



STATE OF INDIANA

BEFORE THE INDIANA UTILITY REGULATORY COMMISSION

IN RE: 30-DAY FILING, AS PROVIDED IN )
TARIFF C.S. - IRP2 (CONTRACT SERVICE )
INTERRUPTABLE POWER), SEEKING ) IURC 30-DAY
APPROVAL OF A CONTRACT FOR ) FILING NO. 2680
INTERRUPTABLE POWER BETWEEN )
HARTFORD CITY AND INDIANA MICHIGAN )
POWER COMPANY. )

I&M's REPLY TO OUCC'S OBJECTION TO I&M'S 30-DAY FILING

Indiana Michigan Power Company ("I&M" or "Company") hereby files the following reply to the Indiana Office of Utility Consumer Counselor's ("OUCC") Objection to I&M's 30-Day Filing. I&M clarifies that its 30-Day Filing does not seek relief prohibited by the Commission's Thirty-Day Administrative Filing Procedures and Guidelines set forth at 170 IAC 1-6-1 et seq. The OUCC's objection comes as a surprise to I&M given that interruptible contracts have been processed through the 30-Day Filing process for many years. It appears that the OUCC's objection may be premised on a mistaken understanding of I&M's filing and/or an erroneous interpretation of the Commission's rule. Furthermore, the OUCC's request that the Contract which is the subject of the filing not be processed as a 30-Day Filing is inconsistent with the prior Commission decision approving Tariff CS-IRP2. As a result, I&M does not believe the OUCC's objection complies with Section 7 of the Commission's rule. In support of this reply, I&M states as follows:

A. I&M's 30-Day Filing Is Made Pursuant to Tariff CS-IRP2. This matter concerns a 30-Day Filing submitted by I&M pursuant to its Tariff CS-IRP2 (Contract Service Interruptible Power). See I&M, IURC Tariff No. 15, First Revised Sheet No. 30. Tariff CS-IRP2 was issued

pursuant to the Commission's March 4, 2009 Order in Cause No. 43306.<sup>1</sup> This tariff authorizes I&M to offer eligible customers the opportunity to receive interruptible service pursuant to a contract that complies with the minimum requirements set forth in the tariff.

With regard to the 30-Day Filing process, Tariff CS-IRP2 provides as follows:

Upon receipt of a request from the Customer for interruptible service, the Company will provide the Customer with a written offer containing the rates and related terms and conditions of service under which such service will be provided by the Company. **If the parties reach an agreement based upon the offer provided to the Customer by the Company, such written contract will be filed with the Commission under the 30-day filing procedures.** The contract shall provide full disclosure of all rates, terms and conditions of service under this tariff, and any and all agreements related thereto, subject to the designation of the terms and conditions of the contract as confidential, as set forth herein. (Emphasis added).

As noted above, the 30-Day Filing procedures are set forth at 170 IAC 1-6-1 *et seq.* In addition to the above referenced language regarding the protection of confidential information, Tariff CS-IRP2 (Original Sheet No. 30.1) further provides as follows:

All terms and conditions of any written contract under this schedule shall be protected from disclosure as confidential, proprietary trade secrets pursuant to Indiana Code 5-14-3 if:

- a. either the Customer or the Company requests a Commission determination of confidentiality, and
- b. the Commission finds that the party requesting such protection has shown good cause, by affidavit, for protecting the terms and conditions of the contract.

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<sup>1</sup> In paragraph 3 of its objection, OUCC notes that Tariff CS-IRP2 was revised via 30-Day Filing No. 2640 which the Commission approved on January 20, 2010. Filing No. 2640 did not alter any tariff language relevant to the OUCC's objection. That filing revised language in the second sentence of paragraph 4 under the Conditions of Service set forth on First Revised Sheet No. 30.

With respect to the terms for interruptible service, Tariff CS-IRP2 is an improved version of its predecessor, Tariff CS-IRP, which was withdrawn following issuance of the Commission's March 4, 2009 Order in Cause No. 43306 (except for the existing load of customers receiving service). IURC Tariff No. 15, Original Sheet No. 27.<sup>2</sup> The provisions of Tariff CS-IRP2 were addressed in testimony and identified in the Settlement Agreement approved in Cause No. 43306. Although the tariff was presented for review in Cause No. 43306, the OUCC did not raise any objections to the provisions regarding the 30-Day Filing process or contract confidentiality. Consequently, the OUCC's belated objection to the tariff language is unreasonable.

Furthermore, the provision of interruptible service in accordance with negotiated contracts is not new. The availability of this option pre-dates the Commission's March 4, 2009 Order in Cause No. 43306. *See Re Indiana Michigan Power Co.*, Cause No. 40201 (IURC 8/23/1995) (approving Tariff CS-IRP). As explained in the 1995 order in Cause No. 40201 (at 2), contract interruptible service allows "eligible customers of I&M to customize their interruptible service to meet the particular needs of their business or manufacturing processes. In addition, I&M's other customers will receive the benefits that interruptible service provides, such as enhancing the availability of power at times of extreme usage or peaks and deferring the construction of additional generating capacity."

