



INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

January 18, 2008

Via Email Transmission (bkroads@urc.in.gov)
Beth K. Roads, Esq.
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 East
Indianapolis, Indiana 46204

Dear Ms. Roads:

Enclosed please find the OUCC's Response to the IEA's Comments that were filed on 12/14/07.

Sincerely,

Daniel M. Le Vay
Assistant Consumer Counselor

DML/sld
cc: Carol A. Stephan

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

OUCC's RESPONSE TO
THE INDIANA ENERGY ASSOCIATION'S (12/14/07) COMMENTS
REGARDING
REVISIONS TO THE COMMISSION'S
MINIMUM STANDARD FILING REQUIREMENTS

INTRODUCTION

The OUCC responds below to the provisions unilaterally proposed by IEA on December 14, 2007. The OUCC has struck through IEA language that the OUCC asserts should be deleted. Underlined language is language the OUCC proposes be added or inserted into the provisions as proposed by IEA on December 14, 2007. For each section discussed, the OUCC includes (1) IEA's proposed provision, (2) the OUCC's revision with strikes and underlines and (3) a clean version of the latter. These are followed by comments explaining the OUCC's revisions.

170 IAC 1-5-2(d):

Language proposed by IEA (170 IAC 1-5-2(d):

(d) This rule and its expedited timeframe are intended to apply to general rate case filings that comply with this rule. To the extent the utility's petition includes one or more requests for alternative regulation or tracking mechanisms of a type not previously considered by the Commission, the presiding officers may extend the timeframe provided for in section 2.1; provided that any such extension will be as minimal as possible in consideration of the alternative relief requested. Notwithstanding the foregoing, in no event shall an extension beyond 12 months from the filing of the case-in-chief to issue a final order be granted, unless extraordinary circumstances exist as determined by a majority of the commissioners.

OUCC's revision to language proposed by IEA (170 IAC 1-5-2(d):

(d) This rule and its expedited timeframe are intended to apply to general rate case filings that comply with this rule. To the extent the utility's petition includes one or more requests for alternative regulation, unusual or complex ~~or~~ tracking mechanisms, or other relief not typically within the scope of a general rate case, or if the totality of the issues to be addressed indicate that the proceeding is of a complex nature, which makes the issuance of an order within 10 months impractical, ~~of a type not previously considered by the Commission,~~ the presiding officers may extend the timeframe provided for in section 2.1, ~~;~~ ~~provided that any such extension will be as minimal as possible in~~

~~consideration of the alternative relief requested. Notwithstanding the foregoing, in no event shall an extension beyond 12 months from the filing of the case in chief to issue a final order be granted, unless extraordinary circumstances exist as determined by a majority of the commissioners. Extensions beyond twelve (12) months will only be allowed in extraordinary circumstances upon the concurrence of a majority of the commissioners.~~

OUCC's revision to language proposed by IEA (clean version):

(d) This rule and its expedited timeframe are intended to apply to general rate case filings that comply with this rule. To the extent the utility's petition includes one or more requests for alternative regulation, unusual or complex tracking mechanisms, or other relief not typically within the scope of a general rate case, or if the totality of the issues to be addressed indicate that the proceeding is of a complex nature, which makes the issuance of an order within 10 months impractical, the presiding officers may extend the timeframe provided for in section 2.1. Extensions beyond twelve (12) months will only be allowed in extraordinary circumstances upon the concurrence of a majority of the commissioners.

OUCC's Comment with respect to IEA's proposed changes to 170 IAC 1-5-2(d):

The OUCC considers the language proposed by IEA to be too specific and therefore restrictive of the Commission's ability to convert a ten-month process into a twelve month process. Therefore, the OUCC added language to IEA's suggested language to afford the Commission the ability to base its decision on all relevant factors that would make a ten month order impractical. With respect to the ability of the Commission to have a process that exceeds twelve months, IEA's proposed treatment in substance is not inconsistent with the language of the current rule. However, the tone of IEA's proposed language suggests a more restrictive treatment. Therefore, the OUCC proposes the existing language of the current rule should be readopted. That is - **"Extensions beyond twelve (12) months will only be allowed in extraordinary circumstances upon the concurrence of a majority of the commissioners."**

170 IAC 1-5-2.1(a):

Language proposed by IEA (170 IAC 1-5-2.1 (a)):

(a) Except as otherwise provided herein, the commission shall issue a final order in a proceeding under this rule within ten (10) months.

