**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** |

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

Petitioner, Indiana Michigan Power Company ("I&M" or "Company"), by counsel and in accordance with 170 IAC 1-1.1-11(g), respectfully objects to the Petition to Intervene ("ICC Petition") filed by the Indiana Coal Council, Inc. ("ICC") on the grounds that the ICC Petition fails to show a "substantial interest" "in the subject matter" of this proceeding and its proposed intervention would unduly broaden the issues. In support of this objection, I&M states as follows:

A. Intervention Requires A "Substantial Interest". "The two-pronged test used by this Commission in granting - or denying - Intervention, is as follows:

a. Does the "Petition to Intervene" demonstrate that the Petitioning Party possesses a "substantial interest" in the matter being determined?

And, if so,

b. Would granting this Petitioning Party Intervenor's status unduly broaden the issues in the matter being determined?"

*Assignment of Electricity Suppliers Service Areas, Ruling on Petition to Intervene of Indiana Statewide Association of Rural Electric Cooperatives, Inc.,* Cause No. 36299-S209(X), 1984 WL 995183, at 5 (Ind. P.S.C. Sept. 21, 1984) ("*Assignment Entry*").

Notably, the first test is not "any" or "mere" interest or "collateral" 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.

Importantly, the "substantial interest" must be "in the subject matter of the proceeding". Rule 11 requires facts showing the proposed intervenor's substantial interest in the subject matter of the proceeding must be set out clearly in the petition. In other words, the required demonstration may not be withheld for the reply to any objection to the petition.

The subject matter of this instant proceeding is the setting of retail electric service rates. Consequently, a proposed intervenor must demonstrate a substantial interest in the Company's retail rates for electric service. As discussed below, the ICC Petition does

not show the proposed intervenor has any interest that will be determined in this proceeding or that the ICC has any other clear and direct stake in the outcome of the case. The ICC contention otherwise confuses the important distinction between a collateral business interest in taking positions to advance an interest in selling coal and the "substantial interest in the subject matter of this proceeding" test imposed by Rule 11. Put another way, the ICC Petition has failed to demonstrate that the ICC's purported interest in this proceeding is sufficiently direct and substantial to come within the meaning of the Rule 11 substantial interest test.

B. ICC Has Not Met The Substantial Interest Standard. The ICC is a trade association "formed to foster, promote, and defend the interests of Indiana's coal producers, coal reserve holders, and other business entities related to the coal industry." ICC Petition, ¶1. While the ICC may have a material interest in defending and promoting the coal industry, a Commission decision establishing retail rates for electric service and associated matters will not directly impact the ICC. The ICC is not subject to the jurisdiction of the Commission and a decision in this case will not prohibit the ICC from engaging in its lobbying and other coal industry promotional activities. As discussed below, not one of the assertions in the ICC Petition demonstrates a substantial interest warranting the ICC being granted leave to intervene.

First, the ICC asserts that "[a]n ICC member supplies coal to Indiana Michigan Power Company's (I&M) generating stations." *Id.*[1] The ICC does not identify the member, much less state whether the unidentified ICC member purports to sell Indiana coal to I&M

[1]Although the ICC Petition refers to multiple I&M generating stations, there is only one coal fired generating station – namely Rockport Station, which consists of two units.

or whether that "member" falls within the ICC's purview of defending "other business entities". *Id.* This is notable because the Rockport units burn almost exclusively Power River Basin ("PRB") coal, not Indiana coal.[2] Furthermore, the fact that an I&M coal contract may be of significant monetary value to a coal supplier, does not demonstrate a substantial interest in this general retail rate proceeding.

The ICC Petition implies that the coal industry effort to sell coal to I&M is within the scope of this proceeding. It is not. With respect to fuel supply, this proceeding will determine the "base cost of fuel". 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 any 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, neither the interest of the trade association nor its unidentified member constitutes a "substantial interest" "in" the setting of retail rates, *i.e.* "the subject matter" of this proceeding." Moreover, the ICC position statement does not identify the "base cost of fuel" as being within its targeted positions.

The ICC claims that a Commission decision on depreciation expense and the other matters identified in the Petition will somehow adversely impact the coal industry's ability to sell coal. The ICC seeks to be made a party to this case so as to present arguments to protect its business interests. Nevertheless, there is no direct connection between the

[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. 34/100).

ICC's interest in promoting the coal industry and this retail rate case. The so-called linkage is remote and contingent.

A remote or contingent interest is not the type of substantial interest in the subject matter of the proceeding contemplated by Rule 11. The *Assignment Entry* recognized the distinction between a collateral contingent business interest and a "substantial interest" in the subject matter of the proceeding.

> In a situation analogous to Intervention before this Commission, Intervenor status was denied to the lessor of property occupied by movie theaters who sought Intervention to oppose a proposed consent agreement in a civil anti-trust action. The interests he asserted were possible losses he would suffer if the theater chain were unable to divest itself of several theaters, and the United States then refused to exercise its discretion to permit continued operation of the theaters. The interest asserted was held contingent on the non-occurrence of certain events. See *United States v. Carrolls Development Co.*, 454 F.Supp. 1215, 1219 (N.D. N.Y. 1978).

