ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA MICHIGAN POWER COMPANY, AN INDIANA CORPORATION, FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR ELECTRIC UTILITY SERVICE THROUGH A PHASE IN RATE ADJUSTMENT; AND FOR APPROVAL OF RELATED RELIEF INCLUDING: (1) REVISED DEPRECIATION RATES; (2) ACCOUNTING RELIEF; (3) INCLUSION IN RATE BASE OF QUALIFIED POLLUTION CONTROL PROPERTY AND CLEAN ENERGY PROJECT; (4) ENHANCEMENTS TO THE DRY SORBENT INJECTION SYSTEM; (5) ADVANCED METERING INFRASTRUCTURE; (6) RATE ADJUSTMENT MECHANISM PROPOSALS; AND (7) NEW SCHEDULES OF RATES, RULES AND REGULATIONS.	**CAUSE NO. 45235** **APPROVED:** MAY 20 2020

ORDER ON RECONSIDERATION

Presiding Officers:
David L. Ober, Commissioner
Carol Sparks Drake, Senior Administrative Law Judge

On March 11, 2020, the Indiana Utility Regulatory Commission ("Commission") issued a final Order in this Cause ("March Order"). On March 31, 2020, Indiana Michigan Power Company ("I&M" or "Petitioner") filed a verified petition for reconsideration, clarification, and rehearing ("Petition"). In the Petition, I&M requests the Commission reconsider and reverse the portion of the March Order in which the Commission did not accept I&M's jurisdictional separation study adjustment that moved certain fixed costs to Indiana retail ratepayers as a result of Indiana and Michigan Municipal Distributors Association ("IMMDA") member utilities terminating their wholesale contracts with I&M. March Order at pp. 82-83. I&M raises multiple bases for challenging this action, but all roads lead to the propriety of this adjustment. Alternatively, I&M asks the Commission to establish a separate subdocket or grant rehearing to present additional evidence upon this issue.

On April 20, 2020, I&M filed a Notice of Appeal with the Indiana Court of Appeals ("Court"), and on May 6, 2020, a Verified Motion for Temporary Stay of Appeal was filed with the Court.

The Indiana Office of Utility Consumer Counselor ("OUCC") and the I&M Industrial

Group ("Industrial Group") filed a joint response on April 13, 2020, to I&M's Petition, opposing I&M's requested relief. They assert the Commission established fair, just, and reasonable rates and properly determined it was not reasonable for Indiana retail customers to bear the costs of I&M's reduced revenues associated with the IMMDA wholesale load termination. The OUCC, along with the City of Fort Wayne, the City of Marion, and Marion Municipal Utilities (collectively, "Joint Municipals"), and the City of South Bend also filed a response on April 13, 2020, to I&M's Petition, requesting the Commission deny the Petition in all respects because the Commission applied governing Indiana statutory law and properly used its expertise to reach a decision that is supported by its findings and substantial evidence.

On April 20, 2020, I&M filed a reply to the OUCC and the Industrial Group's response and to the OUCC, Joint Municipals, and the City of South Bend's response.

After reviewing the filings on reconsideration and the evidence that was presented over three weeks of hearings in this Cause, the Commission denies the Petition,[1] including the request to establish a subdocket and/or reopen this record, and in doing so, based upon the applicable law and the evidence, finds as follows:

1. **I&M's Issue on Reconsideration.** The Commission remains resolute that I&M's adjustment in Petitioner's test year to the jurisdictional separation study was properly rejected and supported by our findings (March Order, pp. 80-83) and sufficient evidence. *See* Intervenor IG Ex. 3 at pp. 8-9, 33-39. In so finding, as will be discussed below, the Commission did not depart from long-standing ratemaking principles or prior Commission orders. It is I&M's proposed adjustment that departs. Also, as discussed below, in multiple instances I&M distorts what the March Order says in furtherance of its position instead of demonstrating error in what the Commission actually found or determined.