OUCC's revision to language proposed by IEA:

(a) Except as otherwise provided herein, it is expected that the commission shall issue a final order in a proceeding under this rule within ten (10) months.

OUCC's revision to language proposed by IEA (clean version):

(a) Except as otherwise provided herein, it is expected that the commission shall issue a final order in a proceeding under this rule within ten (10) months.

OUCC's Comments with respect to IEA's proposed changes to 170 IAC 1-5-2.1(a):

With respect to 170 IAC 1-5-2.1(a), it is apparent that IEA favors language that more firmly imposes an obligation on the Commission to issue an order within ten months than does the strawman. The OUCC considers its language to represent a middle ground on the issue. The OUCC has communicated its revisions to IEA. Through its counsel, IEA indicated to the undersigned that it does not object to the OUCC's revision to this subsection.

170 IAC 1-5-2.1(b):

Language proposed by IEA (170 IAC 1-5-2.1 (b)):

(b) The ten (10) month timeframe commences as of the date an electing utility's case-in-chief and working papers are filed.

OUCC's revision to language proposed by IEA:

(b) The ten (10) month timeframe commences as of the date an electing utility's case-in-chief and working papers have both been are filed.

OUCC's revision to language proposed by IEA (clean version):

(b) The ten (10) month timeframe commences as of the date an electing utility's case-in-chief and working papers have both been filed.

OUCC's Comments with respect to IEA's proposed changes to 170 IAC 1-5-2.1(b):

IEA stated that it "believes that Section 2.1 (b) should be clarified to state that the ten month limit for issuing an order begins when the case-in-chief and workpapers of the utility are filed." The OUCC agrees with the concept of IEA's changes with respect to 170 IAC 1-5-2.1(b), but has inserted the phrase "have both been filed" to make the point more explicit. The OUCC has communicated its revision to IEA. Through its counsel, IEA indicated to the undersigned that it does not object to the OUCC's revision to this subsection.

170 IAC 1-5-2.1(c)

Language proposed by IEA (170 IAC 1-5-2.1 (c)):

(c) The presiding officer shall establish procedural dates and cut off dates that comply with this rule and will ensure completion of the case within ten (10) months from the date the electing utility's case-in-chief and working papers are filed including specific dates for:

OUCC's revision to language proposed by IEA:

(c) The presiding officer shall establish procedural dates and cut off dates that comply with this rule and will ~~ensure~~ promote completion of the case within ten (10) months from the date the electing utility's case-in-chief and working papers have both been ~~are~~ filed including specific dates for:

OUCC's revision to language proposed by IEA (Clean version):

(c) The presiding officer shall establish procedural dates and cut off dates that comply with this rule and will promote completion of the case within ten (10) months from the date the electing utility's case-in-chief and working papers have both been filed including specific dates for:

OUCC's Comments with respect to IEA's proposed changes to 170 IAC 1-5-2.1(c):

IEA injected the word "ensure" to replace "allow," the OUCC proposes "promote" as a compromise and to reflect the 10-month timeframe as a desired result. The OUCC has communicated its revision to IEA. Through its counsel, IEA indicated to the undersigned that it does not object to the OUCC's revision to this subsection.

170 IAC 1-5-2.1(c)(3):

Language proposed by IEA (170 IAC 1-5-2.1(c)(3)):

(3) the plant cutoff date for updating the rate base to include the cost of all plant by either adopting a reasonable cutoff date used in the utility's case-in-chief or, if not already filed, then establishing such date pursuant to section 5 of this rule,

OUCC's revision to language proposed by IEA:

(3) the plant cutoff date for updating the rate base to include the cost of all plant, which shall be the date the presiding officer sets for the hearing on the utility's case-in-chief. In the event the parties agree that the proceeding should not be bifurcated, then the general rate base cutoff date will be determined by the presiding officer. ~~by either~~

~~adopting a reasonable cutoff date used in the utility's case-in-chief or, if not already filed, then establishing such date pursuant to section 5 of this rule,~~

OUCC's revision to language proposed by IEA (clean version):

(3) the plant cutoff date for updating the rate base to include the cost of all plant, which shall be the date the presiding officer sets for the hearing on the utility's case-in-chief. In the event the parties agree that the proceeding should not be bifurcated, then the general rate base cutoff date will be determined by the presiding officer.