*Assignment Entry* at 5.

Second, the ICC Petition asserts that "ICC has actively participated as a stakeholder in I&M's 2018-19 IRP proceedings and plans to submit comments on I&M's most recent IRP, which was submitted to the Commission on July 1, 2019, concurrent with the filing of I&M's petition in this Cause." ICC Petition, ¶2. The ICC's attempt to link the instant case to the Company's IRP lacks merit. These are two separate matters and were not filed at the same time. The Company's petition initiating this general retail rate case was filed May 14, 2019 and makes no mention of the integrated resource plan. ICC does not assert or demonstrate how its participation in the separate IRP stakeholder process constitutes a substantial interest in this general retail rate case.

Third, the ICC asserts that "ICC has a substantial interest in this Cause *related* to I&M's requests to accelerate the depreciation of its existing coal-fired facilities and for

recovery of costs related to qualified pollution control property and a dry sorbent injection system related to its coal-fired facilities." Petition, ¶3 (emphasis added). Notably, Rule 11 is addressed to a "substantial interest" "*in*" "the subject matter of the proceeding", not interests "*related to*" the subject matter of the proceeding. This is not mere semantics but illustrates the distinction between the ICC's business interest (taking positions to foster, promote, and defend the coal industry) and the subject matter of this proceeding (establishing retail rates for electric service based on a cost based revenue requirement)

C. The ICC's Asserted "Position" Does Not Establish A "Substantial Interest" "In" The Subject Matter Of This Proceeding. Rule 11(b)(2) requires the petition to intervene shall set out clearly and concisely facts showing the "position of the proposed intervenor with respect to the matters involved in the proceeding." This "position" requirement, which is separate and distinct from the prerequisite "substantial interest" test, provides the information necessary for the Commission to evaluate whether the proposed intervention will unduly broaden the issues. As discussed above, the proposed intervenor must first show a "substantial interest" "in" "the subject matter of the proceeding". A claimed business or other interest in asserting a given position, however substantial, is distinct from having a "substantial interest" "in" the "subject matter of the proceeding." Put another way, the prerequisite substantial interest test assures that positions offered in the case are from those with a direct connection to the subject matter of the proceeding. The Rule 11 substantial interest test is not an invitation for any entity with a collateral interest to intervene in a retail rate case.

The ICC admits that it "has not fully analyzed I&M's filings in this case". Petition, ¶4. Rather than "set[ting] out clearly and concisely facts showing" ICC's position "with

respect to the matters involved in the proceeding", as required by Rule 11(b)(2), the Petition identifies the ICC's "general" ideological views. The ICC states that "in general", it "opposes requests for Commission approval to accelerate the depreciation of a generation asset before the end of its useful life especially when a utility plans to replace the early-retired asset with a large new generation resource." ICC Petition, ¶4. The Petition does not set forth any facts or identify any basis for the contention that I&M is making such requests in this proceeding.

I&M has not sought approval of any "large new generation resources" in this case. The ICC contention otherwise is unfounded. The ICC's unsupported contentions that I&M has requested "to accelerate the depreciation" of its coal generation facilities in this case or seeks approval of relief related to an "early retired asset" are also unfounded. ICC Petition, ¶¶3-4.

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. This is the same assumed useful life reflected in the Company's current depreciation rates approved by the Commission in Cause No. 44967.[3] Moreover, depreciation rates are established based on estimate of a unit's useful life and are not formulated based on the self-interests of coal suppliers. 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 Unit 2 DSI) are

[3] See Thomas Direct, p. 32. While I&M's IRP filed in July 2019 also reflects the retirement of unit 1 in 2028, the date is far beyond the 2020 Test Year in this retail rate case.

established based on the end of the lease term. In fact, because the Company does not own Unit 2, the date of its retirement is not I&M's decision to make.

D. Intervention In Other Cases Does Not Demonstrate A Substantial Interest In The Instant Case. The ICC contends the Commission has allowed the ICC to intervene in other cases and cites three other dockets. The mere identification of three other cause numbers fails to demonstrate that the ICC has a substantial interest in this I&M electric rate case. ICC Petition ¶8.

It is the proposed intervenor's burden, not I&M's burden to demonstrate how these dockets support intervention. Nevertheless, the Commission's electronic docket shows the three proceedings identified by the ICC did not involve I&M and are not similar to the pending I&M electric rate case. Cause No. 44872 was a petition filed by Northern Indiana Public Service Company ("NIPSCO") for approval of a federally mandated environmental compliance project. Cause No. 45052 was a petition filed by Southern Indiana Gas and Electric for a certificate of public convenience and necessity for construction of a combined cycle gas turbine generation facility. Cause No. 45159 is a pending electric rate case that includes a request for alternative regulatory relief. The petitioner in that docket is NIPSCO and the subject matter of that docket concerns NIPSCO and NIPSCO's rates, not I&M or I&M's rates. The Commission's docket shows the ICC testimony in Cause No. 45159 was addressed to NIPSCO's proposal to allow its largest industrial customers to opt into retail wheeling and NIPSCO's proposed acceleration of depreciation for coal generation units and proposed accounting for authority to defer remaining net book value of coal generation assets as regulatory assets are early retirement. ICC Witness Medine Direct Testimony, filed March 19, 2019 Cause No. 45159. The ICC

objected to these proposals based on NIPSCO's Integrated Resource Plan. *Id.* The instant I&M case does not seek the relief sought in these other dockets. Therefore the ICC's contention that this instant docket is "similar" to these other cases should be rejected.

