

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
INDIANA MICHIGAN POWER COMPANY)
FOR A COMMISSION DETERMINATION)
THAT DESIGNATED INFORMATION)
RELATED TO AN INTERRUPTIBLE)
SERVICE CONTRACT BE DESIGNATED)
CONFIDENTIAL INFORMATION EXEMPT)
FROM DISCLOSURE UNDER 170 IAC 1-1.1-)
4, IND. CODE, § 5-14-3, AND IND. CODE § 8-)
1-2-29 AND FOR APPROVAL OF THE)
CONTRACT FOR INTERRUPTIBLE)
POWER UNDER TARIFF C.S.-IRP2 WITH)
HARTFORD CITY PAPER LLC AND FOR A)
COMMISSION DETERMINATION)
REGARDING TARIFF C.S.-IRP2 FILINGS)
PURSUANT TO 170 IAC 1-6-1 ET SEQ.)

CAUSE NO. 43878

ORDER ON LESS THAN ALL OF THE ISSUES

APPROVED: JUL 14 2010

BY THE COMMISSION:

Aaron A. Schmoll, Administrative Law Judge

On April 6, 2010, Indiana Michigan Power Company (“I&M” or “Petitioner”) filed a *Verified Petition for Protection and Nondisclosure of Confidential Information* (“Petition”) in this Cause. In its Petition, the Petitioner indicates that certain information included in and related to contracts under its Tariff CS-IRP2 contains confidential, proprietary and competitively sensitive information (“Confidential Information”) and constitutes trade secrets pursuant to Indiana Code §§ 8-1-2-29 and 5-14-3-4 and should be exempt from public disclosure. With its Petition, Petitioner filed the affidavits of William W. Hix and Scott LeBeau (“Affidavits”) which discuss the confidential nature of the information. On April 15, 2010, the Presiding Officer issued a Docket Entry which indicated that the Confidential Information would be held as confidential by the Commission on a preliminary basis. The Confidential Information was submitted electronically via the Commission’s Electronic Filing System on April 15, 2010. An Attorneys’ Conference was convened on April 28, 2010 to establish a procedural schedule, which was memorialized in a Docket Entry dated May 10, 2010. On May 12, 2010, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the testimony of Eric M. Hand, Utility Analyst. On May 24, 2010, I&M filed the rebuttal testimony of Marc E. Lewis and William W. Hix.

On June 4, 2010, Petitioner filed an *Unopposed Motion to Continue Evidentiary Hearing*, which motion was granted by Docket Entry dated June 7, 2010. On June 11, 2010, Petitioner filed a *Motion to Amend Petition and Caption*, in which Petitioner sought to amend its Petition to include a request for approval of a contract for Interruptible Power (“Contract”) between I&M and Hartford City Paper LLC (“Hartford”) entered into pursuant to Tariff CS-IRP2 and for a Commission determination regarding a dispute about the submission of Tariff CS-IRP2 contracts

to the Commission pursuant to the 30-Day filing process.¹ By its Docket Entry dated June 15, 2010, the Commission granted I&M's *Motion to Amend*. On June 21, 2010, I&M filed the supplemental testimony of William W. Hix. The OUCC filed the supplemental testimony of Eric M. Hand on June 23, 2010.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, a public hearing was held on Tuesday, June 29, 2010 at 10:30 a.m. in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Petitioner and the OUCC participated in the hearing. No members of the general public appeared. At the hearing, the Petition and Affidavits, along with Petitioner's and OUCC's testimony and exhibits, were admitted into evidence. All parties waived cross-examination. At the hearing, the parties also requested that the Commission issue an order on less than all the issues, which order would address Petitioner's unopposed request for approval of the Contract and the confidential treatment of certain information contained therein. Based upon the evidence of record and the applicable law, the Commission now finds:

1. Commission Jurisdiction and Notice. Proper notice in this Cause was given as required by law. Petitioner is a "public utility" within the definition thereof in the Public Service Commission Act, as amended, and as such, is subject to the jurisdiction of the Commission, in the manner and to the extent provided by law. Therefore, the Commission has jurisdiction over the Petitioner and the subject matter of this Cause.

2. Petitioner's Organization and Business. I&M, a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"), is a corporation organized and existing under the laws of the State of Indiana with its principal offices located at One Summit Square, Fort Wayne, Indiana. I&M is engaged in, among other things, rendering electric service in the States of Indiana and Michigan. I&M provides retail electric service to approximately 455,000 customers in the State of Indiana. I&M owns, operates, manages and controls plant and equipment within the States of Indiana and Michigan that are in service and used and useful in the generation, transmission, distribution and furnishing of such service to the public.

3. Relief Requested. I&M and Hartford executed a contract for interruptible power ("Hartford Contract"), and I&M requests Commission approval of that contract, as well as a finding that the confidential information previously found confidential by the Presiding Officer will continue to be held as confidential by the Commission.

4. Evidence. I&M presented the supplemental testimony of Mr. William W. Hix. Mr. Hix testified concerning the background and support for approving the Hartford Contract.

