

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) CAUSE NO. 45235
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.)

**INDIANA MICHIGAN POWER COMPANY'S OBJECTION TO
PETITION TO INTERVENE**

Petitioner, Indiana Michigan Company ("I&M"), by counsel and in accordance with 170 IAC 1-1.1-11(g), respectfully objects to the Petition to Intervene ("Petition") filed by Alliance Coal, LLC ("Alliance") on the grounds that the Petition fails to show a "substantial interest" "in the subject matter" of this proceeding. In support of this objection, I&M states as follows:

A. Intervention Requires A "Substantial Interest". The standard for intervention in Commission proceedings is not "any" or "mere" interest. Rather, the Commission's rule on petitions to intervene, 170 IAC 1-1.1-11 ("Rule 11"), requires a proposed intervenor to have a "substantial interest".

A "substantial" interest is one that is not remote, nominal or tenuous. The word "substantial" means:

Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.

BLACK'S LAW DICTIONARY 744 (abr. 5th ed. 1983). Therefore, Rule 11 is not satisfied by an abstract impact or other speculation that an entity may somehow be affected by the Commission's decision.

Moreover, the "substantial interest" must be "in the subject matter of the proceeding". The subject matter of this instant proceeding is the setting of retail electric service rates. As discussed below, the Petition does not show the proposed intervenor has any interest that will be determined in this proceeding or that Alliance has any other clear and direct stake in the outcome of the case – namely a Commission order establishing retail rates.

B. Alliance Has Not Met The Substantial Interest Standard. Alliance is not an I&M customer and therefore a Commission decision establishing retail rates for service will not directly impact Alliance.

The Petition alleges Alliance has a "substantial interest" because "Alliance is a potential supplier of coal to the generation facilities owned and operated by Indiana Michigan Power Company ("I&M")." Petition, ¶12. While the "base cost of fuel" will be established in this case, this represents the embedded level from which future adjustments to fuel costs will be made. A Commission decision on the level of fuel cost to embed in I&M's retail revenue requirement will have no direct impact on a potential supplier of coal. I&M's ongoing coal and other fuel purchases will continue to be the subject of the "(d)(1) test" in the Company's ongoing fuel adjustment charge proceedings

conducted pursuant to Ind. Code § 8-1-2-42(d). Consequently, the interest of a “potential supplier” of coal does not constitute a “substantial interest” in the setting of retail rates, *i.e.* “the subject matter” of this proceeding.

C. The Proposed Intervention Will Unduly Broaden The Issues. Rule 11(d) requires a determination that “the proposed intervenor’s participation will not unduly broaden the issues” (emphasis added). The use of the word “will” is commonly recognized as “having the mandatory sense of ‘shall’ or ‘must’”. *Peking Ins. Co. v. Hanquier*, 984 N.E.2d 227, 230 (Ind. Ct. App. 2013), *quoting* BLACK’S LAW DICTIONARY 823 (5th ed. 1983). The Petition falls short of this requirement, alleging only that the proposed intervention “‘should not’ unduly broaden the issues” Petition, ¶ 5. Alliance’s use of the phrase “should not” rather than “will not” subverts the requirements of Rule 11(d).

The asserted desire to respond to issues raised by the parties regarding I&M’s request to revise its depreciation rates and the “data in support thereof” evinces an intention to delve into matters outside the scope of this proceeding. Petition, ¶ 4. A party interested in the Company’s depreciation rates, equipment enhancements, accounting and other matters legitimately pending before the Commission in this Cause would be interested in reviewing the depreciation study, accounting schedules and associated workpapers. An asserted desire to respond to “data in support thereof” indicates the proposed intervenor intends to use this retail rate proceeding to present its position on policy issues or other matters beyond the scope of this docket, such as integrated resource planning, or delve into competitively sensitive fuel costs and needs to potentially improve its position in the Company’s coal solicitations.

This docket was initiated to establish new retail rates and charges for I&M. It would be unduly burdensome to allow Alliance to burden I&M with discovery and the need to respond to Alliance testimony regarding integrated resource planning and other matters that have no direct impact on the Test Year or other matters pending in this general rate case.

Alliance asserts that it seeks to address I&M's request "for approval of various accounting treatments and equipment enhancements related to I&M's coal generation facilities and their potential early retirement." Petition, ¶4. The Petition does not articulate how the referenced enhancements and associated retail cost recovery will have any direct and material impact on Alliance. Additionally, the Petition does not identify any basis for the contention that I&M has proposed any "early retirement" of coal generation facilities in this case. Unit 1 was commissioned in 1984. The Company's depreciation study reflects an assumption that the date through which Unit 1 can be expected to be in operation with any reasonable degree of certainty is December 2028.¹ This is the same assumed useful life reflected in the Company's current depreciation rates approved by the Commission in Cause No. 44967. Moreover, depreciation rates are established based on estimate of a unit's useful life and are not formulated based on the self-interests of any potential supplier.

