THE INDIANA ENERGY ASSOCIATIONS AUGUST 18, 2022 COMMENTS

REGARDING IURC'S STRAWMAN MSFR RULE

The Indiana Energy Association ("IEA")[1] appreciates the opportunity to review and comment on the strawman minimum standard filing requirement ("MSFR") rule circulated by the Indiana Utility Regulatory Commission ("Commission") on June 9, 2022. The IEA appreciates the Commission's incorporation of several of its comments. The Commission did not incorporate certain of the IEA's comments into its revised redline. The IEA continues to believe some of those changes are important and beneficial to the final rule. IEA is submitting these additional comments to more fully articulate the benefits of the additional changes it is recommending. IEA stands ready to engage in further dialogue should the Commission Staff have any questions about the changes.

Section 5: Case-in-Chief

Subsection 5(a) of the proposed MSFR rule outlines requirements for inclusion of a utility's case-in-chief in any rate case. Subsections (7) and (8) require the following items:

> (7) A schedule by subaccount that compares the utility's actual revenues to the revenues approved in each phase of the utility's previous rate case.
>
> (8) For a forward-looking test period or hybrid test period, a schedule in the same level of detail as the unadjusted income statement in subsection 3(A)(ii) that compares the utility's actual O&M costs to the approved O&M costs in each phase of the utility's previous rate case.

The IEA recommends deleting these subsections. Subsection (7) information is of limited value. Revenues assumed in a previous rate case will often have little relevance to revenues today, particularly for utilities that have not been through a rate case for many years. In some cases, the data may not have been prepared or comparing the revenues over time may be virtually impossible because of changes that render these comparisons meaningless. For example, the number of customers in a particular rate class may have changed substantially, rendering a comparison of the revenues from many years in the past meaningless when evaluating proposed revenues. Obligating this level of detail for every source of revenue will provide little value but will create significant amounts of work. The same concerns exist with respect to O&M costs. Comparing tax expenses from 2009 to 2022 is of no relevance because the federal tax rate has changed. This schedule will require significant effort to prepare yet the comparison will be invalid for many O&M items because changes will be driven by factors outside of management's control.

[1] IEA members include Duke Energy Indiana, LLC ("Duke Energy Indiana"), Indiana Gas Company, Inc. d/b/a CenterPoint Energy Indiana North ("CEI North"), Indiana Michigan Power Company ("I&M"), Indianapolis Power & Light Company d/b/a AES Indiana ("AES Indiana" or "AESI"), Northern Indiana Public Service Company, LLC ("NIPSCO") and Southern Indiana Gas & Electric Company d/b/a CenterPoint Energy Indiana South. Citizens Energy Group is also a member and has filed its own comments to support issues unique to Citizens. Citizens also supports these comments and the other IEA members support Citizens' comments.

Subsection 5(c) sensibly seeks to avoid the need to submit duplicate workpapers for workpapers that may be responsive to multiple sections of the MSFRs. IEA suggests a small change to change the requirement from a "shall" (as in a utility shall only provide workpapers once) to a "should." This minor change is intended to avoid a claim that a utility has not complied with the MSFR because it inadvertently included the same workpaper twice.

Section 8: Required Information

Section 8 sets forth certain required information a utility shall submit and includes a workpaper for each adjustment in subsection 8(2). The rule lays out specific requirements for these adjustments. Some aspects of the requirements are incompatible with a forward test year and must be changed to avoid confusion and misinterpretation of the rules. Specifically, the following provisions need to be revised as shown below:

> (2) The first work paper for each adjustment shall include, but not be limited to, the following:
>
> (A) ~~Historical~~ test period ~~or base period~~ revenues or expenses.
>
> (B) Adjustments to ~~historical~~ test period ~~or base period~~ revenues or expenses.
>
> (C) A summary that generally describes each adjustment developed from the ~~historical~~ test period ~~or base period~~, including, but not limited to, changes in price and in activity levels, separately detailed by elements of cost. All assumptions of changes in price inputs because of inflation or other factors or changes in activity levels due to modified work practices or other reasons should be separately developed.

The proposed rule effectively requires a utility to prepare two complete rate cases if it utilizes a future test year: one based on its future test year and a second based on the base period. In some cases, there may be no way to explain an adjustment to the base period that resulted in the results of the test year because a forecast, rather than an adjustment from a historical period, is the basis for the proposed rates. IEA would be willing to sit down and discuss this issue with the Commission Staff to better understand what the Staff believes this information will provide. As written, however, a utility may be unable to comply, particularly with subparts B and C.

Section 12.2: Rate Base Cutoff Update

Subsection 12.2(c) outlines requirements for the rate base cutoff for a forward-looking test period. Subsection 12.2(c)(1) provides that:

> (1) An electing utility's cutoff for projects for phase (1) shall be projects certified placed in service and used and useful sixty (60) days before the evidentiary hearing.

The IEA comments recommended establishing the cut-off as the last day of the linking period, rather than a period that is 60 days before the evidentiary hearing, such that the section would read:

(1) An electing utility's cutoff for projects for phase (1) shall be projects certified placed in service and used and useful by the last day of the linking period.