In sum, while ICC may have a self-interest in promoting Indiana coal and other business entities, this interest does not equate to the requisite substantial interest in the subject matter of this proceeding. The relief sought in I&M's Petition, including relief regarding depreciation expense and other costs are components of the retail revenue requirement. A Commission decision regarding depreciation and the recovery of other costs through I&M's retail rates will have no direct impact on or otherwise determine any interest that ICC or its unidentified member may have. Accordingly, the ICC Petition fails to identify a nexus between the matters to be decided by the Commission in this case and the ICC, and therefore should be denied.

E. 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'". *Pekin Ins. Co. v. Hanquier*, 984 N.E.2d 227, 230 (Ind. Ct. App. 2013), *quoting* BLACK'S LAW DICTIONARY 823 (5th ed. 1983). The ICC's assertion (Petition, ¶ 6) that it will not unduly broaden the issues or result in unreasonable delay of this proceeding is belied by the other statements made by ICC in its Petition.

More specifically, the ICC's "in general" statements (ICC Petition, ¶4) advocating the ICC's policy views indicate that 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 perhaps delve into competitively sensitive fuel costs and needs to potentially improve the position of the coal industry in the Company's coal solicitations. The fact that the ICC views the three dockets listed in its Petition as "similar" to the instant rate case reinforces the conclusion that an ICC intervention will unduly broaden and burden the instant case with matters that are outside the scope of this docket.

This docket was initiated to establish new retail rates and charges for I&M. It would be unduly burdensome to allow the ICC to burden I&M with discovery and the need to respond to the ICC 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.

It is unnecessary and unduly burdensome to engage in the matters identified in the ICC 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. Indeed, the ICC states that it has "actively participated as a stakeholder" in I&M's IRP process and plans to submit comments on I&M's IRP. ICC Petition, ¶2. Given these other available avenues, ICC's intervention is not necessary or warranted here.

F. 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 succinctly 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 Commission explained this position in detail in the *Assignments Entry*:

> This Commission has historically adopted a liberal interpretation of its rules regarding Intervention, primarily to allow a broad openness to concerned parties, and to further promote a full evidentiary presentation. **However, a liberal approach under proper circumstances does not eliminate the need to carefully evaluate each Intervention, and does not create an absolute right to Intervene. Gary Transit, Inc. v. PSCI, supra, at 91. Indeed, considering the magnitude and complexity of modern utility rate proceedings, too liberal an approach favoring Intervention can be prejudicial to the public interest and detrimental to the regulatory process itself.**

*Assignment Entry* at 3-4 (emphasis added).[4] In denying the request of a trade association to be elevated to party-intervenor status, this entry explained that intervention can be prejudicial to the efficient and fair administration of the Commission's duties and can create a record for a reviewing court which is unnecessarily encumbered by objections, motions or irrelevant testimony:

> The prospect of the Commission allowing Intervention to a Party which neither has a substantial interest in the controversy nor can be reasonably expected to confine its participation to the issues which may be legitimately addressed in the proceeding, can be prejudicial not only to the efficient and fair administration of this Commission's duties but also can create a record for a reviewing court which is unnecessarily encumbered by repetitive objections, motions to strike, and voluminous irrelevant testimony. Other considerations compel rejection of the requested Intervention. Major public policy considerations support the prohibition of intervention when participation by the proposed Intervenor would unduly broaden the issues or the scope of the proceeding. First, the substantial cost to all participants of required proceedings may be unnecessarily increased. This situation is aggravated when, in the utility regulatory context, the utilities' expenses may be borne by the ratepayers, while the Commission incurs a significant and

[4] So as to provide the complete context of this discussion, a copy of this docket entry is included herewith as Exhibit A; see also interim order in said cause dated December 10, 1984.

> unnecessary waste of resources. Second, the framed issues of concern to the proceeding may be obscured by collateral matters. Resources will be allocated to matters not to be determined in this proceeding. As a result, proper analysis of basic issues can be more difficult for the Commission and reviewing Courts. Third, it is axiomatic that relief unnecessarily delayed is relief denied. The prospect of parties with collateral interest broadening the scope of the proceeding is unacceptable when evaluated in terms of unnecessary delay. . . .

*Id.* at 7.

Unduly broadening the scope of this proceeding, is also prejudicial to the utility in need of a timely change in its retail electric service rates. 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 Assignment Entry*; also *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 (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 (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 and policy interests the ICC seeks to protect are not subject to any determination in this general retail rate proceeding. The asserted interests are too attenuated to satisfy the Rule 11 threshold for intervention. Allowing the ICC unfettered participation as proposed in its 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 ICC Petition to Intervene.

