

Stan Pinegar, President and CEO

Ed Simcox, President Emeritus

Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co., Inc.

Duke Energy

Fountaintown Gas Co., Inc.

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Midwest Natural Gas Corp.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

South Eastern Indiana Natural Gas Co., Inc.

Sycamore Gas Co.

Vectren Energy Delivery of Indiana, Inc.

March 23, 2012

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RM#11-07: Integrated Resource Planning Rulemaking

Dear Beth:

The Indiana Energy Association<sup>1</sup> (“IEA”), on behalf of its public electric utility members, hereby submits comments on the strawman revisions to 170 IAC 4-7 (the “Strawman”). The Comments are organized into (1) the IEA’s policy discussion concerning the Strawman, (2) an explanation of the changes proposed to each section of the Strawman, and (3) a redline of the proposed revisions to the Strawman.

The IEA members participating in these comments appreciate the historically good working relationship between the Indiana Utility Regulatory Commission (“Commission”), the utilities and other stakeholders in the IRP processes and suggest the Commission revise the Strawman to promote this long

<sup>1</sup> The IEA members participating in these comments are Duke Energy Indiana, Inc.; Indiana Michigan Power Company; Indianapolis Power & Light Company; Northern Indiana Public Service Company and Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc.

standing relationship, particularly by continuing to place ultimate responsibility on utilities for the preparation of resource planning assessments for their own service territories.

The IEA and its members value and appreciate the opportunity to participate in the Strawman development. As the Commission moves forward with revised IRP rules, the IEA and its members suggest changes to harmonize any revised rules with historical practice and to make the rules more useful.

## **THE STRAWMAN PROPOSAL IN GENERAL**

### **Updates To The IRP Are Appropriate To Recognize Planning Developments**

The IEA acknowledges that aspects of the current IRP rules should be updated to reflect changes since the rules were first adopted in 1995. The Strawman recognizes advancements in electronic communications that permit IRPs to be submitted electronically. Section 2(c)(3).<sup>2</sup> The definitions in Section 1 have been amended to incorporate technologies, regulations and entities that did not exist when the IRP Rule was first promulgated, including “Regional Transmission Organizations” (“RTOs”), “Smart Grid Technologies” and broadening the term “Allowance.” Outdated terms, such as system lambda, have been omitted. These updates are appreciated.

The IEA believes at least one additional revision is warranted to better reflect modern planning realities. Section 6(d) of the Strawman should better reflect the role of utilities’

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<sup>2</sup> Throughout these Comments, a reference to Section X refers to the section in the Strawman. Thus, a reference to Section 2(c)(3) refers to 170 IAC 4-7-2(c)(3) in the Strawman.

respective RTOs. The goals of the Strawman are not reached most efficiently by requiring Indiana jurisdictional electric utilities to identify the list of principal criteria upon which the design of the transmission network is based, and then describe in detail the options considered. As FERC's recent Order 1000 makes clear, these functions are performed today on a regional basis, and all Indiana utilities covered by the Strawman are members of an RTO. The utility should not be required to provide a duplicitous and detailed retelling of information the utility has submitted to its RTO. Instead, the utility should be able to synthesize this information and provide a discussion of all of its transmission activities that are currently being considered by the utility's RTO. This approach alleviates concerns for duplicative submission while providing the Commission with sufficient and appropriate information to factor transmission activities into the need for new service requirements. The IEA has suggested changes to the Strawman to reflect this balance.

**A Formalized Acknowledgement Is Unnecessary  
And Creates Avoidable Concerns**

The IEA also has concerns about the formalized "acknowledgement" process found in Section 2 of the Strawman. That process provides for the Commission Staff to notify the utility and interested parties of its determination that the utility's IRP is either acknowledged or contains compliance deficiencies. The Commission Staff may ask a utility to revise and resubmit specified portions of the IRP and may issue instructions to correct deficiencies it identifies. Section 2(g). The IEA members certainly have an interest and role to play in assisting the Commission in its role in developing, publicizing, and keeping current an analysis of the long-range needs for expansion of facilities for the generation of electricity; however, the

acknowledgment could imply a Commission Staff approval or disapproval of a company's IRP. Given the IRP is a planning document that is often used as evidence in other docketed proceedings, this new "approval" process could be problematic for several reasons.

