

FILED
July 29, 2021
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA MICHIGAN)
POWER COMPANY (I&M) AND AEP)
GENERATING COMPANY (AEG) FOR CERTAIN)
DETERMINATIONS WITH RESPECT TO THE)
COMMISSION'S JURISDICTION OVER THE)
RETURN OF OWNERSHIP OF ROCKPORT UNIT 2) CAUSE NO. 45546

VERIFIED DIRECT TESTIMONY OF BROWN D. THORNTON

AND ATTACHMENTS BDT-1 AND BDT-2


SUBMITTED ON BEHALF OF:
CITY OF FORT WAYNE
THE CITY OF MARION
MARION MUNICIPAL UTILITIES

IURC INTERVENOR'S - Joint Municipal
EXHIBIT NO. 1
9-10-21 DATE REPORTER AT

JULY 29, 2021

JOINT MUNICIPAL EXHIBIT 1

Respectfully Submitted,



Kristina Kern Wheeler
Nikki Gray Shultz
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204

I. INTRODUCTION AND QUALIFICATIONS

Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND BRIEF BUSINESS DESCRIPTION.

A. My name is Brown D. Thornton. I am an Executive Consultant in the Energy Practice at NewGen Strategies and Solutions, LLC (“NewGen”). My business address is 112 Westwood Place, Suite 165, Brentwood, Tennessee 37027. NewGen is a consulting firm that specializes in utility rates, engineering economics, financial accounting, asset valuation, appraisals, and business strategy for electric, natural gas, water, and wastewater utilities.

Q2. PLEASE STATE YOUR EDUCATIONAL BACKGROUND.

A. I have a Master of Business Administration degree from Vanderbilt University. Prior to this, I earned a Bachelor of Science in Electrical Engineering from Tennessee Technological University. In addition to my undergraduate and graduate degrees, I am a registered Professional Engineer in the State of Tennessee.

Q3. WOULD YOU BRIEFLY DESCRIBE YOUR PROFESSIONAL EXPERIENCE?

I have more than 35 years of experience in the energy and utility industry including operations, management, and consulting positions. My work history includes eleven (11) years with the Tennessee Valley Authority in field operations, power supply contracts, and rates; eighteen (18) years with the R. W. Beck, Inc. engineering and consulting firm as Principal Consultant and Vice President of Utility Consulting; two (2) years with MWH Global as Americas Sector Leader, Energy; and the last seven (7) years with NewGen as Director, Energy and Utility Consulting and Executive Consultant. A summary of my qualifications is provided within Attachment BDT-1 to this testimony.

Q4. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS OR ANY OTHER REGULATORY COMMISSION?

A. Yes, I have testified and/or prepared affidavits before the Indiana Utility Regulatory Commission (“IURC” or the “Commission”), the Kentucky Public Service Commission¹, the Mississippi Public Service Commission, and the Federal Energy Regulatory Commission.

Q5. ON WHOSE BEHALF ARE YOU SUBMITTING THIS TESTIMONY?

A. I am testifying on behalf of the City of Fort Wayne, the City of Marion, and Marion Municipal Utilities (“Joint Municipals”).

II. PURPOSE OF TESTIMONY

Q6. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address whether Indiana Michigan Power Company’s (“I&M’s” d/b/a “AEP’s”) request in this proceeding is consistent with the public convenience and necessity, and whether it is prudent for I&M to move forward at this time with the purchase of Rockport Generating Station Unit 2 (“Rockport Unit 2”), which is currently owned by a trust comprised of private investors (“Owner Trust”).

Q7. HAVE YOU REVIEWED THE PETITION AND TESTIMONY OFFERED BY I&M IN THIS PROCEEDING?

A. I reviewed I&M’s Joint Petition and joint direct testimony filed in this proceeding, including I&M’s Integrated Resource Planning Report to the Indiana Utility Regulatory

¹ My most recent testimony before the IURC was in Northern Indiana Public Service Company’s last rate case, Cause No. 45159. Many years ago, I also testified before the IURC, but I no longer have those records.

Commission, dated July 1, 2019 (“IRP”), and the data requests and responses of the parties to this proceeding.

Q8. BASED ON YOUR REVIEW, WHAT ARE YOUR RECOMMENDATIONS?

A. I recommend the Commission deny I&M’s request to purchase Rockport Unit 2. I&M’s witnesses make many conclusory statements about the benefits of purchasing the Rockport Unit 2, without any supporting analysis, quantification or workpapers. For example, I&M failed to provide any examination of alternative resources for its capacity and energy needs.

Q9. DO YOU HAVE AN OPINION REGARDING AEP GENERATING COMPANY’S (“AEG’S”) PURCHASE OF ROCKPORT UNIT 2?