Respectfully submitted,

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 19th 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

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

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

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

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

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

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

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

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

Shaw R. Friedman
Friedman & Associates, P.C.
705 Lincolnway
LaPorte, IN 46350
sfriedman.associates@frontier.com

Keith L. Beall
Beall & Beall
13238 Snow Owl Dr., Ste. A
Carmel, IN 46033
kbeall@indy.rr.com

Jeffery A. Earl
BOSE MCKINNEY &EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
jearl@boselaw.com

Nikki G. Shoultz
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
nshoultz@boselaw.com

Teresa Morton Nyhart

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 14784932

1984 WL 995183 (Ind.P.S.C.)

IN THE MATTER OF THE ASSIGNMENT OF ELECTRICITY SUPPLIERS SERVICE AREAS PURSUANT TO PUBLIC LAW 69-1980 (I.C. 8-1-2.3) AS SUCH ASSIGNMENT AFFECT THE SERVICE AREAS OF THE CITY OF BLUFFTON, CITY OF COLUMBIA CITY, INDIANA AND MICHIGAN ELECTRIC COMPANY, JAY COUNTY REMC, PAULDING-PUTNAM ELECTRIC COOPERATIVE, INC., TOWN OF SOUTH WHITLEY, UNITED REMC, TOWN OF WARREN, AND WHITLEY COUNTY REMC IN CERTAIN PORTIONS OF ADAMS, ALLEN, BLACKFORD, DELAWARE, GRANT, HUNTINGTON, JAY, WELLS, AND WHITLEY COUNTIES, INDIANA (U.S.G.S. FACETS T-6, T-7, T-10, U-6, U-7, U-10, U-11, V-6, V-7, V-8, V-10, V-11, V-12, W-6, W-7, W-10, W-11, W-12, X-6, X-7, X-8, X-9, X-10, X-11, X-12, Y-7, Y-8, Y-9, Y-10, Y-11, Y-12, Z-6, Z-7, Z-8, Z-9, Z-10, Z-11, AND Z-12).

Cause No. 36299-S209(X)

Indiana Public Service Commission

APPROVED: SEP 21 1984

RULING ON PETITION TO INTERVENE OF INDIANA STATEWIDE ASSOCIATION OF RURAL ELECTRIC COOPERATIVES, INC.

BY THE COMMISSION:Jane A. Williams, Administrative Law Judge

***1** On November 19, 1980, this Commission held a Preliminary Hearing and Prehearing Conference to determine the uniform procedure for implementation of Public Law 69-1980. A Preliminary Hearing and Prehearing Conference Order regarding such was approved by this Commission of February 18, 1981. Pursuant to said Order, Joint Petitions were filed by two or more parties named in the above-caption, seeking the assignment of electrical service areas in certain portions of various Indiana Counties. (Commission Cause Nos. 36299-S36(X), 36299-S-39, 36299-S-43, 36299-S-47, 36299-S-48, 36299-S-57, 36299-S-58, 36299-S-88, and 36299-S-134.)

On December 8, 1982, this Commission issued a Supplemental Order in Cause No. 36299, revising certain procedures established in its Order of February 18, 1981. In accordance with the Supplemental Order, U.S.G.S. Facets T-6, T-7, T-10, U-6, U-7, U-10, U-11, V-6, V-7, V-8, V-10, V-11, V-12, W-6, W-7, W-10, W-12, X-6, X-7, X-8, X-9, X-10, X-11, X-12, Y-7, Y-8, Y-9, Y-10, Y-11, Y-12, Z-6, Z-7, Z-8, Z-9, Z-10, Z-11, and Z-12, which were originally contained in one of the above original Petitions, were consolidated and assigned the above new Cause Number.

With regard to the instant Petition to Intervene, on August 28, 1984, I&M filed its “Petition for Modification of Service Area Within Facet Map V-8-1.” On September 5, 1984, this Commission approved its Interim Order in this Cause, setting the Motion of I&M filed August 28, 1984, for hearing Monday, September 24, 1984, at 9:00 a.m., EST, in Room 907, State Office Building, Indianapolis, Indiana.

On September 11, 1984, Wabash Valley Power Association, Inc., (“WVPA”) and Indiana Statewide Association of Rural Electric Cooperatives, Inc., (“Indiana Statewide”) each filed its “Petition to Intervene,” respectively:

**(H.I.)**

**(H.I.)**

On September 18, 1984, General Motors Corporation filed its “Memorandum In Opposition To Petitions To Intervene Of Indiana Statewide Association of Rural Electric Cooperatives, Inc., and Wabash Valley Power Association, Inc.”

  

**(H.I.)**

Having examined each of these filings, and being sufficiently advised in the premises, the Commission now finds:

1. Statement of Applicable Law. The basis for any Intervention is dictated by 170 IAC 1-1-9, which provides:
INTERVENING PETITIONS

(a) In addition to the matter as required by Rule VII [170 IAC 1-1-7], intervening petitions shall be in writing and shall contain;

(1) A plain and concise statement of the facts showing the Intervenor's interest in the matter involved in the proceeding;

(2) A plain and concise statement of the Intervenor's position with respect to such matters and of the facts which are deemed to justify such position;

(3) Specific prayers for affirmative relief, if desired; and

(4) A prayer for leave to Intervene and to be made a party to the proceeding.

(b) Intervening petitions shall be filed not less than five (5) days prior to the date set for the initial public hearing and may be filed thereafter only with the consent of the Commission, Presiding Commissioner, Deputy Commissioner, or Examiner.