The Staff and the Indiana Office of Utility Consumer Counselor ("OUCC") have provided feedback on the content of the IRP. The utility can respond to such feedback with revisions or additions. Under this existing procedure, planning remains the province of the utility. In subsequent proceedings where the IRP may be used to support either supply side or demand side proposals, any issues as to its conclusions and the basis therefore can be vetted via formal testimony and hearing, with full due process considered in a setting where there are no ex parte concerns.

The Strawman's acknowledgement could lead to an unnecessarily contentious IRP process.<sup>3</sup> Acknowledging an IRP is a de facto Commission endorsement of the IRP's methodology (even though it is the Staff that makes the determination), particularly if the acknowledgement results from a methodology revision instigated at Staff's urging. This implicit assent, even with the Strawman's reservation of rights to later challenge the methodology, incentivizes a party to contest the IRP and advocate its viewpoints, whether environmental or cost related, particularly because of the ramifications of an approved methodology. The Strawman requires that "any resource action shall be consistent with the last acknowledged IRP."

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<sup>3</sup> New Mexico has a provision similar to the acknowledgement proposed in the Strawman under which the New Mexico Public Regulation Commission ("NMPRC") accepts the IRP. N.M. Code R. 17.7.3.12. The NMPRC recently issued an order acknowledging New Mexico IRPs often involve lengthy and expensive litigation. *In re Possible Changes To The Filing Requirements for Renewable Energy Portfolio Procurement Plans, Efficient Use of Energy Reports and Integrated Resource Plans*, Case No. 12-00057-UT, p. 2 (NMPRC 3/6/2012) available at <http://www.nmprc.state.nm.us/general-counsel/docs/12-00057-UT%20-%20Order%20Scheduling%20Workshop.pdf>.



Section 2(h). Only an acknowledged IRP can be used in a certificate of public convenience and necessity (“CPCN”) proceeding, which is where IRPs are most often at issue. An acknowledgement or a lack of acknowledgement has the potential to disadvantage any party to a CPCN proceeding, either the utility or an opposing party, because the acknowledgement could be viewed as approval or rejection of the methodology in the IRP before that proceeding has even taken place. Even though the Strawman professes to disclaim an acknowledgement being deemed an approval of the methodology, the process might lead to outcomes that do just that. Thus, as a practical matter, the review of large projects that has always taken place in noticed proceedings (with the opportunity to offer evidence, conduct cross examination and present legal arguments) and subject to ongoing jurisdiction, would be transferred to the IRP process.

The result is a more adversarial and lengthy process than the current approach, even during periods when the IRP is unlikely to be used to support investment. Given the existing ability to exchange comments and have the opportunity for review of the IRP, the IEA questions whether there is a need to add these new requirements to a process that already works well and does not have the potential negative consequences discussed herein. In the interest of avoiding unnecessary litigation and other threats to the proper review of utility proposals, the IEA respectfully suggests that the current process of no “official” acknowledgement of the IRP by the Commission be retained. Such continuation of current practice will avert the potential due process and/or ex parte concerns addressed elsewhere in these comments. If the Commission believes it is better public policy to have a formalized acknowledgement, the IEA suggests that such an acknowledgement be limited to a determination of whether the IRP provides the information required by the rule.

The acknowledgement also has the appearance of an improper delegation of authority to the Commission Staff that would be lacking in transparency. Issues critical to resource choice could be decided by the Commission Staff, with no apparent recourse to the full Commission if stakeholders disagree with the conclusions. The law does not preclude the Commission from the practical use of its Staff as long as the Commissioners do not abdicate their power and responsibility and preserves for them the right to make the final decision. *Citizens Action Coalition of Indiana, Inc. v. Northern Indiana Pub. Serv. Co.*, 555 N.E.2d 162, 164 (Ind.Ct.App. 1990) quoting *Madison Area Educational Special Services v. Indiana Education Emp. Rel. Bd.*, 483 N.E.2d 1083, 1087 (Ind.Ct.App. 1985). The Strawman has no provision for raising the matter of Staff endorsement of particular methodologies with the Commission.

If the acknowledgement truly has no impact on a “resource action,” no purpose appears to be served by the acknowledgement. IRPs are already under scrutiny when a utility proposes a capital project – it is duplicative and resource intensive to have the IRP undergo a similar review every two years as well.