A. While AEG is considered a public utility in Indiana, its sales are limited to the wholesale market, and it has no captive retail ratepayers. Thus, my testimony herein will be solely directed towards my concerns regarding I&M’s purchase of Rockport Unit 2.

Q10. ARE YOU SPONSORING ANY ATTACHMENTS TO YOUR TESTIMONY?

A. Yes. In addition to Attachment BDT-1, I am including Attachment BDT-2, which is an July 6, 2017 Order from the U.S. District Court in the *Wilmington Trust Co., et al. vs. AEP Generating Co., et al.*, Civil Action 2:13-cv-1213.

III. I&M’S PROPOSAL IS NOT SUPPORTED BY SUFFICIENT ANALYSIS

Q11. WHY ARE THE FACTORS IN THE POWERPLANT CONSTRUCTION ACT IMPORTANT?

A. The Powerplant Construction Act (the “Act”) was passed to ensure that public utilities providing retail electric service in Indiana do not build unnecessarily “large, expensive power plants with lengthy construction periods . . . to meet expanded growth.” *In re*

Petition of Southern Indiana Gas and Elec. Co., 108 P.U.R. 4th 494 (IURC Cause No. 38738, Oct. 25, 1989).² It is important to realize the historical context in which the Indiana Utility Powerplant Construction Act was enacted. That Act first went into effect in 1983, right in the middle of the debacle created by the construction of the Marble Hill Nuclear Power Plant. That project created a net operating loss of \$1.4 billion for Public Service Indiana (now “Duke Energy Indiana”) and was abandoned in 1984.³ The Indiana General Assembly understood that “checks and balances” were needed for utility power plant projects, lest customers be left on the hook for the utility’s bad business decisions and exorbitant project costs.

**Q12. DO YOU THINK IT IS APPROPRIATE FOR THE COMMISSION TO
“DISCLAIM” OR “DECLINE” JURISDICTION OVER THE SALE OF
ROCKPORT UNIT 2 TO I&M?**

- A. No. In a monopoly system, absent regulation, a utility’s incentive is to overbuild or overbuy generation capacity in order to maximize its return on investment for shareholders. That is why it is important for the Commission not to “disclaim” or “decline” jurisdiction over I&M’s purchase of Rockport Unit 2.

**Q13. WHAT FACTORS DOES THE COMMISSION CONSIDER IN GRANTING A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (“CPCN”)?**

- A. Under Ind. Code § 8-1-8.5-2, I&M may not purchase an electric generation facility without first obtaining a CPCN from the Commission. Under Ind. Code § 8-1-8.5-4, when determining whether a CPCN should be issued, the Commission is directed to take into

² This Commission Order cannot be found in Westlaw.

³ See *inter alia*, *Petition of Public Service Company of Indiana, Inc.*, 72 P.U.R. 4th 660, 1986 WL 1248582 (Cause No. 37414, March 7, 1986) and *N. Ind. Pub. Serv. Co. v. Citizens Action Coal., Inc.*, 548 N.E.2d 153 (Ind. 1989).

account the utility's current and potential arrangement with other utilities for the interchange of power; the pooling of facilities; the purchase of power; joint ownership of facilities; and other methods for providing reliable, efficient and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.

Pursuant to Ind. Code § 8-1-8.5-5, a CPCN may only be granted if the Commission has: (1) approved the estimated construction, purchase, or lease costs; (2) made a finding that either such construction, purchase, or lease will be consistent with the Commission's plan for expansion of electric generation capacity, or that the construction, purchase, or lease will be consistent with a utility specific proposal as to the future needs for electricity to serve the people of the state or the area served by the utility; and (3) made a finding that the public convenience and necessity require or will require the construction, purchase or lease of the facility.

Q14. WHAT EVIDENCE DID I&M PRESENT TO SUPPORT ITS REQUEST FOR A CPCN?

- A. I&M's witnesses provided a total of only about thirty pages of testimony supporting the company's request and did not present even a single workpaper supporting the utility's case-in-chief. For example, the Joint Petition, at pp. 7-8, makes the broad assertion that "...the return of ownership of Rockport Unit 2 to Petitioners provides substantial benefits to customers and the State." Yet I&M's witnesses provide no evidence that shows the claimed "substantial" benefits associated with improved operating efficiencies at Rockport Unit 2.

Q15. WHAT OTHER METHODS DID I&M IDENTIFY IN ITS TESTIMONY FOR PROVIDING RELIABLE, EFFICIENT AND ECONOMICAL ELECTRIC SERVICE IN LIEU OF PURCHASING ROCKPORT UNIT 2?