(c) If an intervening petition shows a substantial interest in the subject matter of the proceeding, or any part thereof, and does not unduly broaden the issues, the Commission, the Presiding Commissioner, Deputy Commissioner, or Examiner may grant the prayer for leave to intervene and, thereupon, the intervenor shall become a party to the proceeding with respect to the matters set out in his intervening petition.

(d) An intervenor shall be bound by all stipulations, rulings and other matters of record prior to the time such intervenor is made a party and shall take the case as he finds it as of the date of intervention.

Id.

The granting or denial of Petitions to Intervene is strictly within the discretion of the Public Service Commission. Gary Transit v. Public Commission of Indiana 314 N.E.2d 88,91 (Ind.App. 1974). See also, Application of Hawaiian Electric Company, Inc., 535 P.2d 1102,1104 (Hawaii 1975); City of Pittsburgh v. Public Utilities Commission, 39 A.2d 641; 1 F (1943). Cooper, State Administrative Law, 325 (1965). This rule, however, is always subject to the essential qualification that the Commission's discretion is not to be arbitrarily and capriciously exercised.

Generally, no constitutional right to participate in ratemaking proceedings is recognized. Therefore, any alleged "right to intervene" must be based upon applicable statutes or administrative rules and regulations. Armco Inc. v. Public Utilities Commission, 433 N.E.2d 928 (Ohio 1982); Cleveland v. Public Utilities Commission, 67 Ohio St.2d 446,453, 424 N.E.2d 561 (1981).

When reviewing Denials of Intervention pursuant to such rules and regulations, courts normally uphold reasonable restrictions based upon the interest of the proposed Intervenor in the controversy, and further based upon prohibitions against enlarging the issues. In this vein, Justice Roberts, writing for a majority of the United Stated Supreme Court, stated:

> [O]ne of the most usual procedural rules is that an intervenor is admitted to the proceeding as it stands, and in respect of the pending issues, but is not permitted to enlarge those issues or compel an alteration of the nature of the proceeding. Vinson v. Washington Gas & Light Co., 321 U.S. 489,498 (1944).

The ability to exercise informed discretion concerning Intervention is necessary if this Commission is to adequately and fairly proceed with the matters committed to its care. As stated by the Supreme Court of Massachusetts:

> The discretion to limit intervention [is] obviously intended to permit the department to control the extent of participation by persons not sufficiently and specifically interested to warrant full participation, which might interfere with the complicated regulatory process. City of Newton v. Department of Public Utilities, 160 N.E.2d 108,113 (1959).

Similarly, the United States Supreme Court has noted that a regulatory commission's efforts to focus and consolidate arguments on behalf of Parties with essentially similar views tends to increase the effectiveness and clarity with which issues are presented in the context of complex utility cases. See, In Re Permian Basin Area Rate Cases, 390 U.S. 747,766 n.32 (1968); See also 170 IAC 1-1-17(e). In a case concerning the asserted "right" of one regulated utility to participate in another utility's certification proceeding, Justice Frankfurter, writing for a majority of the Court, explained the rationale for such discretion as follows:

> While this criterion [of public interest] is as concrete as the complicated factors for judgment in such a field of delegated authority permit, it serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy. Necessarily, therefore, the subordinate questions of procedure in ascertaining the public interest, when the Commission's licensing authority is involved -- the scope of the inquiry, whether applications should be heard contemporaneously or successively, whether parties should be allowed to intervene in another's proceeding -- are explicitly and by implication left to the Commission's own devising, so long, of course, as it observes the basic requirements designed for the protection of private as well as public interest....Administrative agencies have power themselves to initiate inquiry, or, when their authority is invoked, to control the range of investigation in ascertaining what is necessary to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication and other essential public services. These differences in origin and function preclude wholesale transplantation of the rules of procedure, trial, and review which have evolved from the history and experience of courts. Thus, this Court has recognized that bodies like the Interstate Commerce Commission, into whose mould Congress has cast more recent administrative agencies, 'should not be too narrowly constrained by technical rules as to the admissibility of proof,' Interstate Commerce Commission v. Vaird, 194 U.S. 25,44, should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties. Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134,138-143 (1939).

This Commission has historically adopted a liberal interpretation of its rules regarding Intervention, primarily to allow a broad openness to concerned parties, and to further promote a full evidentiary presentation. However, a liberal approach under proper

circumstances does not eliminate the need to carefully evaluate each Intervention, and does not create an absolute right to Intervene. Gary Transit, Inc. v. PSCI, supra, at 91. Indeed, considering the magnitude and complexity of modern utility rate proceedings, too liberal an approach favoring Intervention can be prejudicial to the public interest and detrimental to the regulatory process itself.