Commission Staff stated at the workshop that the acknowledgement process would be concerned with methodologies rather than input data. IEA members are also concerned the Commission Staff could advocate a “one size fits all” IRP methodology, which may or may not be appropriate for the varied systems and service territories of Indiana’s utilities.

If the acknowledgement requirement remains, the IEA has suggested several changes to Section 2 of the proposed rule to provide, among other changes, for a deadline for staff acknowledgement and for clarification that any revised IRP submitted pursuant to this rule does

not have to redo the public advisory process or bar a utility from seeking a CPCN until the IRP is acknowledged by the Staff.

### **Due Process and Ex Parte Concerns**

The Strawman is also imbued with potential due process and ex parte issues. Should the Commission believe that the acknowledgement, as currently drafted, serves a useful purpose, the IEA believes that, in an effort to mitigate these due process and ex parte concerns and create a fair and more formal approach, the rule should include (1) an appeals process of the acknowledgment that entails the full accompaniment of due process rights and/or (2) a requirement that testimonial staff be designated at the beginning of each IRP process. These revisions do not completely ameliorate the IEA's due process concerns but they do mitigate the procedural infirmity.

As currently written, the Strawman does not allow an appeal of the acknowledgement determination. In effect, Staff is in the position of being the gatekeeper as to whether a utility can initiate a CPCN proceeding and a utility has no recourse except to modify its IRP until such time as it can obtain the acknowledgment, even if the utility (or intervenors) disagree. Similarly, a party may disagree with Staff's determination to acknowledge an IRP and have no recourse. This violates fundamental principles of due process in that a utility and/or intervenor is not offered the opportunity to present evidence, hear the evidence against them, cross examine Staff or have an evidentiary hearing. Although an intervenor will have an opportunity in a CPCN proceeding to present evidence and object to the utility's acknowledged IRP, there is no opportunity to challenge the Staff on the acknowledgement finding and any influence such a

finding may have on the Commission's CPCN decision-making process. The Strawman should be revised to provide an opportunity to appeal an acknowledgement or methodology mandate to the full Commission.

Unfortunately, the appeals-process solution to the acknowledgement problem will likely increase the amount of litigation before the Commission, which will further strain already limited resources of the utility, intervenors, OUCC, Staff, and the Commission itself. This is yet another reason why IEA is recommending that the acknowledgement process either be eliminated or scaled back to the current process as discussed earlier. These litigation delays also could have adverse impacts on resource decisions which, given long lead times, can be time sensitive. The Strawman is silent on questions such as: Can a CPCN case be filed if acknowledgement is outstanding? and What if the IRP acknowledgment process has become bogged down in debate over modeling issues and has become lengthy in nature?

Furthermore, due process and Ind. Code § 8-1-1-5(a) require an impartial decision maker, which is not assured with the acknowledgement process. In its determination concerning whether to acknowledge an IRP, there may be discussions among Staff members and Commissioners that have the potential to influence later Commission decisions. Moreover, while the acknowledgment takes on great importance, under the current rule all parties are able to discuss their views with Staff. In a litigated proceeding, absent a requirement for disclosure, such discussions create further due process concerns for all parties to a proceeding.

One solution is to designate Testimonial Staff, who are fully walled off from the rest of the Commission. Because an IRP can be at issue any time over its two year horizon, any reports

or communication between the Testimonial Staff and the rest of the Commission should be documented and disclosed to the record of a proceeding. Furthermore, a member of Testimonial Staff will need to file testimony regarding the IRP, be available for cross-examination, and respond to data requests. Absent such a process, a party may be effectively unable to fully explore the rationale for a particular methodology or input mandated by the Staff to gain an acknowledgement.

Because the IRP has always been informational in nature and has provided an opportunity for exchange of comments and information, IEA regrets that such division of Staff would be necessary to mitigate the potential ex parte concerns posed by the acknowledgement process. Unfortunately, absent such a step, the ex parte concerns exist and could provide yet another ground for debate and litigation between parties—all of this consumes resources and obscures the material issues that arise when new resources are needed to reliably serve customers.