The linking period is defined as "the period of time between the last date of the base period to the first date of a forward-looking test period". *See* proposed subsection 1(t). The effect of changing the cutoff from 60 days before the evidentiary hearing to the day immediately before a forward-looking test period is necessary to effectuate Ind. Code § 8-1-2-42.7. The Statute specifically authorizes a forward test year that is up to 24 months after the date the utility petition the Commission for a change in basic rates and charges but forecloses implementation of rates utilizing a forward test year until the beginning of the future period. *Compare* I.C. 8-1-2-42.7 (d)(1) and (e)(1). The language in the Commission's strawman significantly eliminates a utility's ability to utilize a forward test year by arbitrarily eliminating rate base additions that occur between the date of a potential hearing and the first date of the test year. This provision of the rule must be revised to bring the rule into compliance with the intent of the statute.

The strawman language in subsections 12.2(d) and (e) similarly fail to adhere to the intention of I.C. 8-1-2-42.7's future test year provisions. Subsection 12.2(d) provides for updates of the utility's capital structure. The IEA proposed the following additions (shown in underline) to recognize that capital structures may change when a future test year is implemented:

(d) <u>For a historical or hybrid test period, a</u>n electing utility's capital structure <u>and cost of debt</u> may be updated based on the latest information available within fifteen (15) business days of the evidentiary hearing as part of the electing utility's rebuttal filing. <u>For a forward-looking test period, an electing utility's capital structure and cost of debt may be updated based on forecasted capital structure and cost of capital, trued up to reflect actual cost of debt and capital structure as of the date(s) of the rate base cutoff date(s)</u>.

The capital structure should also be updated to reflect changes in the cost of debt. The cost of debt is easily verifiable and rates should reflect the latest debt cost experienced by the utility. The IEA is not proposing to update its return on equity. The IEA proposed to add clarifying language to this effect that was rejected by the Commission. This explanation may provide the Commission greater clarity around the rationale for these comments.

Similarly, language is necessary to reflect the impact of future test years. From the time of filing a case until the deadline for an update, projects on capital structure and anticipated debt structure may change. To achieve rates that best match forecasts, an update process for the future should not be tied simply to current conditions but reasonably forecasted results.

IEA has suggested some practical suggestions to subsection 12.2(e) to help implement the provisions necessary to recognize a future test year:

(e) An electing utility:
(1) shall file a certified schedule of utility plant in service by subaccount reflecting the beginning balance, adjustments, and ending balance ~~ten (10) business days~~ prior to or contemporaneous with the electing utility's request for approval of its commission approved phased rates.
(A) The OUCC and any other party will have sixty (60) days from the date of certification to state any objections.
(B) If objections cannot be resolved informally, a hearing will be held to determine the utility's actual net plant in service.
(C)~~, and~~ Rates will be trued up to the date that the utility~~'s~~ filed its certification of utility plant in service .~~rates became effective~~

IEA suggests requiring the schedule of utility plant in service to be "certified" to provide greater rigor around the submission. The IEA also does not understand the rationale in requiring the updated utility plant in service 10 days before submitting its phased rates. It may not always be possible to submit this 10 days before the rates are submitted for approval because in some instances the rates are filed less than 10 days after an order is received. This rule could delay the effectiveness of rates due to the need to file the updated schedule 10 days in advance.

IEA recommends removing the word retroactive in subsection (C). This term has a specific meaning in Indiana ratemaking jurisprudence. Courts have repeatedly held that the Commission cannot retroactively set rates. Use of the term retroactive in this subsection could be construed as the Commission attempting, through rules, to circumvent the prohibition on retroactive ratemaking. IEA recognize that in the context of the rule that is not what the Commission is intending, but an appellate court may not understand the context. IEA believes elimination of the phrase from this rule results in the same meaning without causing potential difficulties in an appellate challenge.

Section 12.3: Accounting Rate Schedules, Work Papers and Data for Investor-Owned Utilities

Section 12.3 prescribes accounting rate schedules investor-owned utilities must include with their filing. IEA recommended two additions to these workpapers that were not incorporated by the Commission staff. IEA continues to believe these changes provide important clarifications to the schedules.

Subsection 12.3(4) requires a schedule of pro forma utility additions subsequent to the historical testing period or base period, ending with the proposed major plant cutoff. IEA suggested adding language to clarify this schedule may not be necessary. Specifically, the IEA suggested the following clarification that was not accepted:

(4) For historical test periods or hybrid test periods, a schedule of pro forma utility additions subsequent to the historical test period or base period, if applicable, ending with the proposed major plant cutoff date, including the following:

The IEA's concern is that parties will argue failure to provide this schedule, even when the schedule is not applicable, will lead to other parties contending that the petitioning utility has not complied with the MSFRs as a tactic to delay a rate proceeding.

Similarly, subsection 12.3(7) requires a schedule showing the fair value of the utility's proposed rate base. This may not be required in instances when a utility contends that its original cost basis satisfies the fair value requirement. Absent clarification, a petitioning utility may be compelled to unnecessarily develop a fair value assessment to avoid a claim it has not complied with the MSFRs even in instances when it is asserting the original cost of its facilities is consistent with a fair value determination. This requirement will not help customers because calculating the fair value basis under accepted methodologies will always result in a higher rate base. IEA urges the Commission to avoid this unnecessary duplication using the following language:

(7) A schedule showing the fair value of the utility's proposed rate base, unless the utility believes that the original cost of its proposed rate base is consistent with its fair value.