While the Petition asserts an interest only in the coal unit "owned and operated" by I&M (Petition, ¶2), Rockport Unit 2 (in service in 1989) is the subject of a Commission approved long-term Lease which will expire after the Test Year in 2022. Commission approved depreciation rates for Rockport Unit 2 leasehold improvements (excluding the

¹ See Thomas Direct, p. 32.

Unit 2 DSI) are established based on the end of the lease term. There is no “early retirement” proposal related to Unit 2 in this proceeding. In fact, because the Company does not own Unit 2, the date of its retirement is not I&M’s decision to make.

While Alliance may have a self-interest in selling coal, this interest does not equate to a substantial interest in I&M’s retail rates. Depreciation expense and the other costs identified in the Petition are components of the retail revenue requirement. The retail rate recovery of these costs will not alter the fact that the Rockport units burn almost exclusively Power River Basin coal, which Alliance does not mine, and the Commission’s decision on these matters will have no direct impact on or otherwise determine any interest that Alliance may have as a potential coal supplier.²

It is unnecessary and unduly burdensome to engage in the matters identified in the Petition in the course of a general rate proceeding. Indiana has other avenues through which entities interested in the coal industry and energy policy may voice their opinions, including the IRP stakeholder process and the legislative processes conducted by the Indiana General Assembly.

D. The Rule 11 Standard For Intervention Is Designed To Safeguard The Regulatory Process. In making a determination regarding a petition to intervene, the Commission has stated that “the Commission must carefully consider the relative benefits and detriments to all involved as well as integrity of the process.” *Re Petition of the Municipal Electric Utility of the City of Crawfordsville*, Cause No. 38726 (IURC 12/20/1990), 1990 Ind. PUC LEXIS 439, at *11. The prospect of the Commission allowing

² See I&M MSFR Vol. 3 1-15-12(2)(C)(iii-vi) pg. 1 of 1 for test year fuel inventory (pdf p. 34 of 100). See also <http://www.arlp.com>.

intervention to a party which neither has a substantial interest in the controversy, nor which can be reasonably expected to confine its participation to the issues which may be legitimately addressed in the proceeding, can be prejudicial to the efficient and fair administration of the Commission's duties. It can create a record for a reviewing court which is unnecessarily encumbered by objections, motions or irrelevant testimony.

It is also prejudicial to the petitioning utility. I&M should not be subjected to discovery from an entity seeking to investigate matters beyond the scope of the pending docket. I&M should not be required to use resources to seek a protective order to confine discovery to the scope of the docket or to defend itself against motions to compel such discovery, particularly where, as here, the proposed intervenor does not have substantial interest in the subject matter of the proceeding and its Petition already evinces that the zone of interest to be pursued in the docket exceeds the scope of the pending proceeding. This is why Rule 11 supports the prohibition of intervention where, as here, participation by the proposed intervenor would unduly broaden the issues or scope of the proceeding.

The sound public policy underlying these safeguards is well recognized. Other commissions also deny intervention where a proposed intervenor's interest is not tangible or is beyond the scope of the proceeding. *See Re Investigation and Suspension of Tariff Sheets Filed by Public Service Company of Colorado*, Docket No. 08S-520E, Decision No. R08-1349 (Colo. Pub. Utils. Comm'n 1/2/09), 2009 Colo. PUC LEXIS 1 at *5 (denying petition to intervene by solar energy industry association in rate case where association failed to meet its burden of proof to identify any specific pecuniary or tangible interest in the matter); *Re Review of the Retail Rates of Florida Power & Light Company*, Docket No. 001148-EI (Fla. Pub. Serv. Comm'n 3/13/02), 2002 Fla. PUC LEXIS 179 at *5-10

(rejecting natural gas supplier's petition to intervene in electric retail rate case where alleged interests were based on conjecture and were too speculative); *Re Application of CMS Gas Transmission Company*, Case No. U-10057 (Mich. Pub. Serv. Comm'n 4/15/92), 1992 Mich. PSC LEXIS 96 at *9-12 (affirming denial of intervention where pipeline operator's interest in certificate application by another pipeline company was based on conjectural possibility of future harm to its business); *Re Petition for Advance Determination*, U-10-41, Order No. 2 (Alaska Reg. Comm'n, 8/24/2010) 2010 Alas. PUC LEXIS 307 at *9-12 (finding interest of developer of PURPA qualifying facilities too remote and speculative to warrant intervention in utility petition for advance determination that decision to construct power project was prudent).