The IEA also has some lesser due process and ex parte concerns over Commission Staff attending individual utility meetings in the public advisory process. As a hypothetical, Staff may agree with public requests to model a particular resource at a cost that the utility deems unreasonable based on market and industry projections, forcing the utility to do so or suffer from a lack of acknowledgement. A similar hypothetical example might involve staff advocating a particular methodology (e.g., end use load forecasting rather than econometric load forecasting) to the exclusion of other methodologies that might be more appropriate or accurate for that particular utility. If a utility ultimately accedes to Staff's demands and later uses that IRP in a



resource action, the Staff involved in those initial meetings should be designated as testimonial to allow for the utility to provide sufficient evidence to defend the projections that it did not believe were correct, but performed in order to obtain an acknowledged IRP.

Another ex parte concern with Staff participation in the public advisory process can occur when a utility is in the midst of an active CPCN proceeding while at the same time it needs to begin the public advisory process for its next IRP. Based on the Strawman, the utility would be constrained from engaging in discussions at any meeting attended by Staff concerning its load forecast, existing resources, supply-side and demand-side alternatives (and costs), methodologies, and treatment of risk and uncertainty that would likely also be at issue in the CPCN proceeding. This will create unnecessary ex parte dilemmas for all involved.

**The Commission Should Reconcile The  
Contemporary Issues And Methods  
Additions With Current Practice**

The purpose of the IRP, as recognized by the current IRP Rule, is to aid the Commission in its administration of the Utility Powerplant Construction Law found at Ind. Code § 8-1-8.5-1 *et seq*; 170 IAC 4-7-3(a). Under this statute, each utility submits a “utility specific proposal[] as to the future needs for electricity to serve the people of the state or the area served by the utility.” Ind. Code § 8-1-8.5-3(e). To this end, IRPs generally form a significant part of a utility’s evidence in support of a CPCN sought pursuant to the Utility Powerplant Construction Law.

The IEA is concerned that the Strawman specifically deletes the provision in the current IRP Rule recognizing its connection with the Utility Powerplant Construction Law. The Strawman also introduces the concept of Contemporary Methods and Contemporary Issues

which arguably could be used by the Commission to dictate the type of analysis conducted in the IRP. IEA is confident that the intent of the Commission is not to change the IRP into a Commission-mandated analysis and therefore suggests revisions to the Strawman's contemporary issues and methodology approach.

The Commission has long recognized that “[i]t is not the place of this Commission to substitute its managerial judgment for the judgment of the [utility’s] management.” *Kokomo Gas and Fuel Co.*, Cause No. 38096, 1987 Ind. PUC LEXIS 179 at \*23 (IURC 10/26/1988); *see also Richmond Gas Corp.*, Cause No. 38477, 1988 Ind. PUC LEXIS 385 at \* 13 (IURC 10/26/1988); *Jasper County REMC*, Cause No. 37533, 1986 Ind. PUC LEXIS 118 at \*2 (PSCI 10/1/1986) (concluding the Commission had erred by substituting its business judgment for that of the utility’s management); *Indianapolis Railways, Inc.*, 70 PUR NS 492, 518 (PSCI 7/1/1947) (“It is not within the power nor the inclination of this Commission to invade the province of management of petitioner company.”) As noted above, the IRP finds its origins in the Utility Powerplant Construction Law, which requires each utility to prepare a “utility specific proposal[] as to the future needs for electricity to serve the people of the state or the area served by the utility.” Ind. Code § 8-1-8.5-3(e). The utilities rely on the IRP to evaluate their future needs and investments. Given that resource planning is squarely an operational function to be undertaken by the utilities, the Strawman should recognize that contemporary issues and methods meetings best serve all parties by focusing on how best to present information regarding planning decisions in an IRP rather than mandating to a utility’s management which factors it should consider in making future capital investments.

The issues and methods meetings and the interaction between the utility and the Commission Staff should reflect the foundational principles of the Commission's enabling statute (Ind. Code § 8-1-1-1 *et seq.*). Under this regulatory relationship, the Commission must be an impartial fact-finding body in all contested proceedings, acting as neither a proponent nor opponent (Ind. Code § 8-1-1-5(a)). The Commission should not promote or oppose the analyses used by (or to be used by) utilities. The Strawman should avoid turning the contemporary issues meetings into a critique of a utility's analysis.<sup>4</sup> The Strawman should clearly state that the issues and methods meetings are not forums for mandating assumptions or analysis but rather that these meetings serve as an opportunity to (1) keep IRP filing procedures from being outmoded and (2) to identify contemporary factors that might affect drafting the IRP document. In addition to clearly promoting the goal of the issues and methods meetings, the Strawman should address potential conflicts with *ex parte* prohibitions. The Strawman indicates that the Commission will convene contemporary issues meetings that will consider input from interested parties.