- A. I&M did not identify any other methods for providing reliable, efficient, and economical service. The company simply ignores its previous IRP analysis. I&M's IRP indicated its preferred plan was to procure lower cost alternative generation resources, such as solar, wind, energy efficiency and market purchases at the end of the current Rockport Unit 2 lease in December 2022. The I&M IRP Preferred Plan also included the addition of natural gas combined cycle units to meet resource requirements after Rockport Unit 1 is retired in 2028.

Q16. HOW DID I&M EXPLAIN WHY IT DEVIATED FROM THE RESULTS OF ITS CURRENT IRP?

- A. I&M did not explain why it deviated from the results of its current IRP. I&M's IRP indicated that through 2022, I&M's existing capacity resources meet its forecasted internal demand.⁴ In 2023, I&M anticipated experiencing a capacity shortfall of 484 megawatts ("MW"), based upon its assumption of the expiration of the lease of Rockport Unit 2. However, I&M's IRP plan was to cover that shortfall with smaller-scale replacement resources, such as solar, wind, energy efficiency and short-term market purchases.

Of course, an IRP is a "snapshot in time" and the actual procurement and retirement of additional generating resources can and does vary. While it is hypothetically possible that purchasing Rockport Unit 2 is a reasonable alternative, I&M has not shown *how or*

⁴ IRP at p. ES-4.

why changing course from its IRP and buying Rockport Unit 2 is prudent. I&M provided no studies, analyses or work papers demonstrating any examination of alternatives to meet PJM capacity requirement shortfalls, such as all-source generation alternatives considered, expected cost, and alignment with I&M's current IRP. I&M provides no testimony to discuss whether other scenarios were considered or why those were eliminated, such as renewing the Rockport Unit 2 lease or reserving a portion of the unit's output for I&M under a Purchased Power Agreement ("PPA").

Q17. HOW DOES THE CAPACITY OF ROCKPORT UNIT 2 COMPARE TO I&M'S EXPECTED 2023 CAPACITY SHORTFALL?

- A. At 1,300 MW, Rockport Unit 2 is nearly three times the amount of capacity needed to meet I&M's stated shortfall in 2023. Therefore, it appears Rockport Unit 2 will mostly be sold into the wholesale market, rather than being used to serve retail customers in Indiana. While I have not performed any analysis to determine the cost of alternative capacity, logic would dictate that 400 MW of capacity can be obtained at far less cost than 1,300 MW. I briefly discuss low clearing prices of capacity in Q26 below.

Q18. IF PURCHASING ROCKPORT UNIT 2 IS A MEANS OF MEETING I&M'S CAPACITY SHORTFALL, WHY IS THAT NOT AN ACCEPTABLE RESULT?

- A. I&M's primary purpose is to serve its retail customers by providing reliable, efficient, and economic service. The sale of capacity on the wholesale market should be only incidental, and subordinate to, this primary purpose of serving retail customers. The majority of Rockport Unit 2's energy and capacity are simply not needed to meet I&M's retail demand.

Q19. THE JOINT PETITION (FOOTNOTE 1) REFERS TO SEVERAL PREVIOUS CASES OF WHOLESALE POWER GENERATING FACILITIES, HOW IS ROCKPORT UNIT 2 SIMILAR?

- A. I do not think Rockport Unit 2 is similar to these examples, nor is it an “independent power producer” or a merchant plant. In Indiana and across the county, most merchant plants are not coal-fired plants, and usually operate solely in the wholesale market. I believe I&M is trying to recast Rockport Unit 2 as a wholesale plant in order it support its request for disclaimer/declination of Commission jurisdiction. It makes sense that the IURC would decline jurisdiction over a true wholesale plant, because traditional regulation is not necessary when there is no obligation to serve retail customers and no ability to recover costs through regulated rates. Yet, I&M wants to have it both ways, by getting a disclaimer/declination of jurisdiction while still maintaining its rights to request retail rate recovery at some future point (Joint Stipulation filed June 8, 2021, p. 1).

Q20. GIVEN I&M HAS STIPULATED THAT THE ISSUE OF WHETHER ROCKPORT UNIT 2 WILL BE PLACED IN RETAIL RATES WILL BE DEALT WITH IN A FUTURE PROCEEDING, WHY IS THAT NOT SUFFICIENT TO ALLAY YOUR CONCERNS?