I&M initially claims the Commission erred in finding I&M "added" generating capacity to serve the IMMDA contract load, citing the March Order at pp. 80-83. Petition at pp. 5-6. The Commission, however, made no such finding. What the Commission recognized is that I&M did not commence serving the IMMDA members when the most recent IMMDA contracts began in July 2006. Instead, we are persuaded the record shows IMMDA's member utilities have been receiving wholesale electric service from I&M for more than 50 years. March Order, p. 82; Intervenor Jt. Municipals Ex. 5. To set forth the years, as I&M does in its Petition, when Petitioner added generation resources and then claim since I&M has not materially added to its generation fleet since 1989 the 2006 IMMDA contracts did not cause I&M to add load and/or their termination did not create a misalignment between planned for load and I&M's resources overlooks that I&M did not begin serving IMMDA's members with the 2006 contracts. As we found in the March Order, I&M has been providing electric service to these non-retail customers for over a half century, so the fact that I&M has not built or "added" generating capacity since the 2006 IMMDA contracts were entered into does not show the Commission erred in finding that I&M's IMMDA related costs are not properly recovered from Indiana's retail customers.

[1] The Commission finds that within the discussion upon the jurisdictional separation study that I&M challenges, March Order at pp. 80-84, a clerical correction should be made. In relaying Mr. Gorman's testimony in the first paragraph of Finding No. 15.A.2., Mr. Gorman proposed to make permanent $46.44 million in offsets, not $6.44 million in offsets as the March Order states. Intervenor IG Ex. 3 at p. 8.

Importantly, while specific costs may not have been incurred to add capacity for or provide energy solely for the IMMDA contracts, so, too, I&M's resources were not built solely for I&M's retail customers. The Commission has approved the Indiana jurisdictional portion of I&M's fleet through various proceedings, and it is the cost of that jurisdictional portion that retail customers should bear, not the cost of protecting the non-jurisdictional portion of I&M's fleet.

I&M's jurisdictional separation study adjustment was not rejected because any specific generation was added to serve the IMMDA contract load. The Commission rejected the production demand allocation realignment I&M proposed because Indiana's ratepayers bear the costs associated with the Indiana jurisdictional portion of I&M's fleet but not the risk of protecting the non-jurisdictional portion of that fleet that has been serving IMMDA members since at least the 1970s. Based on Mr. Thomas testimony (Petitioner's Ex. 2 at p. 28), it is speculative whether or when any of I&M's generation capacity used to serve the IMMDA load will be needed to provide retail service. We find the record shows this capacity is not necessary to meet Indiana retail customers' capacity requirements in 2020 through 2022. Intervenor IG Ex. 3 at p. 36. Also, based on the evidence, I&M's primarily baseload generation fleet is long in both current and future energy markets.

In asserting the Commission's reasoning does not support excluding the IMMDA load adjustment, Petition, pp. 6-13, I&M again mischaracterizes the text of the March Order. This Order does not state, as I&M asserts, that the Commission's review of this issue rests "significantly" on the premise that the "early termination" provision of the contracts was exercised. Petition, p. 7. What the Commission found significant is that our review of the IMMDA contracts discloses these contracts do not include a provision addressing cost recovery in the event the contracts were terminated earlier than May 31, 2026, or a provision mitigating the potential misalignment such a termination may create between planned for load and I&M's planned for resources to meet such load. We did not find the "early termination" clause of the contracts that applies in the event of default was exercised. Under the IMMDA contracts, I&M was to provide the IMMDA municipal utilities with wholesale service through at least May 31, 2019, and potentially through May 31, 2026, but the IMMDA customers could, alternatively, provide notice to cancel before May 31, 2026. March Order, footnote 1, p. 8. The Commission found the contracts were terminated early, i.e., before May 31, 2026, but the Commission did not suggest a default provision of the IMMDA contracts had been triggered and find I&M's discussion otherwise is without merit.

