

FILED

SEP 11 2019

STATE of INDIANA



INDIANA UTILITY
REGULATORY COMMISSION

INDIANA UTILITY REGULATORY COMMISSION
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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) CAUSE NO. 45235
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.)

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

The Parties to this Cause are advised that the Commission at its September 11, 2019 Conference considered *Alliance Coal, LLC's Appeal to the Full Commission of the Presiding Officers' August 15, 2019 Docket Entry Denying Alliance Coal's Petition to Intervene* filed by Alliance Coal, LLC on August 22, 2019, appealing to the full Commission a Docket Entry the Presiding Officers issued on August 15, 2018. Administrative Notice is hereby taken of the transcript of the Commission's consideration of this appeal, with a copy of said transcript attached to this Docket Entry and made a part of the record of this proceeding. The Commission by a vote of three in favor and two opposed reversed the decision by the Presiding Officers, thereby granting intervention in this Cause to Alliance Coal, LLC.

David L. Ober, Commissioner

Carol Sparks Drake, Senior Administrative Law Judge

Date: September 11, 2019

Indianapolis, Indiana
September 11, 2019
10:05 A.M. (EDT)

EXCERPT OF WEEKLY CONFERENCE

CHAIRMAN HUSTON: Are there any pending appeals
ripe for Commission approval?

ADMINISTRATIVE LAW JUDGE SPARKS DRAKE: Yes,
Mr. Chairman.

The Commission has an appeal to the full
Commission that was filed on August 22, 2019 in Cause
No. 45235 that is ripe for the Commission's consideration.

More specifically, the Commission has been asked
to reverse the Docket Entry that the Presiding Officers
issued on August 15, 2019.

CHAIRMAN HUSTON: As I call your name, please
indicate whether you're in favor of upholding the --
upholding or overruling the Presiding Officers'
August 15th, 2019 ruling.

A yes vote upholds the Presiding Officers and a
no vote overrules the Presiding Officers.

Commissioner Freeman?

COMMISSIONER FREEMAN: Thank you, Mr. Chairman.

Today I vote yes to sustain or uphold the
August 15th ruling of the Presiding Officers to deny

1 Alliance Coal's Petition to Intervene.

2 When deciding whether to grant or deny a Petition
3 to Intervene, a presiding officer exercises his or her
4 discretion in the matter based on the arguments and
5 evidence presented in support of or in opposition to that
6 Petition.

7 For purposes of this appeal, I reviewed the
8 pleadings that were before the Presiding Officers when they
9 made their decision on August 15th. I think there were
10 five from Alliance and two from I&M. I found nothing in
11 any of those pleadings that would support a decision to
12 overrule the Presiding Officers' August 15th ruling.

13 Rather, I find based on that same evidence that
14 the Presiding Officers had a solid foundation on which to
15 deny that Petition and did not abuse their discretion in
16 doing so.

17 CHAIRMAN HUSTON: Commissioner Krevda?

18 COMMISSIONER KREVDA: No.

19 CHAIRMAN HUSTON: Commissioner Ober?

20 COMMISSIONER OBER: Thank you, Mr. Chairman.

21 While presiding officers in many cases before the
22 Commission have historically granted petitions like the one
23 in question in this matter, Rule 11, the Commission's
24 intervention rule, should not be construed to limit the
25 officers from exercising their discretion in any

1 proceeding. Put another way, in order to ensure adequate
2 and fair treatment of the matters entrusted to its care,
3 the Commission must be able to exercise informed discretion
4 in all aspects of the proceeding.

5 The Commission's intervention rule imposes a
6 minimum standard for prospective parties to show
7 demonstrable substantial interest in a proceeding. A
8 standard the majority agrees was not met in this instance.
9 This standard is critical because once intervention is
10 granted, a party is entitled to specific rights and
11 responsibilities, such as discovery and access to
12 confidential materials submitted by other parties.

13 Rule 11 provides for appropriate limitations to
14 become an Intervenor to a proceeding and, therefore,
15 ensures respect of the pending issues and the many parties
16 as the Commission ascertains the public interest.

17 The Presiding Officers in this cause carefully
18 evaluated the Petition to Intervene and exercised informed
19 discretion in their decision. That decision should be
20 affirmed.

21 Yes.

22 CHAIRMAN HUSTON: Commissioner Ziegner?

23 COMMISSIONER ZIEGNER: No.

24 CHAIRMAN HUSTON: I also vote no which overrules
25 the Presiding Officers, and, therefore, the record should

1 reflect that the Presiding Officers' ruling of August 15th,
2 2019 is reversed.

3 However, I would like to also add to the record
4 and to reflect that the question of Alliance Coal's
5 Petition to Intervene in I&M's rate case presents unique
6 challenges for the IURC. Alliance Coal rightly argues that
7 the Commission has adopted a liberal interpretation of
8 intervention in docketed cases over many years.

9 That liberal philosophy does not mean automatic.
10 The Commission does not reflexively grant intervention in
11 docketed cases. The liberal interpretation for granting
12 intervention is rooted in the Commission's ongoing desire
13 that active stakeholder engagement in docketed and
14 non-docketed matters helps the Commission in rendering
15 decisions that are in the public interest.

16 Transparency is embedded in all we do. That is
17 why the Integrated Resource Plans for all utilities are
18 open to stakeholders with incredible access to utility
19 planning resources. That is why the IURC's Director's
20 Report seeks out stakeholder input at all phases. That is
21 why the IURC has had many technical conferences open to
22 stakeholders and why we continually engage stakeholders as
23 we begin the process of fulfilling our statutory
24 responsibilities related to the Energy Policy Task Force.

25 In addition, the IURC carries the transparency

1 philosophy on in what is open to the public for inspection
2 on our website, and that any interested parties may receive
3 service of all filings in cases excluding confidential
4 documentation. All evidentiary hearings that involve
5 cross-examination are not only recorded by Court Reporters
6 and available for inspection but are also streamed live.

7 Alliance Coal's original request for intervention
8 relied solely on the prospect of doing business with
9 Indiana Michigan in the future and that they wanted to stay
10 apprised of I&M's plans. That rationale initially gave the
11 Commission was insufficient. That request for intervention
12 was appropriately denied within the Commission's
13 discretion. If all Alliance Coal wanted was to stay
14 apprised of what I&M was planning, they need only
15 participate in open, transparent forums already available
16 to the public.

17 It took Alliance Coal several attempts to put
18 together a more cogent, reasoned argument for why they
19 should be allowed to intervene in a rate case for which
20 they do not appear to have any immediate prospect of doing
21 business with the utility in the future or in the future
22 and that they are not a current customer of the utility nor
23 do they do business with that utility; however, Alliance
24 Coal's subsequent assertions give greater connection to the
25 need to intervene in this cause.

1 Alliance Coal's counsel and all those desiring
2 intervention are expected to do a better job demonstrating
3 substantial interest at the outset of evidentiary
4 proceedings and not task the Commission to strain a liberal
5 philosophy that is nurtured from a desire of inclusiveness
6 and engagement to mean automatic.

7 I would also recommend that Alliance Coal take
8 the case as it exists on this date in accordance with 170
9 IAC 1-1.1-11.

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