- A. Joint Municipals agreed to the Stipulation because they agreed that the statutory considerations associated with I&M’s proposed purchase of Rockport Unit 2 should not be relegated to a subdocket or separate proceeding.⁵ A proper analysis requires that the Commission consider all of the possible implications of I&M’s purchase of Rockport Unit

⁵ The Stipulation reserved the Parties rights to “...raise any issue, take any position, or introduce any evidence relevant to the Commission’s determination as to whether to decline to exercise its jurisdiction pursuant to Ind. Code ch. 8-1-2.5 or disclaim its jurisdiction under Ind. Code ch. 8-1-8.5.” *Id.* at 2.

2 on the public convenience and necessity. I&M has not shown why the purchase of Rockport Unit 2 is a reasonable, necessary, or least cost option, nor has it quantified the rate impact the purchase will have on customers in this proceeding. Instead, I&M wants the Commission to look at this transaction in a vacuum and focus only on whether I&M should be permitted to close the sale. Given that I&M could have simply terminated the lease and not purchased the unit, there is certainly the potential for higher rates associated with the purchase, with the exact increase being unknowable at this time given I&M's lack of evidence on the subject. While all costs in a rate case are subject to prudence review, it will be difficult to argue those costs were not prudent if the Commission already approved the sale. For example, Ind. Code § 8-1-8.5-6.5, if a utility receives an approved CPCN, it has the right to recover costs in rates, even if the project is cancelled.

Q21. WHY IS IT PRUDENT TO ANALYZE THESE CONSIDERATIONS BEFORE AUTHORIZING I&M TO PURCHASE ROCKPORT UNIT 2?

- A. The Commission should not solely look at the \$115 million purchase price and conclude that I&M's investment is reasonable, without any consideration of continuing operational and environmental compliance costs, and other risks. I believe I&M's goal is to pass both part of the purchase price and continuing operating costs, and plant retirement costs on to its captive retail customers so that its shareholders will receive higher returns. During the pendency of this proceeding, I&M filed a rate case on July 1, 2021. While the impact of the purchase of Rockport Unit 2 to I&M's retail rates is yet to be determined, we are currently in the process of reviewing the newly-filed rate case in hopes of shedding light on the lease termination option versus the purchase option.

Q22. WHAT INVESTOR-OWNED UTILITIES ARE ABLE TO SELL COAL-FIRED PLANTS NEAR THE END OF THEIR USEFUL LIVES?

- A. Most investor-owned utilities are not able to sell their coal-fired plants when they are near the end of their useful lives, either because the asset has little value and/or the environmental regulatory and clean-up risks are too high. Instead of being sold, most coal plants are being decommissioned, sold for scrap or replacement parts, transitioned to gas-fired plants, or repurposed in some other way unrelated to electric service.

Q23. WHAT CONCERNS DO YOU HAVE WITH THE TIMING OF I&M'S REQUEST FOR COMMISSION APPROVAL OF THE PURCHASE OF ROCKPORT UNIT 2?

- A. I&M has leased and operated this generating facility for more than 30 years. It has known for quite some time that the lease would end in December 2022. Meanwhile, court records from the U.S. District Court show that AEG and I&M have been trying to settle litigation associated with environmental compliance with the Owner Trust since June, 2017 (Attachment BDT-2). In 2019, NewGen was engaged in the last I&M rate case on behalf of the Joint Municipals, where I&M refused to provide any certainty regarding its intentions to extend or terminate the lease on Rockport Unit 2. After that rate case was complete, I&M notified the Owner Trust in November 2020 that the lease would be terminated (Thomas Direct, p. 7). While I&M's desire for regulatory certainty "blessing" its settlement with the Owner Trust is understandable, it is unfair to bind the other parties and the Commission itself to a timeline negotiated between I&M and the Owner Trust related to litigation that has dragged on for many years.

Q24. PLEASE DESCRIBE THE SETTLED LITIGATION AT THE CORE OF THIS CASE.

- A. I am not an attorney, so I refer the Commission to the 2017 Sixth Circuit Court of Appeals decision, which does a good job of summarizing the history of AEP's environmental litigation:

Beginning in 1999, the United States Environmental Protection Agency, many states, and private environmental organizations commenced numerous environmental lawsuits against several AEP affiliates, including defendant Indiana Michigan Power Company. These lawsuits, consolidated in the Southern District of Ohio, alleged AEP's affiliates modified thirteen power plants across the country without installing certain pollution controls in violation of the Clean Air Act. ***There was no allegation of misfeasance at Rockport, and the owners were not involved.***

The parties to these lawsuits resolved the claims by way of a consent decree approved by the district court in 2007. ***Of import, the consent decree required AEP to modify both Rockport plants (notwithstanding the lack of alleged violations at these facilities).*** For Rockport 2, AEP agreed to install emissions-limiting devices by December 31, 2019. One of these devices, a scrubber, reduces sulfur dioxide emissions and costs approximately \$1.4 billion.