The filing of contracts for interruptible service via the 30-Day process also is not new. The now withdrawn Tariff CS-IRP provided for both the filing of contracts via the 30-Day process and the protection of confidential information. This process has been followed for many

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<sup>2</sup> For discussion of tariff improvements see Order in Cause No. 43306 at 39-40 and Settlement Agreement attached to said order at 15-16.

years without objection.<sup>3</sup> The Commission has also recognized that pricing and cost analysis associated with such contracts are confidential and exempt from public disclosure. Order in Cause No. 40201 at 2 (“because the Commission recognizes that filings under Tariff CS-IRP may contain sensitive, proprietary information, the Commission finds, as a preliminary matter, that such filings should be protected from disclosure in the manner set forth in the tariff, pending review of the requisite affidavit.”).

B. The Current 30-Day Filing. The 30-Day Filing to which the OUCC objects concerns a contract between I&M and Hartford City Paper LLC (the “Contract”). In accordance with the express language of Tariff CS-IRP2 and historical practice, on April 5, 2010 I&M filed a redacted version of the Contract using the 30-Day Filing procedures. I&M does not seek a determination regarding confidentiality pursuant to the 30-Day Filing procedures. On April 6, 2010, I&M filed a separate petition seeking protection from public disclosure of the confidential information associated with the Contract. This petition was docketed as Cause No. 43878. I&M also provided the OUCC with a confidential copy of the Contract and associated cost analysis pursuant to its standing confidentiality agreement.

C. The OUCC’s Objection. The OUCC’s objection to the 30-Day Filing does not concern the merits of whether the Contract complies with the requirements of Tariff CS-IRP2.

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<sup>3</sup> The filings under the original Tariff CS-IRP occurred prior to the adoption of the Commission’s promulgated 30-Day Filing Rule. Under the original tariff, I&M transmitted a redacted contract and/or contract amendments to the Commission Staff for processing via the 30-Day filing process. The redacted contract and amendments would be made available to the public. The transmittal to Staff would also include a copy of the confidential unredacted contract/amendments and cost analysis. The confidential information would be provided in a sealed envelope pursuant to the preliminary ruling granted in Cause No. 40201. Both the public version and the confidential information were provided to the OUCC at the time the 30-Day filing was made. Under the new tariff, Tariff CS-IRP2, I&M followed essentially the same process, with the exception that the confidential information was presented via a formal petition to the Commission and was not transmitted directly to the Commission’s Staff. Both the public and non-public information associated with the instant filing, as well as past filings, was provided to the OUCC.

Rather, the OUCC's objection is procedural in nature. The OUCC opposes I&M's use of the 30-Day Filing procedures to submit Tariff CS-IRP2 contracts to the Commission. The OUCC recognizes that Tariff CS-IRP2 expressly contemplates that such contracts will be submitted to the Commission using the 30-Day Filing procedures. Nevertheless, the OUCC argues that I&M's 30-Day Filing seeks confidential treatment for all or part of the filing and is therefore prohibited under 170 IAC 1-6-4. The OUCC concludes that I&M's 30-Day Filing is "controversial" and prohibited by 170 IAC 1-6-1(b). The OUCC requests a finding that its objection complies with 170 IAC 1-6-7 and further requests that this matter not be presented to the Commission for consideration and/or approval under the 30-Day Filing procedures.

D. I&M's Filing Complies with Its Commission-Approved Tariff CS-IRP2 and Does Not Seek A Commission Determination of Confidential Information in Violation of Section 4(8) of the Commission's 30-Day Filing Procedures. OUCC argues that the 30-Day Filing is prohibited by Section 4(8) of the 30-Day Filing procedures (170 IAC 1-6-4(8)). Section 4 enumerates types of requests not allowed under the 30-Day Filing procedures. Section 4(8) specifies that any filing for which the utility wants confidential treatment for all or part of the filing shall not be allowed under this rule.

Section 4(8) does not preclude the filing of redacted documents via the 30-Day Filing procedures as provided in Tariff CS-IRP2. Rather, Section 4(8) precludes use of the 30-Day Filing procedure to request a ruling from the Commission that information is confidential and exempt from public disclosure. I&M clarifies that it does not want a determination of confidentiality made via the 30-Day Filing procedures and is not attempting to use this process to obtain such a ruling. Instead, I&M filed the public version of the Contract via the 30-Day Filing procedures as provided in Tariff CS-IRP2. The request for protection of the confidential

information has been sought via a formal petition docketed as Cause No. 43878. Therefore, I&M's filing does not violate the Commission's rule.

I&M's filing is expressly authorized by Section 3(6)-(7) of the Commission's rule (170 IAC 1-6-3(6)-(7)). These provisions expressly recognize that the 30-Day Filing procedures may be used for filings where the Commission has already approved or accepted the use of the 30-Day Filing procedures for the change or otherwise ordered the filing to be made under this rule. As explained above, Tariff CS-IRP2 has been approved by the Commission and provides that the contracts entered into thereunder shall be submitted to the Commission using the 30-Day Filing procedures. This tariffed procedure has the force and effect of law until changed in accordance with the governing law.