The Commission also did not find, as I&M contends, that in entering into the 2006 contracts with IMMDA members I&M had a unilateral right to dictate the terms of these contracts. Petition, p. 9. What we effectively found—and continue to find—is that as between Indiana's retail ratepayers who had no seat at the negotiations leading to these contracts and I&M's management who engaged in these negotiations, I&M bears the risk of the 2006 wholesale contracts it made, not Indiana retail ratepayers. It was I&M who entered into contracts that could be terminated in 2020, leaving I&M with 312 MW of excess capacity. We continue to find persuasive Mr. Gorman's testimony that Indiana retail customers should not bear the underlying responsibility for funding the cost of this capacity that is not needed for service in Indiana. Intervenor IG Ex. 3, p. 35. As Mr. Gorman testified, I&M has not shown that it needs any of this excess wholesale capacity to serve retail customers. *Id.* at pp. 35-36. The Commission

did not find I&M's management "acted imprudently" nor did we use hindsight. Petition, pp. 10-11. We simply declined to accept as reasonable or in the public interest an adjustment in I&M's jurisdictional separation study that imposed on retail customers the cost of so much generation that is not needed to serve them, letting I&M bear the risk of the wholesale contracts its management made.

The March Order also does not result in an unconstitutional taking or unlawfully impute hypothetical or "phantom" load. I&M is correct that because the IMMDA contracts will terminate during the test year, I&M will not receive revenue *from these contracts* after June 1, 2020. Petition at p. 13. The Commission's decision, however, affords I&M the opportunity to materialize the $25.4 million, more or less, that I&M valued this excess capacity at and retain that amount outside of our Indiana jurisdictional consideration. Those revenues will follow the associated production plant, and under the March Order, both are non-jurisdictional to Indiana retail customers. I&M has the opportunity to capture these non-jurisdictional sales. That these sales may have less value on the wholesale side of the ledger is not, we find, justification for moving this excess capacity to the Indiana jurisdictional side of the ledger in this proceeding.

Jurisdictional separation studies are put forward to support the assignment of cost, and specifically, here, the cost associated primarily with the production demand component of I&M's total company that is reasonably assigned to I&M's Indiana retail jurisdiction. The Commission's review of the evidence found I&M's proposed cost allocation was not reasonable and directed I&M to file a different jurisdictional separation study, excluding the adjustment I&M witness Duncan proposed due to the IMMDA load terminating. March Order at p. 83. We continue to find the adjustment I&M originally proposed was not reasonable or in the public interest. But, in so finding, there is no unlawful taking because I&M has the opportunity to recover the costs associated with the lost IMMDA wholesale load and the opportunity to earn its authorized rate of return on assets used to serve Indiana retail customers. The Commission fully recognized the scope and financial ramifications of its decision as shown in Finding No. 13 of the March Order and footnote 15 on page 79, and we reject I&M's claims otherwise. The Commission finds that I&M continues to have a reasonable opportunity to earn its authorized rate of return on assets used to serve Indiana retail customers and that I&M has not established that it has been denied the opportunity to utilize its non-jurisdictional assets to compensate its investors through non-jurisdictional off system energy and capacity sales.

The March Order is also not contrary to past Commission decisions upon I&M's separation study or our historical approach to such studies. Until this proceeding, I&M did not propose in its jurisdictional separation study that the IMMDA wholesale costs should be borne by Indiana retail ratepayers. It is, therefore, I&M who deviates in this matter by proposing the adjustment the Commission did not accept. Nevertheless, we take seriously I&M's claims that our position changed in this proceeding, but find that we disagree given the magnitude of I&M's excess capacity and the magnitude of the adjustment proposed. Acceptance of I&M's jurisdictional allocation in the past does not mandate acceptance now of I&M's proposed adjustment nor is this adjustment purely a mechanical result that allows no room for judgment by the Commission. We find the Commission is expected—indeed, required—to exercise its expertise and judgment to assure the reasonableness of this rate process given the circumstances existing at the time of our review and the evidence presented.