Defendants later sought to alter this agreement. Initially, they requested permission to install a substantially less expensive pollution control system in place of the scrubber. Following opposition from various plaintiffs, the parties agreed to modify the consent decree in 2013. Regarding Rockport 2, AEP agreed to install the less expensive system by April 16, 2015, and "Retrofit, Retire, Re-power, or Refuel" it by December 31, 2028. "Retrofit" means installing a scrubber, "Retire" means "permanently shut down and cease to operate the Unit," "Re-power" means replacing the coal-burning technology, and "Refuel" means converting it to natural gas.

The effect of the modification is substantial. By pushing the "Retrofit, Retire, Re-power, or Refuel" requirement to 2028 (six years *after* the expiration of the Facility Lease), the owners are now responsible for the costs associated with either upgrading Rockport 2 or shutting it down.⁶

⁶ *Wilmington Tr. Co. v. AEP Generating Co.*, 859 F.3d 365, 369-70 (6th Cir. 2017) (emphasis added).

The Sixth Circuit remanded the case to the federal district court for further proceedings consistent with its order. By agreeing to purchase Rockport Unit 2, I&M and AEG were able to settle this litigation.

Q25. WHAT BENEFIT DOES THE SETTLEMENT OF I&M'S ONGOING FEDERAL LITIGATION IN OHIO WITH THE ROCKPORT OWNERS HAVE FOR THE COMPANY?

- A. The settlement with the Owner Trust resulting in I&M and AEG's purchase of Rockport Unit 2, solves a problem of AEP's own creation. AEP brought Rockport Unit 2 into the consent decree like a "sacrificial lamb" when there were no alleged violations at the plant. The Owner Trust fought with AEP for years about who is responsible for the costs of that decision. Now, fourteen years later, I&M wants its customers to pay to settle that dispute. It is much like asking ratepayers to fund I&M's "divorce" from the Owner Trust. While certainly, settlement of litigation brings with it the benefits to the utility, what has yet to be shown is whether the benefits of settlement outweigh the risks and costs to ratepayers of purchasing Rockport Unit 2.

Q26. WHAT VALUE DOES ROCKPORT UNIT 2 BRING AS A GENERATING RESOURCE?

- A. Generally speaking, coal-fired plants are being retrofitted, repurposed, retired or refueled across the country because the cost to operate exceeds the value an aging coal-fired unit brings to the energy and capacity market. Day-ahead locational marginal prices ("LMPs") in PJM's AEP zone generally hover around \$22/MWh. Installed capacity resources in PJM's AEP Zone recently cleared at \$1.52/kw-month. In that kind of market, those in need of additional energy and capacity simply are not looking to purchase coal plants. I question

whether, absent this settlement with I&M and AEG, the Owner Trust could have found a third-party buyer willing to take on the costs and risks involved with owning Rockport Unit 2.

Q27. HOW DOES KENTUCKY POWER’S TERMINATION OF ITS CAPACITY INTEREST IN ROCKPORT 2 FACTOR INTO YOUR ASSESSMENT?

- A. Kentucky Power terminated its lease and its 2019 IRP indicates it plans to seek new renewable and short-term market purchases to meet its projected capacity shortfall.⁷ It is relevant to consider that as an AEP affiliate in a similar position as I&M, Kentucky Power mentions no interest in continuing its rights to Rockport Unit 2 capacity, either through purchase, lease renewal, or a PPA.

IV. CONCLUSION

Q28. WHAT IS YOUR OVERALL CONCLUSION AND RECOMMENDATION TO THE COMMISSION?

- A. The Commission should not approve I&M’s purchase of Rockport Unit 2 at this time. I&M has not provided sufficient analysis to support why the Rockport Unit 2 capacity is needed, nor has it clearly met the other elements of the CPCN statute. It is simply inappropriate for the Commission to “disclaim” or “decline” jurisdiction over the sale of Rockport Unit 2 to I&M. This will simply incentivize public utilities to overbuild or overbuy generation capacity and pass the costs on to captive ratepayers.

Q29. DOES THIS CONCLUDE YOUR TESTIMONY?

⁷ Kentucky Power’s most recent IRP can be found here: https://psc.ky.gov/pseccf/2019-00443/sebishop%40aep.com/12202019120748/KPCO_2019_IRP_Volume_A_Public_Version.pdf

Joint Municipal Exhibit No. 1 – Cause No. 45546
Direct Testimony of Brown D. Thornton

A. Yes.

Joint Municipal Exhibit No. 1 – Cause No. 45546
Direct Testimony of Brown D. Thornton

VERIFICATION

I, Brown D. Thornton, affirm under penalties for perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief as of the date filed herein.