This considered, the Commission's *ex parte* rules preclude parties from having contact with Commission staff advocating positions that are at issue in pending proceedings (170 IAC 1-1.5-3(a)). A party, including the utility, may be precluded from advocating its views of proposed contemporary issues because similar issues are being litigated in pending proceedings. Issues that are implicated by these contemporary issues are likely to also be at interest in non-CPCN proceedings. For example, fuel cost projections may be a subject of contemporary issues meetings but would also be relevant to fuel adjustment clause proceedings. *Ex parte* rules would

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<sup>4</sup> A specific statutory procedure is established for instances when the Commission wishes to rely on reports prepared at the direction of its Staff in Ind. Code § 8-1-1-5(b). This process provides for the admission of reports prepared at Staff's direction into the evidence provided that the Staff member is subject to cross-examination by any party.

preclude a robust discussion that will be critical to proper identification of contemporary issues. In addition, given that regulation by the Commission sometimes involves a determination by the full Commission on an issue, in appreciation of current and actual practice the IEA has proposed a procedure for redirecting determinations to the entire Commission.

As the Commission moves forward with the contemporary issues and methodologies concept as set forth in the Strawman, the IEA has provided revisions to the language in order to promote fairness in this process, to balance the goal of the meetings with current practice, and to adequately reflect actual practice. The IEA members appreciate the good working relationship they have with the Commission Staff with regard to the IRP process. The Strawman should reflect this, and promote it for future IRP submissions.

### **The Commission Should Reconsider The Proposed Public Advisory Process**

The Commission Staff recently noted that the dominant trend in IRP reform is requiring a process for stakeholder or public participation. Consistent with that trend, the Strawman proposes that Indiana incorporate a public advisory process by which the utility considers comments from any and all interested commenters. The IEA members do not believe that the anticipated benefits will result from the public advisory process as drafted and recommends that the Commission reconsider this “any and all” approach.

The IEA believes the public advisory process may not generate the anticipated benefits identified in the Staff’s presentation. Staff opined that this process would generate constructive, versus combative, dialogue between utilities and stakeholders. However, no basis has been provided for the conclusion that conducting the public advisory process as written will result in

more substantive discourse.<sup>5</sup> Utilities and stakeholders already meet to discuss proposals in CPCN proceedings. In those meetings, substantive discourse requires that both parties be equally prepared to discuss outcomes. The same is true for a meeting held during the public advisory process. For example, I&M noted that in Virginia, another utility (not affiliated with American Electric Power) invested substantial effort in preparing substantive information for meetings held during the public advisory process and it still drew boilerplate objections to its IRP equivalent.

Many of the anticipated benefits depend heavily on the effort invested by the stakeholders. An open-ended, nonbinding advisory process may not be conducive to requiring substantive comments since parties could essentially take different positions later. IEA members anticipate that some participants may use the public advisory process primarily as an attempt to advocate for assumptions that will skew the resource portfolio to favor generation resources in which they have business or political investments. The utilities should not have to agree to incorporate unrealistic assumptions or assumptions designed to favor a particular resource, especially if that inclusion is unfair to customers and/or if the participants' comments are substantively unfounded.

The IEA acknowledges that conducting a public advisory process promotes the transparency of the planning process by permitting any interested party to participate. However,

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<sup>5</sup> New Mexico has adopted a statutorily required public advisory process for IRPs. See N.M. Stat 62-17-10. Despite this process, the New Mexico Public Regulation Commission has acknowledged that the IRP process often involves lengthy and expensive litigation. *In re Possible Changes To The Filing Requirements for Renewable Energy Portfolio Procurement Plans, Efficient Use of Energy Reports and Integrated Resource Plans*, Case No. 12-00057-UT, p. 2 (NMPRC 3/6/2012) available at <http://www.nmprc.state.nm.us/general-counsel/docs/12-00057-UT%20-%20Order%20Scheduling%20Workshop.pdf>.