Generally, jurisdictional separation studies reflect nominal jurisdictional shifts that have occurred since a utility's last base rate case. To respond to Petitioner's claims that the Commission deviated from our historical approach, the Commission reviewed the jurisdictional shifts approved in our Orders since 2000 for electric investor owned utilities. We found the typical shift has not exceeded 1%, except in a settled rate case, Cause No. 43111, involving Southern Indiana Gas and Electric Company ("SIGECO") in which an Order was issued on August 15, 2007 (the "43111 Order"). Notably, in the current proceeding, the Commission approved a 1% shift in production demand allocation, thereby allowing a separation study adjustment consistent with our historical treatment. The Commission did not, however, approve I&M reassigning all its fleet that was serving the IMMDA load. We acknowledge the SIGECO case is factually similar to the current proceeding insofar as a large shift in production demand allocation was proposed from non-jurisdictional wholesale to jurisdictional retail because of SIGECO's loss of municipal load, 43111 Order at p. 6, but the facts demonstrated SIGECO would be using this capacity "to serve increasing retail demand." 43111 Order, p. 6. As a settled case, the 43111 Order is not precedent, but aside from the settlement, the facts supported a different result because SIGECO needed to use the capacity associated with the sizeable shift in the jurisdictional separation study to meet retail demands. In contrast, I&M proposes a 4% adjustment that will make retail customers assume cost responsibility for 312 MW used to serve the IMMDA load with none of this capacity needed to meet Indiana retail customers' requirements. It is proper to adjust retail jurisdictional allocations to reflect changes in wholesale load, and the Commission did so in this proceeding by approving a shift consistent with the 1% range. We find it is not, however, appropriate or in the public interest to reassign the capacity at issue to captive Indiana retail customers.

I&M erroneously claims the scope of this rate case was expanded to "include an investigation of the separations process itself." Petition at p. 21. This is not what occurred. From the outset I&M witness Duncan proposed the adjustment at issue in the jurisdictional separation study. Petitioner, in Exhibit B to the verified petition initiating this proceeding, recognized the issues in this matter included I&M annualizing the effect of the wholesale contracts expiring on May 31, 2020, and the new demand and energy allocation factors, with Paragraph 18 of Exhibit B to the verified petition summarizing Petitioner's witness Duncan's testimony upon the jurisdictional separation study adjustment that I&M proposed. According to this summary:

> The Company's jurisdictional separation study properly determines the Company's cost of providing service to the Indiana retail jurisdiction, consistent with prior Commission guidance.

I&M's Verified Petition, Ex. B, ¶ 18, p. 40. Thus, I&M at the outset identified its treatment of the IMMDA load loss as it relates to I&M's jurisdictional separation study as an issue. In this base rate case, the burden was upon I&M to establish the propriety of all its adjustments. The scope of this case was not expanded in finding that I&M failed to do so.

Regardless of how many different ways I&M claims the Commission erred by not accepting I&M's adjustment, the Commission finds the evidence contesting the propriety of I&M's jurisdictional separation study adjustment is persuasive and that I&M did not show

otherwise. *See* Intervenor IG Ex. 3 at pp. 8-9, 33-38. We further find that I&M failed to credibly demonstrate the cost-causation relationship to service to Indiana retail customers needed to support I&M's jurisdictional separation study adjustment. I&M did not show that I&M's retail customers are causing these costs now or will be doing so. I&M provides service in the wholesale, Michigan, and Indiana jurisdictions. If the Michigan retail construct changed to allow I&M to curtail its retail obligation in Michigan, it is questionable whether the Commission would simply accept reassigning all of that portion of I&M's generation base to Indiana customers. We find it proper to also not do so because the IMMDA members terminated their wholesale contracts. This is excess capacity now and in the foreseeable future that is not being used by Indiana's ratepayers. The Commission, therefore, finds that I&M's petition for reconsideration and/or rehearing should be denied.