For example, the Massachusetts Supreme Court, reviewing allowed Interventions by the Department of Public Utilities, recently stated:

> The State Administrative Procedure Act grants the Department broad discretion with regard to intervenors. However, that discretion is not unlimited.... Because of the extent of Robinson's participation, his intervention presents a close question. We cannot agree that the Department was obliged to limit him to filing of a written statement of position. In most circumstances, Robinson's role would be of doubtful validity. Given the difficulty of the case before it, we cannot say that the Department erred in seeking intervenor's extensive help in fully elucidating the issues. The Department operates under a statutory deadline when conducting rate proceedings [statute omitted] and its decision that intervention will expedite the case is entitled to great weight. Our decision in Save the Bay, Inc., v. Department of Public Utilities, 366 Mass. 667, 322 N.E. 742 (1975), relied on by the company is not to the contrary. We add that similarly extensive participation by an intervenor in any future case should be permitted by the Department only if careful consideration discloses special circumstances and justification. Boston Edison v. Department of Public Utilities 375 N.E.2d 305,322-33 (1978) (emphasis added).

In the Save the Bay case, referred to above, the Court had cautioned:

> We emphasize that the Department in these hearings was engaged in adjudicatory proceedings wherein legal rights and duties were to be determined and that therefore appropriate limitations could probably be placed on those persons allowed to intervene. Similar considerations apply where appeal from an administrative order is sought before this Court. Only where the parties have demonstrated the required participation in the administrative proceeding and have presented an orderly record before the agency have they properly preserved their appellate rights. The multiplicity of parties and the increased participation by persons whose rights are at best obscure will, in the absence of exact adherence to requirements as to standing, seriously erode the efficacy of the administrative process. We do not say that increased citizen participation is bad. On the contrary, such interest insures full review of all issues. However, to preserve orderly administrative process and judicial review thereof, a party must meet the legal requirements necessary to confer standing. Save the Bay, Inc., v. Department of Public Utilities, 322 N.E.2d 742,748 (Mass. 1975).

Frequently, courts have been compelled to conclude that the standard for Intervention at the administrative level does not presume that legal status as an adversely affected party exists. In 1930, Justice Brandeis, writing for a majority of the Court, determined that the interests of a minority owner were not sufficient to bring suit against an Order of the Interstate Commerce Commission. Status as an Intervenor below did not "entitle it to institute an independent suit to challenge the Commission's Order in the absence of resulting actual or threaten legal injury to it." Pittsburgh and West Virginia Railroad v. U.S., 281 U.S. 470 (1930). See also, Kansas-Nebraska Natural Gas Company, Inc., v. State Corporation Commission, 205 Kan. 838, 473 P.2d 27 (1970); Kalamazoo Municipal Utilities Association v. Salmon, 116 N.W.2d 774 (1962). (Compare, I.C. 8-1-3-3; Martin v. Indianapolis Water Company, 130 Ind. App. 416, 162 N.E.2d 709 (1959)). In another case, based upon rules and regulations governing Intervention similar to those contained in the Commission's Rules, a court blocked an appeal from an FCC denial of

Intervention based upon no recognizable legal interest in the controversy. Sikes v. Jenny Wren Co., 64 App.D.C. 379, 78 F.2d 729. Many courts have gone to great lengths to explain how the "interest" of a party can be defined in the regulatory context. New Orleans Public Service Inc. v. United Gas Pipeline Company, 735 F.2d 452 (5th Cir., 1984).

A public utility commission has been upheld in denying an Intervention based upon a finding that the proposed participation would broaden the issues and cause a delay in the proceedings. Application of Hawaiian Electric Company, Inc., supra, at 1104. A court has held that it was no abuse of discretion for the Pennsylvania Public Utility Commission to deny Intervention to a proposed party whose only purpose was to urge the Commission to do something not within the Commission's power. National Association for the Advancement of Colored People, Inc., v. Pennsylvania Public Utility Commission, (1972) 290 A.2d 704, 712. A denial of Intervention has been upheld when the Party's interests were too general in nature. In the Matter of the Application of Mason, 342 A.2d 219,222 (N.J. Super. 1975). In a situation analogous to Intervention before this Commission, Intervenor status was denied to the lessor of property occupied by movie theaters who sought Intervention to oppose a proposed consent agreement in a civil anti-trust action. The interests he asserted were possible losses he would suffer if the theater chain were unable to divest itself of serveral theaters, and the United States then refused to exercise its discretion to permit continued operation of the theaters. The interest asserted was held contingent on the non-occurrence of certain events. See United States v. Carrolls Development Co., 454 F.Supp. 1215,1219 (N.D. N.Y. 1978). In a case involving the abandonment of the Pilgrim II nuclear power station, the Supreme Court of Massachusetts affirmed the Commission's denial of Intervenor status to a ratepayer. The denial was based in part upon the fact that the proposed Intervenor could conduct discovery and file memorandum through the State's consumer representative. The court stated:

> The issue of Robinson's participation as a party was within the broad discretion of the Department [citations omitted]. The Department did not abuse its discretion. It did not have to hold a hearing on the motion to intervene, nor did it, in the circumstances, have to state its reasons. A judgement shall be entered affirming the Department's Order denying Robinson's motion to intervene.... Robinson was not admitted as an intervenor or party; he had no right to intervene as a matter of law; and, as a residential customer alleging no peculiar damage to himself, he had no constitutional or statutory right to participate fully in the proceedings. Consequently, Edison's motion to dismiss Robinson's appeal should be allowed. Attorney General v. Department of Public Utilities, 390 Mass. 208, 455 N.E.2d 414,419 (1983).