¹ On April 5, 2010, I&M submitted the Hartford Contract to the Commission pursuant to the Commission's Thirty-Day Administrative Filing Procedures and Guidelines set forth at 170 IAC 1-6-1, *et seq.* The OUCC filed an objection to I&M's 30-Day Filing on May 5, 2010 stating the 30-Day Filing was controversial and should not be presented to the Commission. I&M filed its Reply to the OUCC's Objection on May 14, 2010. On May 25, 2010, the Commission's General Counsel sent a letter to I&M stating that due to the controversy I&M's 30-Day Filing will not be presented to the Commission for consideration under the 30-Day Filing process. The letter further stated that in order for the matter to be considered by the Commission, I&M may file a request for Commission review in a formally docketed proceeding, resulting in I&M filing the Motion to Amend Petition and Caption on June 11, 2010.

Mr. Hix described the contract as an arms-length contract and reviewed the fixed-cost analysis developed for the contract. He described I&M's Tariff CS-IRP2, which provides for contracts between I&M and its customers for customers having interruptible demands of 1,000 kVa or greater. Contracts under this tariff provide for mandatory or discretionary interruptions. In the Hartford Contract, Hartford opted for mandatory interruptible service, which provides for a discount from firm service rates. Mr. Hix stated that I&M performed a fixed cost analysis to demonstrate that despite the discounts offered, Hartford still will contribute to I&M's fixed production costs.

The OUCC presented the supplemental testimony of Eric M. Hand. Mr. Hand confirmed that the OUCC had no objections to Commission approval of the contract. Upon review of the fixed cost analysis, Mr. Hand stated that the contractual charges will exceed the incremental cost to I&M for its performance of the Hartford Contract.

5. Discussion and Findings. The record reflects that on March 15, 2010, I&M and Hartford executed a contract for interruptible power ("Hartford Contract") under Tariff CS-IRP2. Hix Affidavit at ¶ 3. The Hartford Contract includes Confidential Information relating to pricing, interruptibility, and terms negotiated at arms' length between I&M and Hartford. The Confidential Information also includes a fixed cost analysis. The Petitioner seeks approval of the Hartford Contract and a final determination that certain information contained in and related to the Hartford Contract is confidential, proprietary, competitively sensitive and trade secret pursuant to the provisions of 170 IAC 1-1.1-4, and Indiana Code § 5-14-3-4.

As explained in the supplemental testimony of Mr. Hix, the Hartford Contract is the result of arms length negotiations between I&M and Hartford. Mr. Hix further testified that the Hartford Contract complies with the provisions of Tariff CS-IRP2 and provides the customer an opportunity to earn a discount from the firm service rates otherwise available to the customer. Mr. Hix sponsored a fixed cost analysis that demonstrated that the charges under the Hartford Contract, including any discounts earned, will still provide a contribution to I&M's Fixed Production Costs. Mr. Hix therefore concluded that the Hartford Contract provides benefits to I&M and its customers and should be approved by the Commission.

In his supplemental testimony, OUCC Witness Hand stated that the contractual charges will exceed the incremental cost to I&M for its performance of the Hartford Contract and will provide a contribution to I&M's Fixed Production Costs. Mr. Hand stated that based on representations made by I&M, it is unlikely that the revenues associated with the discount will ever be collected from other customers. Mr. Hand agreed with I&M that the Commission should approve the Hartford Contract. Thus, the parties agree that the Hartford Contract should be approved.

Based on the evidence of record, the Commission finds that the Hartford Contract complies with I&M's Tariff CS-IRP2. We note that the Hartford Contract provides that it is not effective until the first day of the first billing month following Commission approval of the Hartford Contract. We also note that the parties have requested that the Commission issue an order on less than all the issues so that approval of the Hartford Contract will not be delayed by our consideration of the remaining issues in this proceeding. Accordingly, the Commission finds that the Hartford Contract shall be approved in its entirety without modification.

The Commission further notes the Confidential Information given preliminary confidential treatment in the Docket Entry dated April 15, 2010 shall continue to be held as confidential. As recognized by the Docket Entry dated April 15, 2010, the Affidavit of Scott LeBeau and the Affidavit and testimony of Mr. Hix explain the confidential nature of the Confidential Information in and associated with the Hartford Contract. As stated in the direct testimony of Mr. Hand, the OUCC does not object to I&M's request for confidential treatment of the identified Confidential Information in and associated with the Hartford Contract. We find that the evidence submitted in this Cause shows that the Confidential Information is entitled to confidential treatment and therefore exempt from the public access requirements of Ind. Code §§ 5-14-3 and 8-1-2-29.

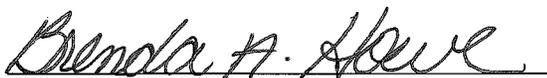
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The March 15, 2010 Hartford Contract for Interruptible Power between I&M and Hartford City Paper LLC is hereby approved.
2. Petitioner's request for confidential trade secret treatment shall be and is hereby granted, and such Confidential Information contained in and associated with the Hartford Contract shall be and hereby is excepted from public disclosure.
3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: JUL 14 2010

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



**Brenda A. Howe
Secretary to the Commission**