the common citizens' interests are most effectively represented by having the OUCC or another knowledgeable entity represent their interests—the process that is in place in the current IRP Rule and during a CPCN proceeding. Without the technical expertise and knowledge to evaluate and understand the assumptions, the ability to provide comments is perhaps of little tangible benefit. This considered, the IEA believes the public advisory process as drafted is likely to provide little value with an “any and all comments welcome” approach. If the Commission determines to implement a public advisory process, the IEA encourages modifications to the Strawman to enhance this process. In order for the advisory process to best promote the anticipated benefits, some standard for public comments should be set. The exchange of comments in this process should provide for the opportunity to gauge real public interest while providing the opportunity to engage in substantive discourse with actual interested and commenting stakeholders.

### **IEA Revisions By Section**

**Section 1.** Section 1(b) defines the term “acknowledgement.” As noted in its general comments, the IEA recommends eliminating the acknowledgement proposal. If the Commission retains a formal acknowledgement, the IEA urges changes to the definition to clarify that Staff is acknowledging that the IRP contains the required components enumerated by the IRP rule, rather than asserting compliance with the procedures and requirements contained within the rule. The original language in the Strawman implies approval of the IRP, including its methodologies, and may lead to additional litigation as explained above.

The IEA's proposed revisions to Section 1(i) are intended to modify the definition of Contemporary Issues to better match current practice at the Commission. The IEA's concerns about transforming the IRP into a Commission mandated analysis are articulated above. The IEA has also proposed deleting the term Contemporary Methods, believing it to be unnecessary in light of the Contemporary Issues definition.

The term FERC Form 715 (Section 1(u)) has been deleted consistent with the IEA's belief that transmission planning requirements in the proposed Strawman should be modified to reflect that transmission planning is now handled by RTOs.

The IEA has proposed changes to the term Public Advisory Process (Section 1(dd)) to avoid potential inconsistency between the definition and the process established in Section 2.1.

**Section 2.** The Strawman requires IRPs to include at least a 20 year planning horizon. Forecasting beyond 10 years requires a number of assumptions about future trends that are, by their nature, unreliable. While the IEA members are willing to continue to endeavor to utilize a 20 year planning horizon, new Section 2(e) is proposed to clarify that the data for years 11 through 20 cannot be as detailed as the first 10 years.

The IEA also recommends revisions to original Section 2(e), which outlines the acknowledgement process. As noted in the redline, the IEA believes the acknowledgement process should be eliminated for the reasons previously discussed. However, the IEA is providing comments in the event the Commission decides to adopt this process. First, the IEA believes that the acknowledgement process must have a deadline so that a utility can plan for a CPCN or other resource proceeding. Because IEA members believe an acknowledgement should be limited to a determination of whether the IRP includes the elements required by the IRP rule, no more than thirty days should be necessary to review and confirm such compliance. The IEA also believes it is important for the Staff to explain, in writing, the reasons why an IRP might be declined in order to facilitate correction of the deficiency.

The IEA has also added provisions to ensure transparency of the acknowledgement process and to ensure that Staff's concerns and conclusions are disclosed in the evidentiary record of any subsequent proceeding involving the IRP. The IEA described its concerns with these communications in the overview portion of these comments.

Portions of the Strawman allowing for the Staff to instruct the correction of deficiencies have been deleted. This is a marked departure from current practice, where the utility is responsible for its resource planning and must support its methodologies in a docketed proceeding when approval is necessary for resource selection.

The IEA has also eliminated language in the Strawman that required a utility to utilize an IRP acknowledged by the Staff prior to seeking approval of any specific resource action. This creates an unnecessary hurdle to initiating a resource action at a time when environmental and other regulations are requiring increasingly nimble planning. Moreover, requiring use of an acknowledged IRP gives an impression that the IRP has already been approved through a process conducted without notice or an opportunity to be heard.

**Section 2.1.** The IEA's comments on the public advisory process are intended to enhance the process' usefulness. The utilities' primary concern, based on experience in other jurisdictions, is that the public advisory process will be a target for special interest groups aiming to tilt the IRP analysis to favor their favored generation resource or issues. The changes are intended to create a process with meaningful input that does not result in the utility having to respond to issues that are not meaningful. Section 2.1(d)(6) also includes revisions to ensure that control of the meeting can be maintained.