Conclusion

The business interests Alliance seeks to protect are not subject to any determination in this general retail rate proceeding. The asserted interest is too attenuated to satisfy the Rule 11 threshold for intervention. Allowing the unfettered participation as proposed in the Petition will unduly broaden the issues and would be unreasonably burdensome and prejudicial to I&M. Rule 11 exists to safeguard the Commission's process and to allow the efficient use of resources. Accordingly, the Commission should deny the Petition to Intervene.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey M. Peabody", is written over a horizontal line.

Teresa Morton Nyhart (Atty. No. 14044-49)

Jeffrey M. Peabody (Atty. No. 28000-53)

BARNES & THORNBURG LLP

11 South Meridian Street

Indianapolis, Indiana 46204

Nyhart Phone: (317) 231-7716

Peabody Phone: (317) 231-6465

Fax: (317) 231-7433

Nyhart Email: tnyhart@btlaw.com

Peabody Email: jpeabody@btlaw.com

Attorneys for:

INDIANA MICHIGAN POWER COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon the following via electronic email, hand delivery or First Class, or United States Mail, postage prepaid this 10th day of July, 2019 to:

Tiffany Murray
Indiana Office of Utility Consumer
Counselor
Office of Utility Consumer Counselor
115 West Washington Street, Suite 1500
South
Indianapolis, Indiana 46204
timurray@oucc.in.gov
infomgt@oucc.in.gov

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
KBoehrn@BKLLawfirm.com
JKylerCohn@BKLLawfirm.com

Robert K. Johnson
2454 Waldon Dr.
Greenwood, IN 46143
rjohnson@utililaw.us

J. Christopher Janak
Kristina Kern Wheeler
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
cjanak@boselaw.com
kwheeler@boselaw.com

Jennifer A. Washburn
Margo Tucker
Citizens Action Coalition
1915 W. 18th Street, Suite C
Indianapolis, Indiana 46202
jwashburn@citact.org
mtucker@citact.org

John P. Cook, Esq.
John P. Cook & Associates
900 W. Jefferson Street
Franklin, Indiana 46131
john.cookassociates@earthlink.net

Kevin Higgins
Energy Strategies, LLC
Parkside Towers, 215 South State
Street, Suite 200
Salt Lake City, Utah 84111
khiggins@energystat.com

Bette J. Dodd
Joseph P. Rompala
Anne E. Becker
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
BDodd@Lewis-Kappes.com
JRompala@Lewis-Kappes.com
abecker@lewis-kappes.com

Courtesy copy to:
ATyler@lewis-kappes.com
ETennant@lewis-kappes.com

Brian C. Bosma
Kevin D. Koons
Ted W. Nolting
Kroger Gardis & Regas, LLP
111 Monument Circle Drive, Suite 900
Indianapolis, IN 46204-5125
bcb@kgrlaw.com
kdk@kgrlaw.com
tw@kgrlaw.com

Eric E. Kinder
SPILMAN THOMAS & BATTLE, PLLC
300 Kanawha Boulevard, East
P. O. Box 273
Charleston, WV 25321
ekinder@spilmanlaw.com

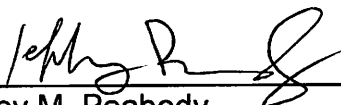
Barry A. Naum
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com

Randolph G. Holt
PARR RICHEY
c/o Wabash Valley Power Alliance
6720 Intech Blvd.
Indianapolis, IN 46278
r_holt@wvpa.com

Jeremy L. Fetty
Liane K. Steffes
PARR RICHEY
251 N. Illinois Street, Suite 1800
Indianapolis, IN 46204
jfetty@parrlaw.com
lsteffes@parrlaw.com

Robert M. Glennon
Robert Glennon & Assoc., P.C.
3697 N. Co. Rd. 500 E.
Danville, IN 46122
robertglennonlaw@gmail.com

Nikki G. Shoultz
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
nshoultz@boselaw.com



Jeffrey M. Peabody

Teresa Morton Nyhart (No. 14044-49)
Jeffrey M. Peabody (No. 28000-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Peabody Phone: (317) 231-6465

Attorneys for INDIANA MICHIGAN POWER COMPANY

DMS 14744468v1