

To: Beth E. Heline, General Counsel, Indiana Utility Regulatory Commission

From: Barnes & Thornburg, LLP on behalf of Indiana-American Water Company, Inc.

Date: April 17, 2025

RE: Comments on amended Minimum Standard Filing Requirements (“MSFR”) rule, 170 IAC 1-5

The following comments are provided to the Indiana Utility Regulatory Commission (the “Commission”) in response to the request for feedback from the General Counsel’s office on draft language to amend MSFR rule 170 IAC 1-5.

I. Cutoff guidelines for general rate base and major projects

The amended proposed rules for general rate base and major projects cutoff dates appear to differ from prior draft versions and current MSFR rules by limiting the presiding officer’s ability to set project cutoff dates for hybrid and forward-looking test periods. Amended rule 170 IAC 1-5-12.2(c)(1) states phase 1 projects that are certified placed in service, used and useful, shall be updated no later than sixty (60) days before the evidentiary hearing. Amended rule 1-5-12.2(c)(2) states any remaining projects shall be updated at the end of the test period, if certain tests are met. The proposed MSFR rules seem to allow only two update periods: the first period based on project updates sixty days before the evidentiary hearing, with rates effective after the Commission order; the second period based on a forward-looking test period, allowing for project updates at the end of the test period, with rates effective following a compliance filing. If the Utility’s understanding of the amended rules is correct, the Commission is limited from gradually phasing in rate increases using more than two phases and intermediate steps between the initial update period and the end of the test period. This change runs counter to the current Commission practice established in recent orders¹ which allows the use of more than two adjustment periods to smooth out rate impacts to customers. The Utility has the following concerns if forward-looking test periods are limited to two update periods:

- 1) Customer rate impact – depending on the test period elected in 4(a)(2) of the proposed rules, customers may experience two rate increases spanning nearly two years apart. A prudent alternative to this outcome would allow for an intermediate step to spread smaller rate adjustments gradually over the same period. Gradual implementation of multiple rate adjustments before the end of the forward-looking test period will allow customers time to more easily acclimate to smaller rate changes compared to the amended rule, which imposes two larger rate increase spread farther apart.
- 2) Rate affordability – allowing only two rate base updates, limited to sixty days before the evidentiary hearing and the end of the test period, can result in a nearly two-and-a-half-year gap between major project updates, depending on the period elected in 4(a)(2) of the proposed rules. If major projects are placed into service during this period gap, the utility will be unable

¹ See *Indiana-American Water Company, Inc.*, Cause No. 45870 (IURC 2/14/2024), at p. 93; *City of Evansville*, Cause No. 45545 (IURC 3/2/2022), at pp. 31-32.

to recover full project costs unless the utility requests and is granted authorization to defer costs for later recovery. Deferral costs, if approved by the Commission, will ultimately result in higher rates for customers compared to using an intermediate step mechanism to capture major projects that are certified placed in service, used and useful, between the time of the initial update and the end of the test period. The use of additional steps to recover intermediate project costs appears to be prohibited in the amended proposed rules. Foreclosing this option appears to be inconsistent with the State policy expressed in Ind. Code 8-1-2-0.5 “to use all practicable means and measures, including financial and technical assistance, in a manner calculated to create and maintain conditions under which utilities plan for and invest in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Indiana citizens.” A sensible option to the proposed rules, weighing the best interest of customers, will allow intermediate update periods to mitigate the impact of authorized rates.

- 3) Opportunity to earn an authorized return – allowing a utility to update rate base and implement rates at the beginning of the forward-looking period will optimize a utility’s ability to earn its authorized return by properly linking the effective date of rates to beginning period rate base and the expenses incurred throughout the test period. If a utility is operating in an inflationary environment and is limited to adjusting rates after the test period, operating expenses will likely increase beyond authorized amounts by the time new rates are fully implemented. The proposed MSFR rules are a step backward from the current rules and Commission practice, which allow a utility the opportunity to earn its authorized return by updating rates at the beginning of a forward-looking test period.

II. Confidential or privileged information

The proposed MSFR rule removes the current confidential and privileged information rule 170 IAC 1-5-3. It appears confidential and privileged information will exclusively be covered by 170 IAC 1-1.1-4. The Utility appreciates the effort to consolidate duplicative rules, however, the Utility requests clear guidance to determine how the objection and appeal process described in 170 IAC 1-1.1-4 affects the statutory timeline of a rate proceeding. The current MSFR rules allow for a reasonable, collaborative effort between parties to reach a confidentiality agreement, and maintain confidentiality of documents before a final determination is made by the Commission. If the current MSFR rule IAC 1-5-3 is removed, it is necessary to confirm that any objections raised by other parties will not delay the effective date of a rate proceeding, should a utility be required to refile any documents. In an age of increased cybersecurity threats and bad actors scouring the internet for information to exploit, it is imperative for a utility to protect sensitive customer and company information from the public docket system. A utility cannot file confidential information until a preliminary determination is made by the Commission to protect the information from public access. If the Commission determines that some information should be refiled publicly this should not be a perceived deficiency, and the statutory timeline of a rate proceeding should not be delayed.

