

**ORIGINAL**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

Commissioner	Yes	No	Not Participating
Huston	✓		
Bennett	✓		
Freeman	✓		
Veleta	✓		
Ziegner	✓		

**IN THE MATTER OF THE PETITION OF INDIANA )  
MICHIGAN POWER COMPANY FOR APPROVAL OF (1) )  
AN ELECTRIC VEHICLE FAST CHARGING RATE AND )  
TARIFF AND (2) DEFERRED ACCOUNTING )  
TREATMENT FOR THE COSTS OF CERTAIN )  
COMPANY-OWNED ELECTRIC VEHICLE FAST )  
CHARGING STATIONS AND THE REVENUES FROM )  
THE ELECTRIC FAST CHARGING TARIFF )**

**CAUSE NO. 45919**

**APPROVED: DEC 27 2023**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David E. Veleta, Commissioner**

**Ann Pagonis, Administrative Law Judge**

On July 19, 2023, Indiana Michigan Power Company (“Petitioner” or “I&M”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) initiating this Cause. Also on July 19, 2023, I&M prefiled its case-in-chief testimony and attachments, consisting of the direct testimony and attachments of Dona Seger-Lawson, I&M’s Director of Regulatory Services; and Elizabeth A. Kerim, Regulatory Accounting Consult Staff for American Electric Power Service Corporation (which provides services to subsidiaries of American Electric Power Company, Inc. (“AEP”), including I&M).

On September 8, 2023, Walmart Inc. (“Walmart”) filed a petition to intervene in this proceeding, which petition was granted on September 22, 2023.

On September 13, 2023, the Indiana Office of the Utility Consumer Counselor (“OUCC”) prefiled the direct testimony of John E. Haselden, a consultant retained by the OUCC; and intervenor Walmart prefiled the direct testimony of Lisa V. Perry, Senior Manager of Utility Partnerships for Walmart. On September 27, 2023, I&M prefiled the rebuttal testimony of Dona Seger-Lawson.

The Commission held an evidentiary hearing at 1:00 p.m. on November 3, 2023, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and Walmart appeared and participated in the hearing. At the hearing, the prefiled testimony and attachments of I&M witnesses Seger-Lawson and Kerim were admitted into evidence, along with Petitioner’s Verified Petition and Petitioner’s October 31, 2023 responses to docket entry questions from the Commission. The testimony and attachments of the OUCC and Walmart were also admitted into evidence.

Having considered the evidence presented and the applicable law, the Commission finds:

**1. Notice and Jurisdiction.** Notice of the hearing in this case was given and published by the Commission as required by law. Petitioner is a public utility as that term is defined in Ind. Code § 8-1-2-1(a). Under Ind. Code §§ 8-1-2-42 and 8-1-2-10, -11, -12, and -14, among others, the Commission has authority to approve a public utility's rates and charges and its system of accounting, including the deferral of costs. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

**2. Petitioner's Characteristics.** I&M is a wholly owned subsidiary of AEP and a corporation organized and existing under the laws of the State of Indiana, with its principal offices at Indiana Michigan Power Center, Fort Wayne, Indiana. I&M is engaged in, among other things, rendering electric utility service in the States of Indiana and Michigan. I&M owns, operates, manages, and controls plant and equipment within the States of Indiana and Michigan that are in service and used and useful in the generation, transmission, distribution, and furnishing of such service to the public.

**3. Relief Requested.** I&M requests Commission approval of its proposed Electric Vehicle Fast Charging ("EVFC") Tariff and EVFC rate. In addition, I&M seeks Commission authorization to defer incremental capital (depreciation and financing) costs (net of funds received from the Volkswagen Environmental Mitigation Trust Fund ("VW Trust Fund")), incremental operation and maintenance costs, and taxes associated with the installation and operation of approximately 12 fast charging stations, until such costs are reflected in Petitioner's base rates. Finally, I&M requests Commission authorization to defer costs net of revenues received from the EVFC Tariff, until such costs, net of revenues, are reflected in Petitioner's base rates.