Date: July 29, 2021

DocuSigned by:
Brown Thornton
205DC981A32A4B0
Brown D. Thornton



Brown D. Thornton
Executive Consultant
bthornton@newgenstrategies.net

Mr. Brown Thornton brings over 35 years of consulting experience in the energy and water infrastructure markets. He specializes in utility management, financial management and analysis, wholesale and retail rate studies, power supply and transmission service, and strategic business planning for municipal and consumer-owned utility clients. Mr. Thornton leverages his broad experience base to work with utility management and governing bodies in engagements involving strategic planning, examination of complex issues, and decision making.

Prior to joining NewGen Strategies and Solutions, Mr. Thornton worked for MWH Global as Vice President, Americas Sector Leader, Energy (2 years) and R. W. Beck, Inc. (including its acquisition by SAIC) as Vice President of Utility Consulting and Principal (18 years). Earlier in his career, he worked in operations, project management, power delivery, and power contracts for the Tennessee Valley Authority, a major generation and transmission electrical utility (11 years).

EDUCATION

- Master of Business Administration, Vanderbilt University
- Bachelor of Science in Electrical Engineering, Tennessee Technological University

PROFESSIONAL REGISTRATIONS/CERTIFICATIONS

- Registered Professional Engineer (PE), Tennessee

KEY EXPERTISE

- Management Advisory Services
- Business and Financial Planning
- Strategic Planning and Utility Management
- System Planning and Contract Negotiation
- Power Supply Planning
- Transmission Services
- System Valuation
- Cost of Service and Rates

RELEVANT EXPERIENCE

Power Supply and Transmission Planning

Mr. Thornton has provided power supply and transmission planning supply assistance to numerous public power systems, electric cooperatives, and private utilities. His breadth of experience includes power supply studies, generation resource portfolio planning, financial and feasibility analysis, examining wholesale and retail rate implications, and purchased power transaction negotiations. His transmission-related experience includes examining transmission alternatives, obtaining transmission service arrangements, and reviewing delivery point facility requirements. His service contract experience includes reviewing and developing power supply and delivery agreements for municipal systems and for large commercial/industrial customers.

Mr. Thornton's system planning clients include the following:

- City of Williamstown, KY
- Clark County REMC, IN
- Golden Spread Electric Cooperative, TX
- Hartselle Utilities, AL
- Meriwether Lewis Electric Cooperative, TN
- Millennium Energy, KY.
- Mountain Electric Cooperative, TN
- North Virginia Electric Cooperative, VA

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- Hoosier Energy Cooperatives, IN
- Kentucky Municipal Energy Agency, KY
- Kentucky Municipal Power Agency, KY
- Kentucky Municipal Systems, KY
- Lee County Electric Cooperative, FL
- Rayburn Country Electric Cooperative, TX
- Southeastern Power Administration (SEPA) – Hydropower Customer Group, GA
- Whitewater Valley REMC, IN
- WIN Energy REMC, IN

Expert Testimony and Litigation Support

Mr. Thornton has offered expert testimony regarding cost of service rate design and ratemaking issues before state and local regulatory bodies and courts. He has national experience providing litigation support regarding ratemaking matters at wholesale and retail levels in Alabama, Florida, Indiana, Kentucky, Tennessee, and Virginia. Preparation and support of expert testimony includes the following:

Indiana Utility Regulatory Commission (1994–1998)

- Whitewater Valley REMC – Electric Rates
- Harrison County REMC – Electric Rates
- Jackson County REMC – Electric Rates

Kentucky Public Service Commission (1996–2002)

- Frankfort Plant Board – Wholesale Water Sales
- City of Franklin – Wholesale Water Sales

Mississippi Public Service Commission (2019)

- 4-County Electric Cooperative – Auxiliary Service for Generation Located in Service Territory

Federal Energy Regulatory Commission (FERC) (1996–Present)

- Kentucky Municipal Power Agency – LG&E/KU Elimination of MISO Transmission De-Pancaking
- Kentucky Municipals – Wholesale Power Contract and Formula Rates
- Kentucky Municipals – LG&E/KU Merger

Rate and Pricing Studies

Mr. Thornton has managed the preparation of numerous cost of service and rate design studies for electric, water, wastewater, and gas clients. His experience includes development of revenue requirements; the functionalization, classification, and allocation process; and design of cost-based rates. He regularly instructs or presents materials related to ratemaking including rate and revenue planning, cost allocation, and rate design. The bulk of his recent rate work includes preparation of unbundled rate studies, competitive rate comparisons, development of market-based rates, and analysis of distribution service charges as a separate component. Mr. Thornton's financial management clients include:

- AMP-Ohio (and Member Systems), OH
- Arizona Public Service Company, AZ
- Berea College Utilities, KY
- Buckeye Power Cooperative, OH
- City of Bardstown, KY
- City of Franklin, KY
- City of Madisonville Municipal Utilities, KY
- Huntsville Utilities, AL
- Illinois Municipal Electric Agency, IL
- Indiana Municipal Power Agency, IN
- ISO-New England, MA
- Jackson County REMC, IN
- Johnson City Power Board, TN
- Meriwether Lewis Electric Cooperative, TN

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| ▪ City of St. Charles, IL | ▪ Navajo Tribal Utility Authority, NM |
| ▪ City of Williamstown, KY | ▪ New Hampshire Electric Cooperative, NH |
| ▪ Clark County REMC, Indiana | ▪ Northern Virginia Electric Cooperative, VA |
| ▪ Decatur Utilities, Alabama | ▪ Rayburn Country Electric Cooperative, TX |
| ▪ Duck River EMC, TN | ▪ Southeast Power Administration (SEPA) – Hydro Power Customers, GA |
| ▪ Frankfort Plant Board, KY | ▪ Wabash Valley Power Association, IN |
| ▪ Georgetown Municipal Water and Sewer Service, KY | ▪ Warren RECC, KY |
| ▪ Harrison County REMC, IN | ▪ West Tennessee Correctional Facility, TN |
| ▪ Hoosier Energy Cooperatives, IN | ▪ Whitewater Valley REMC, IN |
| ▪ Humboldt Utilities, TN | ▪ WIN Energy REMC, IN |

Financial Management and Analysis

Mr. Thornton has managed preparation of long-range financial plans for utilities, including analysis of operating and capital requirements and evaluation of alternative sources of funds for planned debt financing. Other financial services include assistance relative to the development of annual operating budgets, capital improvement plans, and economic feasibility studies. Mr. Thornton's financial management clients include:

- | | |
|------------------------------------|---|
| ▪ Clark County REMC, IN | ▪ Lawrenceburg Power System, TN |
| ▪ Columbia Power System, TN | ▪ Upper Cumberland Gas Utility District, TN |
| ▪ Glasgow Electric Plant Board, KY | |

Strategic Business Planning

Mr. Thornton assists clients in the development of comprehensive business plans, including complete analysis of the company and its external operating environment, as well as strategy recommendations for each functional business area. The breadth of Mr. Thornton's project experience includes the following:

- **Business Planning** – Based on information gathered from external and internal sources, he provides assistance in the development of comprehensive business plans that incorporate mission statements, goals and objectives, implementation strategies, program description and approach, marketing plan, staffing and equipment needs, training, and projected financial results.
- **Benchmarking Studies** – Conducts benchmarking activities for utilities, including an examination of key business processes and methods of operation. Best practices are identified and used to establish goals for improvement and to measure progress over time.
- **Technical Requirements** – Investigates specific industry practices, including analysis and interpretation of results for complex business and organizational processes.

Mr. Thornton's strategic planning clients include:

- | | |
|---|---|
| ▪ American Municipal Power, OH | ▪ Lee County Electric Cooperative, FL |
| ▪ Buckeye Rural Electric Cooperative, OH | ▪ Michigan South Central Power Agency, MI |
| ▪ Delaware Municipal Electric Corporation, DE | ▪ Nashville Electric Service, TN |
| ▪ Harrison County REMC, IN | |

Brown D. Thornton
Executive Consultant

Process Review and Organizational Studies

Mr. Thornton works closely with utilities nationwide and is familiar with wide-ranging issues affecting utility services. He has conducted comprehensive reviews for utilities, including management, staffing, operational practices, financial planning, and capital improvement plans. Mr. Thornton assists clients in functional and technical reviews of organizational systems, processes, and communication practices, and in the implementation of recommended changes.

Mr. Thornton's organizational management clients include:

- Berea College Utilities, KY
- Buckeye Rural Electric Cooperative, OH
- City of Madisonville, KY
- Hartselle Utilities Board, AL
- Harrison County REMC, IN
- Jay County Rural Electric Membership Corporation, IN
- Lenoir City Utilities Board, TN
- Meriwether Lewis Electric Cooperative, TN
- Warren Rural Electric Cooperative Corporation, KY

WORKSHOPS AND PRESENTATIONS

Mr. Thornton has given numerous presentations and participated in training and workshops in several states. These activities have focused on power supply, strategic planning, cost of service, ratemaking, and competitive issues. Selected topics Mr. Thornton presented are displayed below.

Electric Utility Consultants, Inc.