On a more practical level, the IEA members have proposed changes to the timing of the meetings to ensure that input can be incorporated into the IRP. If the initial meeting is held immediately before the IRP is submitted to the Commission, a utility could not prepare comments or incorporate the substance into the IRP before the submission deadline.

**Section 2.2.** The IEA has proposed revisions to the Strawman's Section 2.2 to reconcile the proposal with the existing IRP practice at the Commission. First, the IEA seeks to clarify the purpose of the contemporary issues meeting, which IEA members understand to be ensuring that the IRP process is not outmoded. The IEA members would be concerned with a rule that allowed Commission Staff to dictate assumptions and methodologies based purely on Staff's judgment about how an IRP should be prepared. Utilities rely on their IRP's to weigh multi-million dollar investments. The IRPs will cease to be an effective reflection of planning if methodologies or assumptions with which the utilities disagree are mandated and the utilities conduct their own independent analyses to judge the best use of scarce resources.

The IEA does recognize the value to the Commission and the utilities of a process that vets substantive disagreements over IRP processes. The revisions it recommends in Section 2.2(c) and (d) requires a utility to respond to the Staff contemporary issues in the IRP by either accepting them or providing its reasoning for not incorporating the revisions.

The IEA also recommends the Commission establish a deadline for conducting contemporary issues meetings sufficiently in advance of the IRP process that utilities can consider the results of those meetings in their next IRPs. *See* Section 2.2(e).

**Section 3.** Prompt consideration of a request for a waiver from a particular component of the IRP rules is important to provide certainty concerning the outcome of the waiver application. The IEA has proposed a new Section 3(3) to provide for approval or denial of a waiver in fifteen days. The revisions also include a provision to explain the denial so that a utility understands the basis for the rejection of its waiver request.

**Section 4.** The IEA recommends some wording changes to Section 4(a)'s description of the IRP summary document. Some changes, such as modifying the easily accessible requirement, reader-friendly format and graphical presentation, are intended to eliminate wording choices that could lead to later disagreement. Reasonable people may differ about what constitutes a reader-friendly summary or whether a summary is easily accessible on a web page.

Changes proposed to Section 4(b) are largely intended to clean-up existing language in the IRP rule and match the historic practice. Section 4(b)(11), proposing data on transmission planning, has been deleted by the IEA because transmission planning is now handled by RTOs. Much of the data requested is publicly available through the RTO and is not necessarily in the possession of the utilities preparing the IRPs.

Section 4(b)(10) in the IEA redline modifies the proposed language consistent with its proposal to eliminate a mandate to incorporate contemporary methods described in Section 2.2. The IEA also proposes to require elimination of the requirement to compare evaluation models.

This is a burdensome requirement due to the volume of assumptions that are included in various models and compliance with these terms may be impossible without the expense of acquiring the model the utility does not intend to use. Utilities might also be required to engage experts with proprietary access to the models to describe their differences, particularly if the utility did not have personnel familiar with a particular model.

Section 4(b)(13) in the IEA redline has been modified to ensure that a utility is not required to provide a summary of public advisory processes from prior IRP periods and to shorten the description of the public advisory process.

**Section 5.** Section 5(a)'s revisions ensure the rule matches existing practice, since most utilities are not providing the deleted data forms. The identified load shapes are redundant and do not need to be provided separately in the IRP.

**Section 6.** Language mandating consideration of an existing resource is not necessary in Section 6(a). The purpose of an IRP is to determine the most optimal resource mix and the utility will always include its existing resources unless the resource has reached the end of its useful life or must otherwise be retired. The proposed language is essentially redundant.

The Strawman includes language in Section 6(a) requiring certain information to be provided each year for the entire twenty year projection period. The assumptions required to project net dependable generating capacity, fuel price forecasts, environmental effects, scheduled power import and export transactions and demand-side programs for eleven to twenty years into the future are so speculative that identifying them is of no value. There is no reasonable expectation that the data is accurate, although including it at this level of detail in the IRP may be taken by some as an implication that the forecasts have some accuracy. The IEA's comments add a provision as Section 2(e) to ensure the detailed data sought for the first ten year period is provided.

