

ORIGINAL

[Handwritten signatures and initials]
APW

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA MICHIGAN POWER COMPANY)
FOR APPROVAL OF THE FIRST AMENDMENT TO THE)
CONTRACT FOR ELECTRIC SERVICE WITH STEEL)
DYNAMICS, INC., AND REQUEST UNDER 170 IAC 1-1.1-4)
FOR COMMISSION DETERMINATION THAT)
DESIGNATED CONFIDENTIAL INFORMATION BE)
EXEMPT FROM DISCLOSURE)

CAUSE NO. 44530

APPROVED DEC 30 2014

ORDER OF THE COMMISSION

Presiding Officers:
Angela Rapp Weber, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On September 9, 2014, Petitioner Indiana Michigan Power Company (“I&M” or “Petitioner”) filed its Verified Petition and Request for Expedited Consideration (“Petition”) seeking approval of the First Amendment to the Contract for Electric Service (“First Amendment”) between Steel Dynamics, Inc. (“SDI”) and I&M. I&M also requested a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

On September 9, 2011, I&M also prefiled the direct testimony and exhibits of David M. Roush, Director–Regulated Pricing and Analysis, in support of its Petition. In addition, the affidavits of Mr. Roush and Glenn A. Pushis, Vice President and General Manager of SDI’s Flat Roll Division, were submitted in support of I&M’s request for protection of confidential information.

On October 27, 2014, SDI filed its Petition to Intervene, which was subsequently granted at the hearing. On September 24, 2014, Petitioner and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Stipulation and Agreement in Lieu of Prehearing Conference establishing the procedural schedule. On November 7, 2014, the OUCC filed the testimony of Eric M. Hand, Utility Analyst in the Electric Division, in this Cause.

The Commission conducted a public hearing on December 4, 2014, at 10:00 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. I&M, SDI, and the OUCC participated in the hearing. The testimony and exhibits of the Petitioner and the OUCC were admitted into the record without objection. No members of the general public appeared.

Based upon the applicable law and evidence the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and proper notice of the public hearing in this Cause was given and published by the Commission as required by law. Petitioner is a public utility within the meaning of the term in Ind. Code § 8-1-2-1(a) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. Pursuant to Ind. Code §§ 8-1-2-24 and -25, the Commission must review and approve special contracts between a utility and its customers. Accordingly, the Commission has jurisdiction over I&M and the subject matter of this Cause.

2. **Petitioner's Characteristics.** I&M is a corporation organized and existing under the laws of the State of Indiana, with its principal offices at One Summit Square, Fort Wayne, Indiana. I&M is a wholly owned subsidiary of American Electric Power Company, Inc. Petitioner is engaged in rendering electric service and 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. In Indiana, I&M provides retail electric service to customers in 24 counties, including DeKalb County where SDI operates a manufacturing facility consisting of a steel mill and auxiliary facilities.

3. **Relief Requested.** Petitioner seeks Commission approval of the First Amendment to the contract for electric service between SDI and I&M. The First Amendment extends the terms and conditions of I&M's service to SDI for an additional period of one year. Petitioner also seeks determinations that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

4. **Background.** The Commission's Order dated October 5, 1994, in Cause No. 40010 ("40010 Order") approved a contract for electric service between I&M and SDI. Subsequently, the Commission issued Orders approving several amendments and modifications to the contract, the most recent on December 27, 2012, in Cause No. 44256 ("44256 Order"). I&M currently provides electric service to SDI pursuant to the terms of the contract approved in the 44256 Order.

5. **Petitioner's Evidence.** Mr. Roush explained that the First Amendment extends the contract terms and conditions for a one-year period under rates negotiated at arms-length by I&M and SDI. Mr. Roush testified that Petitioner and SDI request an effective date for the First Amendment of January 1, 2015, for consumption to be billed in early February 2015. Mr. Roush also testified that I&M is able to provide SDI's electric service requirements under the First Amendment without adversely affecting the provision of service to other retail customers. I&M will continue to have sufficient generating capacity to meet the electric service requirements of all of its customers. He indicated that approval of the First Amendment will benefit the parties to the agreement, as well as all of I&M's other customers, and is in the public interest for a number of reasons including, but not limited to encouraging and maintaining the economic development in the State of Indiana.

Mr. Roush explained the First Amendment will provide for rates and terms that produce revenues that will continue to cover the variable costs of serving the SDI facilities, while also

contributing to the recovery of I&M's fixed costs. Under these circumstances, I&M's other retail customers will benefit from the approval of the First Amendment through the contribution to fixed costs and cannot be adversely affected since the rates will exceed the total variable cost of serving SDI. I&M's customers will also benefit from the continued economic opportunity provided by SDI in northeast Indiana.

Mr. Roush sponsored confidential attachment DMR-3, which demonstrates that the revenues I&M will receive will continue to cover the full variable costs of serving SDI based upon I&M's current rates, plus provide a contribution to the recovery of I&M's fixed costs. Confidential attachment DMR-3 shows the costs related to the proposed First Amendment to the contract between I&M and SDI are justified on an incremental cost-of-service basis and reflect the total incremental costs incurred by I&M in serving SDI.

