24.277.

II. Staff supports a Section 7 warning regarding the Inter-Company Power Agreement (ICPA) costs if the Commission deems it appropriate.

Pursuant to MCL 460.6j(7), 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."

Consistent with Staff's and the Attorney General's positions in this case, the PFD recommended that "the Commission issue a Section 7 warning regarding the OVEC/ICPA costs in excess of the market value price cap." (PFD, p 38.)

It is well established that the ICPA constitutes an affiliate transaction under the Commission's Code of Conduct. The Code of Conduct states, in relevant part:

If an affiliate or other entity within the corporate structure provides services or products to a utility, and the cost of the service or product is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8), compensation is at the lower of market price or 10% over fully allocated embedded cost. [Mich Admin Code R 460.10108(4).]

An affiliate is defined as:

[A] person or entity that directly or indirectly through 1 or more intermediates, controls, is controlled by, or is under common control with another specified entity. As used in these rules, "control" means, whether through an ownership, beneficial, contractual, or equitable interest, the possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly. [Mich Admin Code R 460.10102(1)(a).]

As Staff noted in its brief, the Michigan Court of Appeals has explained, "[i]t is well recognized that expenses incurred in transactions between utilities and their affiliates deserve special scrutiny, given the potential lack of arms-length bargaining" *In re Indiana Michigan Power Company*, ___ Mich App ___ (2024) (Docket No. 365180), slip op at 8 (quoting *Midland Cogeneration Venture Ltd P'ship v Pub Serv Comm'n*, 199 Mich App 286, 313 (1993)). The Company's Exceptions do not contest the applicability of the Code of Conduct. (I&M's Exceptions, pp 1–10.) Nor do the Company's Exceptions contest that the Commission has repeatedly found that the ICPA

constitutes an affiliate transaction as a result of the Company's 7.85% interest in the Ohio Valley Electric Corporation (OVEC). (See I&M's Exceptions, p 2; Staff's Initial Br, p 6 (citing MPSC Case No. U-20530, 2/2/2023 Order, p 10, *aff'd In re Indiana Michigan Power Company*, ___ Mich App ___ (Docket No. 365180); MPSC Case No. U-20529, 5/13/2021 Order, p 17; MPSC Case No. U-21052, 6/22/2023 Order, pp 21–22; MPSC Case No. U-21427, 10/10/2024 Order, pp 15–17. Therefore, Staff asserts there can be no question that the OVEC/ICPA costs are subject to the market value price cap in Mich Admin Code R 460.10108(4).

The PFD recommended the issuance of a Section 7 warning for “OVEC/ICPA costs in excess of the market value price cap” on several grounds, including the ALJ's finding that the evidence does not support the Company's contention that it has taken meaningful steps to reduce the costs of the ICPA. (PFD, 38.) In its Exceptions, the Company takes issue with this finding, arguing in part that:

Although I&M's 2025 PSCR Plan does not reflect removing OVEC from the Michigan portfolio, that transition has been approved by the IURC and is reflected in an IURC Order, which the Commission can rely upon for the purpose of its Order in this case when determining whether I&M has taken meaningful steps to address the Commission's concerns with OVEC. [I&M's Exceptions, p 1.]

While the Company noted in briefing that it was “evaluating an option where its Indiana jurisdiction assumes its Michigan share of OVEC energy and capacity, along with the costs of that energy and capacity, and has filed a petition with the Indiana Utility Regulatory Commission (‘IURC’) requesting approval to do so,” (I&M's Initial Br, p 36,) the IURC order that the Company

relies upon in its Exceptions was not issued until the close of the record in this case. See IURC Cause No. 45164 RA 5, 7/23/2025 Order, p 19; (2 TR 11, 234). The Company concedes that the plan it is seeking approval of in this case does not “reflect removing OVEC from the Michigan portfolio.” (I&M’s Exceptions, p 1.) Also, the IURC order that the Company relies upon approved inclusion of the ICPA capacity, energy, and associated costs that were previously allocated to Michigan to the Indiana jurisdictional share starting on June 1, 2025. IURC Cause No. 45164 RA 5, 7/23/2025 Order, p 19. The plan in this case is for the period of January 1, 2025–December 31, 2025. (PFD, p 1.) This suggests that the Company may still seek recovery of the costs for the first half of 2025, though this is uncertain since the record does not contemplate the July 23rd IURC order and the plan does not reflect removing OVEC from the Michigan portfolio.

III. Conclusion

For the reasons stated above and in Staff’s testimony, Staff supports a Section 7 warning regarding the above-market ICPA costs if the Commission deems it appropriate. The Company will have an opportunity to justify those costs in the reconciliation proceeding. Staff otherwise requests that its positions and recommendations as stated elsewhere in this proceeding be adopted by the Commission.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
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_____ /

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

Erin Fielder-Attia, being first duly sworn, deposes and says that on **October 3, 2025**, she served a true copy of **Michigan Public Service Commission Staff's Reply to Exceptions Taken to the Proposal for Decision** upon the parties on the attached service list **via email only**:

Erin Fielder-Attia

Subscribed and sworn to before me
this **3rd** day of **October, 2025**.

Cherie A. R. Shea, Notary Public
State of Michigan, County of Jackson
Acting in the County of Eaton
My Commission Expires: 04-13-31

**SERVICE LIST
CASE NO. U-21596**

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