

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.

FILED
September 24, 2019
**INDIANA UTILITY
REGULATORY COMMISSION**

CAUSE NO. 45235

**ALLIANCE COAL, LLC'S RESPONSE
TO INDIANA MICHIGAN POWER COMPANY'S MOTION TO STRIKE
CROSS-ANSWERING TESTIMONY**

Alliance Coal, LLC (Alliance), by counsel, responds to Indiana Michigan Power Company's (I&M) September 20, 2019 Motion to Strike Alliance's Cross-Answering Testimony (Motion). Because the stated grounds for I&M's Motion are baseless, Alliance respectfully requests that the Presiding Officers deny I&M's Motion. In further support, Alliance states:

1. Alliance Obeyed the Intervention Conditions by Filing Proper and Timely Cross-Answering Testimony

Despite the Commission's order granting Alliance's intervention, I&M effectively seeks to exclude Alliance from meaningful participation in this proceeding. Contrary to I&M's allegations, Alliance obeyed the terms of the Commission's order granting intervention; took the

case as it found it on the date intervention was granted; and properly filed timely cross-answering testimony taking exception to the recommendations of OUCC witness Armstrong. Alliance's testimony squarely addresses the issues and recommendations of witness Armstrong and is not, as I&M suggests, direct testimony. Nothing in the Order granting Alliance's intervention petition barred Alliance from filing cross-answering testimony, and accordingly, there was no requirement that Alliance seek special permission to file the testimony.

I&M's Motion mischaracterizes a statement in Alliance's Reply in Support of its Appeal to the Full Commission (Reply) by suggesting that Alliance conceded that it could not file *any testimony* if its intervention was granted.¹ Of course, Alliance said no such thing. On the date Alliance filed its Reply (September 4, 2019), the deadline for Alliance to file direct testimony had passed (August 20, 2019). Alliance's statement was an acknowledgment that the date for filing direct testimony had passed: "Even if the Commission grants Alliance's intervention at this late date, Alliance *will have been denied* the opportunity to file testimony in the proceeding under the existing procedural schedule absent permission."² Alliance's Reply went on to make clear that "Alliance continues to request intervention so that it can participate *in the remainder of the proceeding*" which included, among other things, Alliance's option to file cross-answering testimony. As such, Alliance's Reply neither explicitly nor implicitly waived Alliance's right to file timely cross-answering testimony.

I&M baselessly claims that Alliance's cross-answering testimony is actually direct testimony and I&M mangles the IURC's procedural rules by claiming that only the OUCC and Intervenors of record as of the June 26, 2019 Pre-Hearing Conference Order were entitled to file

¹ Motion at 2, emphasis added.

² *Id.*, emphasis added.

cross-answering testimony.³ Indiana courts make clear that “[a]n intervenor is treated as if it was an original party and has equal standing with the parties.” *Mercantile Nat’l Bank v. Teamsters Union Local #142 Pension Fund*, 668 N.E.2d 1269, 1996 Ind. App. LEXIS 974. As is discussed in fuller detail below, Alliance’s testimony is proper cross-answering testimony – not direct testimony. Because intervenors take IURC proceedings as they find them, intervenors are entitled to participate fully in a proceeding as of the date intervention is granted. Thus, Alliance is entitled to fully participate in any and all of the opportunities to be heard that exist after the Commission granted its intervention on September 11, 2019, including the filing of cross-answering testimony.

2. The Cross-Answering Testimony Properly Addresses Arguments Raised by OUCC Witness Armstrong

Alliance's cross-answering testimony is not direct testimony as I&M asserts. Rather, because it directly addresses and takes exception to the recommendations of OUCC witness Armstrong, Alliance’s testimony is proper cross-answering testimony. If it were direct testimony, it would directly refute I&M's witnesses. It does not. Alliance's cross-answering testimony makes not a single reference to the testimony of any I&M witness. The testimony is limited to addressing the recommendations of the OUCC and the testimony of OUCC witness Armstrong. Contrary to I&M’s assertions that Alliance witness Mr. Norfleet makes “passing references” to testimony offered by the OUCC, Mr. Norfleet makes approximately one dozen references to witness Armstrong and/or the OUCC’s positions. As I&M admits, “[c]ross-answering testimony affords the OUCC and other intervenors an opportunity to contradict, refute or otherwise disprove the arguments raised by other non-petitioning parties,”⁴ which is precisely

³ Motion at 2.

⁴ Motion at 4.

what Alliance's cross-answering testimony does. As such, all of I&M's arguments fail because they are based on the faulty premise that Alliance filed direct testimony.