III. Comparative financial statements 170 IAC 1-5-5(3)(A) proposed rule

The proposed MSFR rules require two (2) preceding twelve (12) month periods of financial data

compared to one (1) twelve (12) month period in the existing rule. Proposed rule 170 IAC 1-5-5(3)(A)(ii) seems to include a new term, “unadjusted”, when referring to income statements. The Utility would like to confirm the periods and timeframe referred to in subsections (AA) and (BB) of the proposed rule to determine if the rule applies in the context of future test periods. If a forward-looking test period is elected in section 4(1)(2), the majority, if not the entirety, of the two (2) preceding twelve (12) month periods will land in future projected periods. It is unclear how the term “unadjusted,” if applicable, relates to future test periods. If the intent of the rule is to provide unadjusted historical income statement data, adopting the language in balance sheet rule 1-5-5(3)(A)(i) referring to the “historical test period” or “base period” as the ending point would alleviate the confusion.

IV. Comparative schedules for previous rate case. Proposed rule 170 IAC 1-5-5(7) and (8)

Proposed MSFR rules 170 IAC 1-5-5(7) and (8) require detailed revenue and expense reconciliations comparing historical financial data to approved amounts from the previous rate case. The question here becomes one of relevance. It is an inefficient use of time and resources to rehash prior rate case reconciliations within the context of a completely new rate proceeding containing unique issues. Disputed matters in prior rate cases have already been decided by the Commission, potentially many years in the past. Including previous rate case reconciliations in a new cause will potentially lead to unnecessary discovery about adjudicated or settled subjects that cannot be retroactively changed. Misusing time on the reconciliation of old data will distract the focus from the important topics in a new rate case. As time passes, the methods to forecast projected data should improve and the merits of those methods should be the focus in a new rate case. While forecasted data will inherently be imperfect, the primary consideration should be a utility’s rate of return following a rate case. Regulated water and wastewater utilities file annual financial reports with the Commission, and a utility’s return can be tracked on Schedule F-5 of the annual report. For these reasons, the Utility recommends removing 170 IAC 1-5-5(7) and (8) from the proposed MSFR rules.

V. Source documents for affiliated transactions and work papers.

Proposed rule 170 IAC 1-5-8(18)(D) requires calculations and source documents for affiliated transactions, including, but not limited to (i) parent company allocations and (ii) direct charges. The Utility is not opposed to this rule assuming “source documents” refers to accounting records that provide a basis for conducting an audit on a reasonable sample of transactions. The Utility is agreeable to the proposed rule insofar as the rule does not require the production of every allocated or direct charged affiliate invoice in its case-in-chief. It is more efficient to provide a reasonable sample of affiliate invoices during the discovery process, particularly if the invoice amounts are small and immaterial. Additional invoices can be requested in discovery if questions remain after a sample of invoices is taken.

The Utility has a similar question about the meaning of “source documents” in 170 IAC 1-5-5(6), which requires forward-looking and hybrid test period work papers to be supported by actual data and source documents for the base and linking periods. It is unclear how “source documents” referenced in 170 IAC 1-5-5(6)(B)(ii) differ from “supporting information or

documentation” referenced in 170 IAC 1-5-5(6)(B)(iii). The Utility interprets these terms as synonyms to be used interchangeably, but would like confirmation that source documents do not include every invoice in the base and linking periods, for the same concerns expressed about proposed rule 170 IAC 1-5-8(18)(D).

VI. Capital structure update periods

Proposed rule IAC 170 1-5-12.2(d) includes a new sentence “A utility shall update its capital structure based on the same date used for projects certified placed in service for its requested phased increase.” The preceding sentence in this rule states that capital structure may be updated based on the *latest information available* within fifteen (15) business days of the evidentiary hearing for phase 1. These statements appear to conflict with rule IAC 170 1-5-12.2(c)(1), which states an electing utility’s cutoff for projects for phase 1 shall be projects certified placed in service, used and useful, sixty (60) days before the evidentiary hearing. It is possible that a utility has more recent capital structure data available between the periods of “sixty (60) days before the evidentiary hearing” and “within fifteen (15) business days of the evidentiary hearing.” The Utility is agreeable to either period but recommends deleting the first sentence in IAC 170 1-5-12.2(d) and making the last word in the second sentence plural to read: IAC 170 1-5-12.2(d) A utility shall update its capital structure based on the same date used for projects certified placed in service for its requested phased increases