2. Ultimate Findings on the Petition to Intervene. The two-pronged test used by this Commission in granting - or denying - Intervention, is as follows:
a. Does the "Petition to Intervene" demonstrate that the Petitioning Party possesses a "substantial interest" in the matter being determined?

And, if so,

b. Would granting this Petitioning Party Intervenor's status unduly broaden the issues in the matter being determined?

(a) Substantial Interest. In the "Petition to Intervene" filed by Indiana Statewide Association of Rural Electric Cooperatives, Inc., the Petitioning Party has failed to satisfy 170 IAC 1-1-9(a) and (c). More particularly, the Petitioning Party, by counsel, has failed to show the Petitioning Party's position with respect to the relief sought in this Cause, and of the facts which are deemed to justify such position, and further has failed to show substantial interest in the subject matter of this proceeding meriting Intervention. In defining itself as a "state service organization of forty-member rural electric cooperatives," Indiana Statewide claims that it is "directly affected by and vitally interested in" this proceeding. At this juncture, we note that the "Petition to Intervene" states in part:

> 5. The issue presented for decision deals generally with the "territorial laws," specifically I.C. 8-1-2.3-1 et seq. Statewide and its members are directly affected by and vitally interested in this issue. As electric suppliers in Indiana, they have spent substantial sums of money, energy and effort in resolving boundary disputes and other questions relating to assigned service areas relying upon I.C. 8-1-2.3-1 et seq as reflecting the legislative intent and being the law which governs all questions as to who is entitled to render electric utility service within a legally assigned service area. It is vital to the REMC's that the questions should be finally resolved that the proposed customer, General Motors, not be taken away from the REMC's and thus recognition given to I.C. 8-1-2.3-1 et seq.

This Cause was instituted in order to establish the territorial boundaries of the electric suppliers serving the U.S.G.S. Facets set forth in the Caption above. However, the August 28, 1984, "Proposal of Indiana & Michigan Electric Company for Modification of the Service Area", within Facet Map V-8, involves only I&M and United REMC as electricity suppliers. United REMC clearly is already a Party in this Cause, and is adequately representing its interests without participation by Indiana Statewide. The other thirty-nine (39) members of Indiana Statewide have failed to articulate any interest in this phase of the proceeding. Indiana Statewide asserts that it is "directly affected by and vitally interested in" this proceeding, but doesn't substantiate that affectation and interest in its "Petition to Intervene." Further, Indiana Statewide claims that it has "spent substantial sums of money, energy and effort in resolving boundary disputes and other questions relating to assigned service areas relying upon I.C. 8-1-2.3-1 et seq." Not only has Indiana Statewide failed to list examples of cases in which it has participated to this degree (relative to I.C. 8-1-2.3-1 et seq.) but this Commission would take administrative notice of the fact that Indiana Statewide has not participated as either a Party or Party-Intervenor in any of the I.C. 8-1-2.3-1 et seq., proceedings. The boundary dispute resolutions and other questions, to which Indiana Statewide refers to in rhetorical paragraph 5 of its "Petition to Intervene" will in no way be affected by the modification proposal requested and submitted by I&M and General Motors Corporation. Indiana Statewide has failed to demonstrate standing to Intervene on behalf of thirty-nine (39) parties whose territorial interests will remain undisturbed however the Commission handles the I&M proposal.

General Motors Corporation's development of the acreage under consideration was not known on June 28, 1983, when I&M and United REMC submitted Facet Map V-8, which contained the proposed service territory boundaries between I&M and United REMC. The factors raised by I&M and General Motors Corporation in support of the recently proposed territory modification could not have been taken into account at the time United REMC and I&M agreed on the territorial boundaries. Absent a change in circumstance which would affect service reliability, the Commission would have no reason to modify any of the other service area assignments within Cause No. 36299-S-209(X). The factual issues pertinent to a resolution of the I&M proposal do not have general application to the service territories of other electric suppliers whose interests Indiana Statewide would represent by Indiana Statewide's participation in this proceeding. Thus, if Indiana Statewide is allowed Intervention, its sole interest would be that of United REMC's interest in this proceeding. Indiana Statewide's "Petition to Intervene" fails entirely to show that its Intervention would be anything more than duplicative representation of United REMC's interest. Indiana Administrative Code, 170 IAC 1-1-9(C), requires that the Intervening Petition show a "substantial interest" in the subject matter, and also that such Intervention not"unduly broaden the issues". None of the members of Indiana Statewide, excepting United REMC, which is a Party to this phase of the proceeding, will be affected by Commission resolution of the I&M proposal.

(b) Undue Broadening of the Issues. Given this lack of a "substantial interest" on the part of the majority of its members, and a duplication of representation on behalf of United REMC, the Intervention of Indiana Statewide cannot help but unduly broaden the scope of the proceeding, and delay a speedy resolution of the issues involved. General Motors Corporation in its "Petition to Intervene" specifically requested that this Commission render an expeditious decision in this Cause so that General Motors Corporation could begin construction of the proposed plant, while being assured of an adequate and reliable source of electricity. General Motors Corporation's Memorandum of September 18, 1984, argues that, to grant the Petition to Intervene

of Indiana Statewide would hamper the ability of this Commission to act expeditiously, and that Indiana Statewide's Petition to Intervene should thus, be denied.