3. I&M Fails to Demonstrate that Alliance's Cross-Answering Testimony Burdens the Proceeding or Prejudices I&M

I&M makes the nonsensical claim that Alliance's cross-answering testimony "has unduly burdened this proceeding with the *potential* for additional discovery, cross-examination and additional matters to be addressed in the course of the post-hearing briefing process."⁵ How can a proceeding be *unduly burdened* by the *potential* of discovery, cross-examination or post-hearing issues? I&M has not even attempted to demonstrate how Alliance has unduly burdened the proceeding – because Alliance has not. Alliance has not introduced voluminous testimony raising new or expanding existing issues. Instead, it has properly confined its cross-answering testimony to a single issue raised by the OUCC. Like any other intervenor, Alliance is unquestionably entitled to offer cross-answering testimony, and Alliance's cross-answering testimony appropriately identifies concerns that the OUCC's position is not based on sufficient information and fails to recommend the appropriate outcome. I&M may address Alliance's recommendations through cross-examination and post-hearing submissions. As such, I&M has not been prejudiced by Alliance's cross-answering testimony.

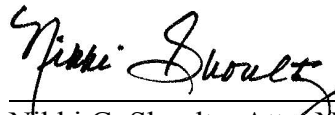
I&M erroneously contends that Alliance's recommendation raises matters outside the scope of this general rate case. Notably, I&M did not move to strike OUCC witness Armstrong's testimony on the same subject. Alliance's recommendation is well within the scope of the proceeding since I&M has asked the Commission for permission to include in rates the costs associated with dry sorbent injection (DSI) and since the Commission has the latitude to order

⁵ Motion at 5.

that which is necessary to effectuate the regulatory scheme. *South E. Ind. Natural Gas Co. v. Ingram*, 617 N.E.2d 943, 1993 Ind. App. LEXIS 846. The Commission certainly has discretion in this proceeding to disallow I&M's enhanced DSI costs from rate base and to encourage I&M to explore whether better alternatives are available that would allow the Rockport unit to meet the environmental requirements, continue operating past its planned retirement date and burn potentially lower-cost coal that will ultimately result in lower cost of energy for ratepayers. Likewise, Alliance is well within its rights to make such a recommendation for the Commission's consideration. Ultimately, Alliance's recommendation is proper cross-answering testimony appropriate for admission into evidence and worthy of the weight deemed suitable by the Commission.

WHEREFORE, Alliance Coal, LLC respectfully requests that the Commission deny I&M's Motion to Strike Alliance's Cross-Answering Testimony.

Respectfully submitted,



Nikki G. Shoultz, Atty. No. 16509-41
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000 (office)
nshoultz@boselaw.com

Attorney for Alliance Coal, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by hand delivery, electronic transmission or U.S. Mail, first class postage prepaid this 24th day of September, 2019, upon:

Teresa Morton Nyhart
Jeffrey M. Peabody
Barnes & Thornburg LLP
11 S. Meridian St.
Indianapolis, IN 46204
tnyhart@btlaw.com
jpeabody@btlaw.com

Matthew S. McKenzie
AMERICAN ELECTRIC POWER
SERVICE CORP.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
msmckenzie@aep.com

Randall C. Helmen
Lorraine Hitz-Bradley
Tiffany Murray
Office of the Utility Consumer Counselor
PNC Center
115 W. Washington St., Suite 1500 S
Indianapolis, IN 46204
rhelmen@oucc.in.gov
lhitzbradley@oucc.in.gov
timurray@oucc.in.gov
infomgt@oucc.in.gov

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

Kevin Higgins
ENERGY STRATEGIES, LLC
Parkside Towers, 215 S. State St., Ste. 200
Salt Lake City, Utah 84111
khiggins@energystrat.com

Jennifer A. Washburn
Margo Tucker
Citizens Action Coalition
603 East Washington Street, Suite 502
Indianapolis, Indiana 46204
jwashburn@citact.org
mtucker@citact.org

Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com

Bette J. Dodd
Joseph P. Rompala
Lewis & Kappes, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282
bdodd@lewis-kappes.com
jrompala@lewis-kappes.com

Robert K. Johnson
2454 Waldon Drive
Greenwood, IN 46143
rjohnson@utilitylaw.us

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

Anne E. Becker
Lewis & Kappes, P.C.
One American Square, Ste. 2500
Indianapolis, IN 46282
ABecker@Lewis-Kappes.com

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

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

W. Erik Weber
Mefford Weber and Blythe
130 East Seventh Street
Auburn, IN 46706-1839
erik@lawmwb.com

Mark W. Cooper
1449 N. College Avenue
Indianapolis, IN 46202
attymcooper@indy.rr.com

Jeffery Earl
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
jearl@boselaw.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

Kristina Kern Wheeler
J. Christopher Janak
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
kwheeler@boselaw.com
jjanak@boselaw.com

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


Nikki G. Shoultz, Atty. No. 16509-41