**4. Summary of the Evidence.**

**A. Petitioner's Case-in-Chief Evidence.** I&M presented the testimony of Dona Seger-Lawson and Elizabeth A. Kerim in support of its Verified Petition. By way of background information, Ms. Seger-Lawson stated that I&M's proposal supports the national initiative to help create 500,000 reliable chargers across the country to support the growing adoption of electric vehicles ("EVs") and specifically to support Indiana's statewide charging network program. She noted that the Indiana Department of Environmental Management ("IDEM") had issued a request for proposals related to the use of the VW Trust Fund for EV charging stations.<sup>1</sup> IDEM's goals and objectives with respect to this request for proposals are:

- 1) To develop a statewide EV charging network that provides EV charging locations to the greatest number of citizens;
- 2) To create a diverse network that meets the needs of Indiana citizens using both direct current fast charging ("DCFC") and Level 2 charging equipment;

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<sup>1</sup> As explained in I&M's Verified Petition, the VW Trust Fund is the result of a settlement and consent decree between the U.S. Department of Justice, the Volkswagen Corporation, and its subsidiaries. IDEM is administering \$5,535,000 from the VW Trust Fund allocated for fast-charging stations in Indiana.

- 3) To implement a program that is reliable through multiple charging stations at each location;
- 4) To maximize the available VW Trust Funds and achieve the greatest value for Indiana's investment; and
- 5) To maximize leveraging of public and private sourced funds where possible to obtain the greatest number of charging locations possible.

Ms. Seger-Lawson testified that I&M participated in a joint utility proposal in response to IDEM's request for proposals, and as part of that proposal, I&M proposed to install approximately 12 fast-charging stations within its service territory. She stated that IDEM awarded \$5.535 million to the joint utility proposal. I&M expects to receive approximately \$1.08 million in grant funding.<sup>2</sup> She testified that Petitioner's installation of these charging stations is consistent with IDEM's stated program goal to maximize leveraging of public and private-sourced funds to obtain the greatest number of charging locations possible for the state. She testified that Petitioner's proposes to fund the costs associated with installing, interconnecting, operating, and maintaining the approximately 12 fast-charging sites in excess of the costs covered by the VW Trust Fund.

Ms. Seger-Lawson explained and supported Petitioner's proposed EVFC Tariff, as well as its proposal for deferring costs net of revenues associated with providing fast-charging service. Ms. Seger-Lawson testified that the proposed EVFC Tariff would establish a fair price for EV fast-charging service at I&M-owned charging stations. She explained the tariff will be available for use by vehicle owners who can, and wish to, charge their EV at one of Petitioner's 50kW or greater public charging sites. Ms. Seger-Lawson stated that the fast-charging rate will be derived from an Indiana statewide average of comparable public charging stations. She explained this is a reasonable method of determining the tariff rate because it will keep charging fees throughout Petitioner's service territory consistent with the fees of third-party owned chargers. She noted that this average market price is clear, administratively simple, and will align well with IDEM's program objective of cultivating the Indiana fast-charging market while not undermining the rates at charging stations owned by third parties. She stated the proposed average rate will be determined from ten existing charging stations within Petitioner's service territory. The proposed EVFC Tariff rate includes both a per kWh charge and an idling fee. Ms. Seger-Lawson testified that the proposed EVFC Tariff will help promote accessible public fast charging stations within this emerging EV market. Further, she stated, it provides for Commission jurisdiction and oversight of the rates charged at Petitioner's fast charging stations to ensure they are market-based and do not create an unfair competitive advantage over other public or private charging stations.

Ms. Seger-Lawson explained that Petitioner proposes to apply revenues from the EVFC Tariff to offset all costs associated with providing the charging service. She stated that these costs can include: any remaining capital costs of purchasing and installing the chargers (net of VW Trust Fund amounts received) to the extent costs are not included in Petitioner's pending rate case; any ongoing operation and maintenance costs (including the cost of electricity used to charge the EVs and any charges assessed by the site location), property tax expense, and other taxes. She stated that Petitioner plans to defer the costs and revenues associated with providing public charging

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<sup>2</sup> OUCC Exhibit 1, Attachment JEH-1, page 1 of 24.

services for a minimum of five years, which is commensurate with the length of time Petitioner is obligated to own and operate its DCFC charging stations as required by the VW Trust Fund award, and until such costs and revenues are reflected in I&M's base rates. After five years, to the extent there are remaining revenues above the costs associated with providing the charging service (i.e., an over-recovery), I&M proposes to pass those back to customers as a credit to the cost of service in a subsequent base rate case. Ms. Seger-Lawson testified that it is appropriate to defer costs net of revenues associated with providing EVFC service because Petitioner cannot predict how profitable or unprofitable this charging service will be since it is an emerging market. She noted that as a recipient of the VW Trust Fund, Petitioner is doing its part to develop a statewide EV charging network that provides EV charging locations to the greatest number of citizens consistent with IDEM's goals and objectives.