The IEA has added language to Section 6(c) concerning the inclusion of resources expected to become commercially available over the planning horizon. The proposed language could introduce substantial dispute about whether a potential resource is expected to be commercially available. The IEA proposes to provide the utility (which must actually make the investment) the discretion to determine whether a resource will become commercially available.

The IEA has proposed several revisions to the language in Section 6(d) relating to transmission and distribution in the IRP process. The IEA has proposed to delete a long list of criteria governing investment in transmission improvements because RTOs now evaluate and make decisions about transmission improvements. The existing language in the rule was proposed at a time when the utility still determined transmission investments. The revised language does provide information on the utility's transmission activities that an RTO is considering.

**Section 7.** The IEA proposes clarifying in Section 7(a)(1) that the Commission is interested in a general description of significant environmental effects rather than a detailed

description. The relevant regulations are often lengthy and detailed descriptions could significantly increase the volume of the IRP. The IEA members also do not believe that it is necessary and creates the potential for confusion to characterize water consumption and discharge as “external” in Section 7(a)(1)(D). The term external has been removed.

The IEA deleted Subsections 7(a)(2)(A) and (B) because these criteria would require numerous runs that would unduly complicate the IRP and limit its usefulness because of the large number of results. Subsection (B), in particular, would be virtually impossible to practically implement with the requirement to run scenarios “of any potential environmental regulation.”

**Section 8.** Many of the revisions to Section 8 are intended to clarify the existing language. The revision to Section 8(b)(3) is necessary to eliminate the suggestion that **all** supply-side and demand side-resources have been evaluated on a consistent and comparable basis. Evaluating every potential resource would be virtually impossible and a poor use of time. Indiana, for example, does not need to evaluate wave-energy capture technology.

IEA recommends eliminating what was Section 8(b)(6)(B) in the Strawman. The IRP’s focus is on resource planning, not on projecting rates. This section relates to ratemaking rather than resource planning. This calculation is misleading because it suggests rate impacts can be derived from the IRP but the results are not designed for that purpose and are not accurate predictors of rate impacts.

**Section 9.** The IEA has eliminated the word “workable” as a descriptor of the strategy to meet its preferred resource portfolio in its redline. The term workable is subjective and may give rise to disputes about whether a strategy is sufficiently practical. Perhaps more importantly, inclusion of the term workable suggests that the utility will strictly adhere to the IRP without revisions. However, the IRP is an analysis based on a particular point of time in the context of a constantly evolving market. Utilities often face new opportunities or unexpected changes that impact the resource planning process. For example, the Commission’s Phase II Order in Cause No. 42693-S1 imposed targets for energy savings from demand response programs that no utility had built into the assumptions reflected in the IRPs.

For similar reasons, the IEA proposes to eliminate the obligation to describe differences between short-term action plans in Section 9(4). Plans often change between IRPs and the obligation to explain the differences will unnecessarily lengthen the short term action plan.

The IEA also opposes mandating a confidence range for the short-term action plan resource budget in Section 9(3). Developing this confidence range would be very difficult for each and every piece of the short-term action plan. While data might be available for some types of generation, data to support a cost range for other types of generation may be virtually impossible to develop with any range of confidence.

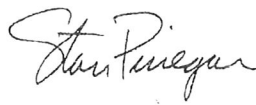
**Section 10.** The IEA has proposed several revisions to Section 10. Section 10 adds a new provision to the rule allowing the Commission or its Staff to request updated IRP



information and to report on its implementation progress between IRP filings. These provisions are significant departures from current procedure.

The Strawman language suggests that an IRP, once developed, becomes a working plan from which the utility generally does not deviate. However, an IRP is a planning document reflecting assumptions at the time of its compilation. The business climate for utilities constantly evolves. In recognition of the evolutionary climate, utilities have frequently presented IRPs in resource acquisition proceedings along with a brief explanation of assumptions or other circumstances that have warranted deviation from the short term action plan. The IEA members are concerned that if the Commission or its Staff wants an update every time there is a significant change in the energy environment, they will be constantly updating their IRPs. In the past year alone there have been several changes in applicable environmental requirements. This burden would be particularly significant if a utility were required to go back through the public advisory process or conduct an entirely new IRP.

Very truly yours,

A handwritten signature in cursive script that reads "Stan Pinegar".

Stan Pinegar