2. **I&M's Request to Re-open the Record or Establish a Subdocket**. I&M claims Petitioner had "only 28 days to prepare rebuttal to the myriad issues raised in the testimony of the other parties," and should not have been expected to compile the history of the separations practice and development of its system and the associated retail customer benefits. Petition at p. 30. In its reply in support of the Petition, I&M similarly asserts, "In a perfect world, one would hope to present detailed testimony and briefing on each" of the issues in a general rate case, but that "cannot reasonably be expected within the timeframe allowed for a Section 42.7 [Ind. Code § 8-1-2-42.7] case." I&M Reply at p. 9. The clear inference is that I&M had insufficient time to prepare evidence upon the adjustment at issue—an inference the Commission finds is specious. It was I&M that proposed a departure in its case-in-chief from how the IMMDA load has historically been shown in its separation study. When doing so, we know of no constraints upon I&M's time to prepare its case-in-chief and support this adjustment. The rate case expenses I&M incurred exceeded $1.5 million. I&M Ex. 24 at p. 30. It is baseless to suggest I&M was caught by surprise in needing to support its own test year adjustment or had insufficient time or resources to do so.

In preparing rebuttal evidence, I&M had potentially whatever time Petitioner needed to develop, draft, and file its rebuttal since a utility may file to extend the 300-day deadline otherwise applicable under Section 42.7. Ind. Code § 8-1-2-42.7(g). I&M, however, never sought such an extension. *See also* Ind. Code § 8-1-2-42.7(h).

As discussed above, the adjustment at issue was proposed in I&M's case-in-chief. If I&M opted to not robustly support this proposal in its case-in-chief, Petitioner had notice after the intervenors prefiled their testimony that this adjustment was being challenged. Its propriety was contested, not glossed over by the other parties. March Order at pp. 80-81; Intervenor IG Ex. 3 at pp. 8-9, 33-38; Intervenor Jt. Municipal Ex. 1 at pp. 9-11, 26-28, 59. I&M had the opportunity to engage in discovery regarding these positions. I&M had the opportunity to file responsive rebuttal, and I&M had the opportunity to cross-examine the witnesses upon this issue, but I&M did not cross-examine Intervenor Industrial Group witness Gorman regarding his disagreement with I&M's adjustment, Tr. M-5 through -20, and waived cross-examination of Intervenor Joint Municipal witness Mancinelli. Tr. O-12 through -15. In contrast, I&M's witness Duncan was cross-examined upon these matters. Tr. D-6 through -13; D-14 through -20.

As the party seeking rate relief and approval of its proposed adjustment, I&M bore the

burden of proof on this issue. The hearing upon I&M's requested rate relief was conducted over the course of three weeks, taking as much time as I&M and the other parties deemed needed to present their respective cases. Mounds of testimony and other exhibits were presented both on direct and via cross-examination. To suggest that I&M was stifled in any respect from supporting the adjustment at issue is unfounded.

In light of the extensive evidence, discovery, and hearing resources already expended, the Commission finds I&M was given a full opportunity in its prefilings and at the hearing to present whatever evidence I&M deemed relevant on the IMMDA adjustment issue, and the hearing should not now be reopened to re-litigate an issue that was disputed in the prefilings, at the hearing, and in the parties' post hearing filings, including the proposed orders. I&M's request to create a subdocket is similarly inappropriate. Significant resources have been expended to afford I&M and all the other parties a fair and just hearing upon all the issues. Parties should present all relevant evidence when filing their case-in-chief and engaging in cross-examination, not wait to do so after the fact in a subdocket. The Commission finds that opening a subdocket in this matter is not warranted. Accordingly, I&M's request to reopen this already voluminous record is denied, as is its alternative request to establish a subdocket. The Commission concurs with the Joint Municipals that the evidence Mr. Williamson identifies now in his affidavit could and should have been included in Petitioner's case-in-chief or rebuttal if I&M deemed it relevant upon the propriety of its jurisdictional separation study adjustment.

Consistent with the Commission's discussion and findings above, I&M's petition for reconsideration, clarification, and rehearing is denied.

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

1. I&M's petition for reconsideration, clarification, and rehearing is denied, including I&M's request to reopen the record in this proceeding and/or establish a subdocket.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: MAY 20 2020

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

Mary M Becerra

Mary M. Becerra
Secretary of the Commission