Ms. Kerim explained how the monthly EVFC deferral amount will be calculated and what precise costs will be deferred net of EVFC revenues. She also testified that the deferred accounting treatment proposed by Petitioner is in accordance with Generally Accepted Accounting Principles ("GAAP"). She stated that, to meet the probability standard established by GAAP, the final order in this proceeding should state that the Commission authorizes Petitioner to defer the EV charging station costs net of the EVFC Tariff revenues. She stated that the Commission's order should also directly address the date when such deferral authority commences (i.e., as of the filing date of this proceeding).

**B. OUCC's Case-in-Chief Evidence.** OUCC witness John Haselden expressed concern with I&M's proposal regarding EVFC investments and cost recovery. He stated that the OUCC's concerns are associated with the fact I&M proposes to require customers to subsidize the EVFC projects in several ways, which allows it to unfairly compete with competitive providers of EVFC services. In addition, he stated that few I&M customers will use the EVFC projects. Finally, he testified that the EVFCs are not necessary to the provision of safe, reliable, and economic electric service to I&M customers, and should not be approved by the Commission.

With regard to the OUCC's concern with customer subsidization, Mr. Haselden testified that the OUCC is not opposed to I&M or other utilities offering EVFC services, so long as they compete fairly and conduct their business as "below-the-line" operations without ratepayer subsidy. In his view, I&M's EVFC Tariff rate was unlikely to cover Petitioner's costs of providing the EVFC Tariff service. Mr. Haselden contended that the costs of the proposed EVFC stations are too speculative at this point. In addition, he testified the OUCC was concerned about this proposal adversely affecting customer affordability. Mr. Haselden also expressed concerns about unfair competition with other EVFC providers, technical obsolescence, and precedent for future Commission cases. Finally, he noted an ambiguity between testimony and the tariff sheet and stated that I&M should clarify how the EVFC Tariff price changes will be administered.

**C. Walmart's Case-in-Chief Evidence.** Walmart witness Lisa Perry made several recommendations to the Commission with respect to I&M's proposal. First, Ms. Perry indicated that Walmart does not oppose I&M's ownership and operation of public fast-charging stations or the deferral of associated costs in excess of the VW Trust Funds to its general rate case for chargers that are, or will be, located in areas where the Commission determines the market will not deliver fast-charging services and Petitioner is the only realistic provider of charging services. However, for all other I&M-owned fast-chargers (i.e., chargers located in areas with competitive

viability for third party owners due to economics, utility-based incentives, or government funding), the Commission should reject Petitioner's request to defer any excess costs to its general rate case or any other future case, as cost recovery for utility-owned chargers in these locations could result in anti-competitive outcomes. Ms. Perry said the Commission should instead find that any such excess costs should be borne by Petitioner and not its customers.

In addition, Ms. Perry noted that, generally, Walmart does not have an issue with Petitioner charging third-party owned chargers under the General Service Secondary Tariff due to its relatively low demand charge, which helps the economics of under-utilized chargers. Ms. Perry stated that Walmart supports Petitioner's commitment to make a "comprehensive filing including a suite of EV programs" during the first quarter of 2024, following market research and customer focus groups. She said Walmart looks forward to participating in these customer focus groups to discuss public and fleet EV charging opportunities, including rates for third-party owned public DCFCs. Finally, Ms. Perry testified that the Commission should review the rate charged to customers using I&M-owned fast-chargers under the EVFC Tariff on a monthly basis to ensure the rate is competitive with third-party owned chargers based on the market conditions existing at that time.

**D. Petitioner's Rebuttal Evidence.** Ms. Seger-Lawson responded to concerns regarding utility ownership of EV charging equipment, ratemaking and accounting treatment for the costs of such equipment, application of VW Trust Fund amounts, and the administration of Petitioner's proposed EVFC Tariff rate.