Mr. Roush stated I&M will continue to recognize investment recovered from SDI in any incremental investment rate adjustment mechanism during the term of the First Amendment. Per Mr. Roush, I&M, as directed in the 44256 Order, has been doing so and will continue to do so during the term of the First Amendment.

6. **OUC's Evidence.** Mr. Hand testified that he reviewed I&M's filing in this matter, including I&M's direct testimony, the current executed special contract between I&M and SDI and the proposed special contract including confidential information, and I&M's discovery response. Mr. Hand further testified I&M and SDI are currently operating under a special contract dated September 18, 2012 which the Commission approved in the 44256 Order. The current contract was an updated agreement that consolidated the parties' original special contract and five subsequent amendments.

Mr. Hand testified that the proposed contract is a one-year extension of the terms in the current contract. Mr. Hand stated that specific provisions such as frequency, duration, and notification of called interruptions remain the same. Mr. Hand noted that the special contract revenue will cover the variable costs of serving SDI and make a significant contribution to I&M's fixed costs, which benefits the public. Mr. Hand testified that the annual contribution to fixed production costs is significant and is approximately the same annual magnitude as estimated for the current special contract.

Mr. Hand testified that he does not oppose the special contract discount and has no concerns with the one-year extension of the existing special contract. Although the monetary discount is a large dollar amount, it is driven by SDI's status as a very large customer. He added that there is value to the utility to have a large customer with large interruptible capacity which has demonstrated the capability and willingness to comply promptly and takes its responsibility seriously. Mr. Hand testified the proposed special contract is in the best interests of the public.

7. **Discussion and Findings.** Ind. Code § 8-1-2-24 provides in pertinent part that:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers for the division or distribution of its surplus profits, or providing for a sliding scale of charges or

other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter.

Ind. Code § 8-1-2-25 provides as follows:

The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

Thus, customer-specific contracts, including tailored-rate contracts such as the First Amendment, are lawful if the Commission finds their provisions to be reasonable and just, practicable and advantageous to the parties, and not inconsistent with the purposes of the Public Service Commission Act.

The Commission has previously recognized that it is appropriate to offer special rates to attract new large volume customers to Indiana if the rates are properly designed. *E.g.*, 40010 Order, at 10 (citations omitted). We have repeatedly found that the contract between Petitioner and SDI is necessary, appropriately designed, and satisfies all of the requirements for approval of a special contract. 40010 Order, at 10 (citations omitted); *Indiana Michigan Power Company*, Cause No. 41345 (IURC 1/27/1999), Cause No. 42928 (IURC 12/14/05), Cause No. 43401 (IURC 03/26/2008), and Cause No. 44256 (IURC 12/27/2012).

The rates set forth in the First Amendment provide for the recovery of all variable costs to serve the SDI facility plus a contribution to the recovery of I&M's fixed costs. The First Amendment is the result of arms-length negotiations. Further, I&M's other retail customers will not be harmed by our approval of the First Amendment. Petitioner and its retail electric customers will benefit from the contribution to I&M's fixed costs brought about by the revenues from SDI. The State of Indiana as a whole, and northeast Indiana in particular, will continue to benefit from the jobs provided by SDI. We find that the First Amendment is fully cost-justified on an incremental cost-of-service basis and reflects the total incremental costs incurred by I&M in serving SDI.

The OUCC did not oppose the First Amendment contract discount and agreed that it appears reasonable. The OUCC recognized there is value to the utility to have a large customer with large interruptible capacity that has demonstrated that it has the capability and willingness to comply promptly and that it takes its responsibility seriously as experience has shown is the case with SDI.

The Commission notes that I&M, as directed in the 44256 Order, has been recognizing investment recovered from SDI in its incremental investment rate adjustment mechanisms. We

find that during the term of the First Amendment I&M shall continue to reflect appropriate credits for any incremental recovery from SDI in its incremental investment rate adjustment mechanism proceedings.

We find that the rates and charges and terms and conditions contemplated by the First Amendment are just and reasonable, the First Amendment is practicable and advantageous to the parties, and is consistent with the Public Service Commission Act. Thus, the First Amendment is approved.

8. Confidential Treatment. I&M sought a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3, which was granted by Docket Entry on October 14, 2014, on a preliminary basis. We find this information is trade secret information pursuant to Ind. Code § 24-2-3-2 and shall be protected from public disclosure pursuant to Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

1. The First Amendment is approved.
2. The material submitted to the Commission under seal constitutes trade secrets as defined in Ind. Code § 24-2-3-2 and shall continue to be exempt from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.
3. I&M shall provide in any incremental investment rate adjustment mechanism proceeding, filed or pending during the term of the First Amendment, evidence sufficient for the Commission to confirm that investment being recovered from SDI is not being recovered from other jurisdictional customers.
4. This Order shall be effective on and after the date of its approval.

STEPHAN, HUSTON, WEBER, AND ZIEGNER CONCUR; MAYS-MEDLEY ABSENT:

APPROVED: DEC 30 2014

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


Brenda A. Howe
Secretary to the Commission