Despite the assertion that Indiana Statewide's Intervention will not unduly broaden the issues before the Commission, the above rhetorical paragraphs of the Petition to Intervene indicate that the matters which Indiana Statewide wishes to address will in fact broaden the scope of this proceeding beyond the issues of the proceeding in this Cause. The discretion to allow or disallow status as a Party-Intervenor resides with the Commission. The prospect of the Commission allowing Intervention to a Party which neither has a substantial interest in the controversy nor can be reasonably expected to confine its participation to the issues which may be legitimately addressed in the proceeding, can be prejudicial not only to the efficient and fair administration of this Commission's duties but also can create a record for a reviewing court which is unnecessarily encumbered by repetitive objections, motions to strike, and voluminous irrelevant testimony. Other considerations compel rejection of the requested Intervention. Major public policy considerations support the prohibition of intervention when participation by the proposed Intervenor would unduly broaden the issues or the scope of the proceeding. First, the substantial cost to all participants of required proceedings may be unnecessarily increased. This situation is aggravated when, in the utility regulatory context, the utilities' expenses may be borne by the ratepayers, while the Commission incurs a significant and unnecessary waste of resources. Second, the framed issues of concern to the proceeding may be obscured by collateral matters. Resources will be allocated to matters not to be determined in this proceeding. As a result, proper analysis of basic issues can be more difficult for the Commission and reviewing Courts. Third, it is axiomatic that relief unnecessarily delayed is relief denied. The prospect of parties with collateral interest broadening the scope of the proceeding is unacceptable when evaluated in terms of unnecessary delay. In this proceeding, unnecessary delay is particularly egregious since each week of unnecessary delay can mean additional costs for the ratepaying public.
Indiana Statewide has failed in its “Petition to Intervene” to demonstrate a “substantial interest” in this Cause, such that Indiana Statewide should be elevated to Party-Intervenor status. In summary, this particular Cause involves only the matter of the proposed construction of an additional General Motors Corporation plant, which Joint Petitioners Indiana & Michigan Electric Company (“I & M”), and United REMC seek to serve. United REMC is already a Party of record, and has, during the entire pendency of this Cause, been represented by counsel. Thus, it would seem that United REMC's interest are already well represented, and Indiana Statewide Association of Rural Electric Cooperatives, Inc.'s status as a state service organization of 40 member rural electric distribution cooperatives would not elevate the Petitioning Party to a basis for Intervention. No other REMC's which belong to the Petitioning Party are involved in this Cause. Further, to allow such Intervention would result in an undue broadening by Indiana Statewide of the issues to be determined in this Cause. Based on thorough examination of the filings and the discretion vested in the Commission, this Commission now finds that said “Petition to Intervene” should be denied.

IT IS THEREFORE ORDERED BY THE PUBLIC SERVICE COMMISSION OF INDIANA that:

1. The Petition to Intervene of Indiana Statewide Association of Rural Electric Cooperatives be, and hereby is, denied.

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

MONTGOMERY, CORBAN, AND ZAGROVICH CONCUR; HARRIS CONCURS WITH OPINION;

BANTA ABSENT:

APPROVED: SEP 21 1984
I hereby certify that the above is a true and correct copy of the Order as approved.

<<Signature>>

SECRETARY

**HARRIS CONCURRING OPINION**

CAUSE NO. 36299-S209(X)

RE: Petition to Intervene of Indiana Statewide Association of Rural Electric Cooperatives, Inc. (Statewide)
Generally I agree with the majority Opinion in this Cause. However, I believe that the following language would have been sufficient: In its Petition to Intervene, Statewide has identified and described itself and made the following statement:

> The issue presented for decision deals generally with the "territorial laws," specifically I.C. 8-1-2.3-1 et seq. Statewide and its members are directly affected by and vitally interested in this issue. As electric suppliers in Indiana, they have spent substantial sums of money, energy and effort in resolving boundary disputes and other questions relating to assigned serviced areas relying upon I.C. 8-1-2.3-1 et seq. as reflecting the legislative intent and being the law which governs all questions as to who is entitled to render electric utility service within a legally assigned service area. It is vital to the REMCs that the question should be finally resolved that the proposed customer, General Motors, not be taken away from the REMCs and thus recognition given to I.C. 8-1-2.3-1 et seq.

Statewide has asserted that it and its members are directly affected by and vitally interested in this issue. But it has failed to provide a plain and concise statement of the facts showing its interest in the matter. The Petition states that the electric suppliers in Indiana, (presumably the members of Statewide) have spent substantial sums of money … There is no indication that Statewide, the Petitioner herein, has ever participated in a "mapping case" before or that Statewide as an organization has an interest. The Petition does state Petitioner's position with respect to this proceeding, that being that General Motors should "not be taken away from the REMCs", but presents no facts whatsoever to justify that position. (General Motors is in the United REMC service territory, not "the REMCs" service territory.) I believe that on this basis alone Indiana Statewide Association of Rural Electric Cooperatives, Inc. should be denied status as an intervenor in this Cause.

**End of Document**