Regarding utility ownership and operation of EV chargers, Ms. Seger-Lawson testified that Petitioner's installation and ownership of charging stations is reasonable for several reasons. First, I&M is proposing to charge a market-based competitive rate, to be updated periodically based upon a survey of other similar competitive chargers. The pricing structure proposed by I&M is designed to ensure that its EVFC rates do not undercut the rates of third-party-owned charging stations or adversely impact the competitive market for EV charging. Second, Petitioner is receiving VW Trust Funds to install these chargers, and the deployment of chargers using these funds will benefit the public at large including I&M's customers. Third, I&M's proposed installation and ownership of approximately 12 EV fast-charging stations is relatively modest, and, if anything, they will add to the competitiveness of the EV charging market in Indiana, not detract from it. Additionally, Petitioner's proposal includes the commitment to return revenues received from its EV charging to customers. Finally, she asserted the Indiana General Assembly has made the policy decision that Indiana electric utilities may own and operate EV charging equipment and may recover the costs through rates. Further, the legislation does not limit the locations where such equipment may be installed.

With regard to the OUCC's argument that any utility-owned DCFC stations should be accounted for below-the-line, Ms. Seger-Lawson reiterated that the Indiana General Assembly has passed legislation authorizing both utility ownership and operation of charging infrastructure, as well as the recovery of such costs through utility rates, subject to a reasonable, just, and public interest standard.

Regarding the OUCC's opposition to I&M's proposal to defer the net costs of the EV chargers, Ms. Seger-Lawson reiterated that the Indiana General Assembly has provided for cost

recovery for charging infrastructure through rates. She also noted that Petitioner's proposal not only leverages VW Trust Funds, but the proposal supports a state policy of increasing deployment of EV charging equipment to facilitate the use of EVs in Indiana. She cited Indiana's EV infrastructure deployment plan as support for her position. In addition, she emphasized that I&M is only seeking to recover its actual costs of installing, owning, and operating these 12 EV chargers and all VW Trust Funds will be used to offset the costs, as will all EV charging revenues received from these chargers.

With regard to the OUCC's concern with affordability, she noted that although the precise cost is uncertain, I&M is estimating \$250,000 to \$500,000 per charger before VW Trust Fund grant is applied.

About the OUCC's recommendation that external VW Trust Funds should first be applied to make ready costs, Ms. Seger-Lawson explained that the VW Trust Fund grant designates what the funds can be used for, and that Petitioner will comply with the grant terms and conditions.

Finally, Ms. Seger-Lawson addressed the ambiguity pointed out by the OUCC with respect to the EVFC Tariff price changes. She noted that the initial EVFC Tariff sheet did not describe the calculation of the market-based rate correctly, and Petitioner has modified the tariff rate description to refer to a regional rather than a statewide average and to Petitioner's service territory rather than the State of Indiana.

## **5. Commission Discussion and Findings.**

**A. EVFC Tariff.** Based upon the evidence presented, we find that I&M's proposed EVFC Tariff as presented in Petitioner's Exhibit 3, Attachment DSL-2, is reasonable and should be approved. I&M's selection by IDEM pursuant to the VW Trust Fund presents a need for I&M to present a price to customers using the EV fast-chargers at the awarded stations. I&M's EVFC Tariff will support fast charging services in its service territory. I&M has demonstrated that it will utilize reasonable and flexible means to price fast-charging service that neither undercut other market participants nor overburden EV drivers. As we have noted previously, undercutting existing charging stations' pricing could serve as a barrier to entry to prospective non-utility charging market entrants and to possible expansion of existing market participants' locations, while pricing charging service above market price could result in underutilization of a utility's charging stations. *See Amended Petition of Duke Energy Indiana, LLC*, Cause No. 45616, 2022 IND. PUC LEXIS 129 (IURC June 1, 2022). We note with approval that I&M's proposed EVFC Tariff rate will be calculated using a regional average for EVFC charging offered by individual fast charge stations in I&M's service territory that charge a consumption-based or time-based fee, are greater than 50 kW in charging output capacity, offer at least one charging connector, and are publicly accessible 24-hours per day. In addition, we approve I&M's commitment to review and update its EVFC Tariff rate on a quarterly basis through the 30-day filing process when the average changes by more than 10% from the amount listed in the Tariff. This periodic pricing update is designed to ensure the Tariff rate remains market-based as charging conditions evolve. Accordingly, we find that I&M's proposal to update the tariff pricing to reflect relevant market pricing of non-utility owned charging infrastructure is a reasonable approach to encourage this emerging market.