Like a statute, the Commission's rules should be viewed *in pari materia*. See *Alabach v. Northern Indiana Pub. Serv. Co.*, 329 N.E.2d 645, 648 (Ind. Ct. App. 1975). The words in one section of the Commission's rule must be construed with due regard for all other sections of the rule. Furthermore, when the legislature enacts a particular piece of legislation, there is a strong presumption that the legislature is aware of existing statutes on the same subject. *Id.* at 649; also *Wagler v. West Boggs Sewer Dist., Inc.*, 898 N.E.2d 815, 818 (Ind. Sup. Ct. 2008). This principle also applies here. It logically follows that when the Commission approved Tariff CS-IRP2 and granted I&M authority to file contracts pursuant to the 30-Day Filing procedures, the Commission was aware of the requirements of its 30-Day Filing procedures. Therefore, the provisions of the Commission's rule should be interpreted so as to harmonize the provisions of Sections 3 and 4, as well as the language in the Commission-approved tariff. This is precisely what I&M's filing does. It reconciles the terms of the Commission-approved tariff with the plain

language of the Commission's 30-Day Filing procedures. The OUCC's argument does not. The OUCC's argument reads limitations into the plain language of Sections 3(6)-(7) and 4(8) that do not exist. Had the Commission wanted to prohibit the filing of redacted documents via the 30-Day filing procedures or restrict the broad reservation of authority set forth in Section 3(6)-(7) to only those matters not expressly listed in Section 4, the Commission knew how to do so. It did not. Therefore, the filing of the redacted Tariff CS-IRP2 Contract via the 30-Day Filing procedures does not violate Section 4(8).

While presented as an objection to the Contract, as noted above, the OUCC's objection does not concern the merits of the Contract or its compliance with the pricing and other requirements of Tariff CS-IRP2. Instead, the OUCC objects to the 30-Day Filing process itself. In particular, the OUCC seeks to restrain the authority the Commission reserved in Section 3(6)-(7) and to constrain Section 4(8) in a manner that would preclude the filing of redacted documents via the 30-Day Filing process. The process for objections was not intended to be used to urge the Commission to re-litigate matters which were resolved during the rule promulgation. Rather, the 30-Day Filing process is intended to provide an efficient system for administrative filings. Tariff CS-IRP2 authorizes I&M to negotiate with eligible customers in accordance with the terms set forth in the tariff. If the parties reach an agreement, the tariff provides that "such written contract will be filed with the Commission under the 30-Day Filing procedures." Use of the 30-Day Filing procedures for this purpose is administratively efficient and reasonable, particularly when the enhanced notice requirements reflected in the promulgated rule are considered. Again, the OUCC has a copy of the confidential information associated with the Contract in question. Because the OUCC's objection does not concern the Contract which is

the subject of the filing, the OUCC's objection does not comply with Section 7 of the Commission's rule.

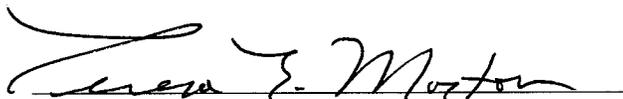
E. The OUCC's Request that the Contract be Removed from the 30-Day Filing Process Is Contrary to Section 4(7). By its objection, the OUCC requests the Commission to remove the Contract from the 30-Day Filing process. The OUCC's request is inconsistent with the Commission order dealing with the subject matter of the request. As noted above, Tariff CS-IRP2 expressly provides for the filing of interruptible contracts via the 30-Day Filing procedures. This tariff was reviewed and approved as part of Cause No. 43306. Section 4(7) of the Commission's rule prohibits "any request that is inconsistent with a commission order dealing with the subject matter of the request." Because the OUCC's request is inconsistent with the Commission's prior order, it is prohibited by the Commission's rule. Therefore, the OUCC's objection fails to comply with Section 7.

F. Lost in the Procedural Argument Being Made by the OUCC is the Impact on the Customer to the Contract. There is simply no reason to punish a customer seeking service under the Contract filed pursuant to a Commission-approved tariff. I&M even highlighted the tariff provision and explained its position to the OUCC prior to submitting its request in an effort to discuss any problems before making the filing with the Commission. There is no reason to delay approval of the Contract any further, but at a minimum, the Contract should be approved and the procedural issues dealt with separately.

G. Conclusion. I&M's filing does not seek relief prohibited by Section 4(8). The OUCC's objection does not concern the Contract which is the subject of I&M's 30-Day Filing. Therefore, the OUCC's objection does not comply with Section 7 of the Commission's rule.

Accordingly, I&M's filing is not controversial and should not be removed from the 30-Day Filing process.

Respectfully submitted,



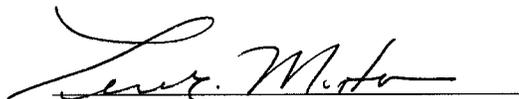
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#### CERTIFICATE OF SERVICE

The undersigned certifies that on May 14, 2010 a copy of the foregoing was served by email transmission upon the following:

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