- *Introduction to Cost of Service Concepts and Techniques for Electric Utilities – 2-day Course taught semi-annually*
- *Introduction to Rate Design for Electric Utilities – 2-day Course taught semi-annually*

Various Utility Clients

- *Direct Access and Unbundled Rates*
- *Time of Use Billing*
- *Dynamic Rates*
- *Cost of Service and Rate Strategy with AMI Data*

New Hampshire Electric Cooperative

- *Two-day strategy and training program pertaining to rate design and cost of service*

Indiana Rural Electric Cooperatives

- *Strategic Planning Workshop*
- *Cost of Service and Rate Design*
- *Power Supply Planning*

Kentucky Municipal Systems

- *Review of Power Supply Alternatives*
- *Financial Forecasting and Rate Planning*
- *Joint Action Agency Workshop*
- *Cost of Service and Rate Design*

TVA Distribution Systems (Tennessee, Kentucky, Alabama, Virginia)

- *Power Supply Planning Workshop*
 - Overview of the Power Industry
 - Fundamentals of Power Supply Planning
 - Generation Technologies and Operational Issues
 - Effects of a Transition in Power Supply Sources
- *Examination of Transmission Services and Alternatives*
- *Understanding Electric Utility Operations*
- *Determining a Utility's Fair Market Value*

Record of Testimony: Brown D. Thornton

Utility	Proceeding	Subject	Before	Client	Date
1. Louisville Gas & Electric and Kentucky Utilities	ER13-2428	Wholesale Power Contract and Formula Rates	Federal Energy Regulatory Commission	Kentucky Municipals	2013–Present
2. Northern Indiana Public Service Company	Cause No. 45159	Support Proposed Modifications to Industrial Service Rates	Indiana Utility Regulatory Commission	United States Steel	2019
3. Louisville Gas & Electric and Kentucky Utilities	ER19-2396	LG&E/KU Elimination of MISO Transmission De-Pancaking	Federal Energy Regulatory Commission	Kentucky Municipal Power Agency	2019
4. Entergy Mississippi	2019-UA-144	Auxiliary Power for Generation Inside Certificated Service Territory	Mississippi Public Service Commission	4-County Electric Power Association	2019
5. Louisville Gas & Electric and Kentucky Utilities	EC98-2-000	LG&E/KU Merger	Federal Energy Regulatory Commission	Kentucky Municipals	1998
6. Frankfort Plant Board, KY	[1]	Wholesale Water Sales	Kentucky Public Service Commission	Frankfort Plant Board, KY	1996 [1]
7. City of Franklin, KY	[1]	Wholesale Water Sales	Kentucky Public Service Commission	City of Franklin, KY	1998 [1]
8. Jackson County REMC	[1]	Electric Rates	Indiana Utility Regulatory Commission	Jackson County REMC	1996 [1]
9. Harrison County REMC	[1]	Electric Rates	Indiana Utility Regulatory Commission	Harrison County REMC	1995 [1]
10. Whitewater Valley REMC	[1]	Electric Rates	Indiana Utility Regulatory Commission	Whitewater Valley REMC	1994 [1]

[1] These items before the Kentucky Service Commission and the Indiana Utility Regulatory Commission were many years ago. Records of proceeding numbers are not available; dates shown are estimated.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILMINGTON TRUST COMPANY, *et al.*,

Plaintiffs,

v.

Civil Action 2:13-cv-1213
Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Chelsey M. Vascura

AEP GENERATING COMPANY, *et al.*,

Defendants.

ORDER

In an Amended Judgment entered on June 8, 2017, the United States Court of Appeals for the Sixth Circuit ordered that this Court's judgment was affirmed in part and reversed in part, remanding the case for further proceedings consistent with its contemporaneously-filed Amended Opinion. On June 30, 2017, the Sixth Circuit's mandate issued, and the case is now pending before this Court.

The parties represent to the Court that they desire to enter into settlement discussions and request a ninety-day stay in order to allow them to focus on those discussions and avoid incurring potentially unnecessary litigation expenses. The Court finds the parties' joint request well taken. It is therefore **ORDERED** that this case be **STAYED** for ninety days from the date of the filing of this Order. Upon the expiration of the ninety days, if the parties have not notified the Court that they have reached a settlement, they are **DIRECTED** to file a status report. If appropriate, the Court will then schedule a conference to discuss resumption of the case in accordance with the Sixth Circuit's opinion.

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IT IS SO ORDERED.

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by electronic transmission this 29th day of July, 2021, upon:

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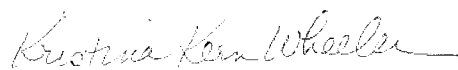
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