**B. Deferred Accounting.** We are administratively aware that the capital costs of the EV fast chargers were included in the Capital Forecast for I&M's pending base rate case.<sup>3</sup> Witness Segar-Lawson's prefiled testimony indicates that I&M wants to recover the capital costs that are not covered by the IDEM grant in the base rate case, but if the Commission says no to that request and excludes those costs from base rates, I&M requests that the return on and of capital (less the IDEM grant plus any charging revenues received from the charging stations) is deferred as part of the deferral proposal. Given that the above scenario could have a material<sup>4</sup> impact on the potential deferral amount, the deferral request is not yet reasonably estimated which makes consideration of the request premature. Therefore, we deny approval of the deferral request as presented by I&M at this time because it is premature.<sup>5</sup> While withholding preapproval at this time, our premature consideration finding and Ind. Code § 8-1-2-10(b) and (c) could provide opportunity for later consideration when further evidence is available.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. I&M is authorized to implement its EVFC Tariff as described in Petitioner's Exhibit 3, Attachment DSL-2, at I&M-owned charging stations. I&M shall file the tariff under this Cause for approval by the Commission's Energy Division.

2. I&M's proposal to defer for subsequent recovery in its retail electric rates, capital costs (depreciation and financing costs), operation and maintenance costs, and taxes associated with the installation, ownership, and operation of approximately 12 I&M-owned fast-charging stations installed in its service territory, is denied at this time as premature.

3. This Order shall be effective on and after the date of its approval.

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: DEC 27 2023**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

\_\_\_\_\_ on behalf of  
**Dana Kosco**  
**Secretary of the Commission**

<sup>3</sup> WP-SAS-9, Cause No. 45933, August 9, 2023.

<sup>4</sup> The amount in the rate case forecast is found on WP-SAS-9 (line 328 of the worksheet).

<sup>5</sup> The rough estimate of non-capital costs reflected in OUCC Attachment JEH-1, OUCC DR 1-2, appear minimal.

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ELECTRIC VEHICLE FAST CHARGING STATIONS AND ) APPROVED:  
THE REVENUES FROM THE ELECTRIC FAST )  
CHARGING TARIFF )

**CONCURRING OPINION OF CHAIRMAN HUSTON**

I agree with the majority in the outcome of this Cause.

As the future of transportation and the potential for electrification unfolds, many great public policy questions may need answers and more thorough vetting. The legislature engaged in listening to stakeholders, discussion with all involved, and deliberation over four years through The Indiana 21st Century Energy Task Force. Those deliberations resulted in the proposal and enactment of several pieces of legislation, chief among them, the five pillars now in statute. *See* Ind. Code § 8-1-2-0.6

One pillar, affordability, comes to mind in this decision that cause me to concur in this Cause and amplify concerns. Ind. Code § 8-1-2-0.6(2).

In *Indianapolis Power & Light Co.*, Cause No. 44478 (IURC Feb. 11, 2015), the Commission denied the bulk of the utility's request to apply customer sourced funds for a business venture that provided no business plan to the Commission for consideration, had limited revenue sufficiency based on potential usage, and almost no possibility for customer return on investment. This Commission found the utility could meet its obligation to serve Blue Indy by making its electric distribution system available to that customer and wiring that network to the customer.<sup>1</sup>

Blue Indy ultimately failed as an enterprise in Indianapolis and no longer exists.<sup>2</sup>

The evidence in this Cause resurrects those same type of challenges and ultimately, begs the question, where does a regulated utility's obligation to serve customers end and what customer should be served? Using Blue Indy as a measure of what is just and reasonable, I see the VW settlement dollars as a measure of the state's desire to seed money in a new enterprise, limited to the awards made, and not an expansion of a utility's responsibility to go beyond our decision concerning Blue Indy.

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<sup>1</sup> [Regulators slash proposed rate-hike request for BlueIndy plan](#) – IBJ, Feb. 11, 2015

<sup>2</sup> [Electric car service Blue Indy ceasing operations](#) – IBJ, Dec. 20, 2019; [BlueIndy cars pile up in junkyard, city seeks ideas for old charging spots, parking](#) – IndyStar, May 29, 2020