OUCC's Comments with respect to IEA's proposed changes to 170 IAC 1-5-2.1(c) (3):

In its December 14, 2007 Comments, IEA stated that "Currently, rate base is generally updated prior to the first hearing, and the utility selects the cut-off date. Under the Strawman, the presiding officer will establish the cut-off date for updating rate base for plant and major projects. Although IEA representatives believed consensus was reached at the Workshop regarding how best to address this issue, neither the OUCC nor the Industrial Group were willing to agree to IEA's proposed language for purposes of this filing." The OUCC disagrees with the conclusion that the utility selects the cut-off date. Rather, under the existing rules, the general rate base cut-off is the date of the hearing on the utility's case-in-chief, while the rate base cut-off for major projects is ten days before the final hearing. The OUCC believes that guidelines in the rules are necessary and suggests that, in substance, the existing rules should be used. However, the rules need to address the fact that participants often agree to have only one hearing. In such cases, the parties typically agree on a date for the general rate base cut off that will permit the OUCC an opportunity to address the issue in its case. If the parties fail to agree, this date can be set by the presiding officer. Therefore, the OUCC's language above (170 IAC 1-5-2.1(c)(3)) rejects the utility's proposal to have the utility unilaterally determine the general rate base cut off date. (Note: The OUCC's proposed revision is also consistent with the Technical Work Group's recommendation that the rule state in section 170 IAC 1-5-5 that "For a utility that files under the MSFR, there is a presumption that the hearing will be bifurcated, unless otherwise agreed to by the OUCC and intervening parties or ordered by the commission if an agreement cannot be reached.") Finally, the OUCC acknowledges that it may be more appropriate to insert the substance of its language proposed above into section 170 IAC 1-5-5 (c) of the Strawman instead of 170 IAC 1-5-2.1(c)(3). Section 1-5-5 is specifically designed to provide guidelines for cut-offs, while section 2.1 functions more like a list of items to be addressed by the pre-hearing conference order.

170 IAC 1-5-2.1(c)(4):

Language proposed by IEA (170 IAC 1-5-2.1(c)(4)):

(4) the major project cutoff date for updating the rate base to include the cost of a major project consistent with section (5) hereof,

OUCC's Comments with respect to IEA's proposed changes to 170 IAC 1-5-2.1(c) (3):

The OUCC does not object to the language proposed by IEA for 170 IAC 1-5-2.1(c)(4).

170 IAC 1-5-2.1(f):

Language proposed by IEA (170 IAC 1-5-2.1(f)):

The presiding officer may extend the procedural schedule to retain the 3 month period for issuance of an order referenced in (e) above to the extent the electing utility has caused or agreed to delays or extensions to the procedural schedule.

OUCC's revision to language proposed by IEA:

The presiding officer may extend the procedural schedule for good cause shown. In order to allow the Commission approximately three months to issue an order after the last proposed order has been submitted, any extension to the procedural schedule that modifies the date of the last proposed order shall also extend the expected amount of time to complete a proceeding under this rule. ~~to retain the 3-month period for issuance of an order referenced in (e) above to the extent the electing utility has caused or agreed to delays or extensions to the procedural schedule.~~

OUCC's revision to language proposed by IEA (clean version):

The presiding officer may extend the procedural schedule for good cause shown. In order to allow the Commission approximately three months to issue an order after the last proposed order has been submitted, any extension to the procedural schedule that modifies the date of the last proposed order shall also extend the expected amount of time to complete a proceeding under this rule.

OUCC's Comments with respect to IEA's proposed changes to 170 IAC 1-5-2.1(f):

The OUCC does not disagree with the concept of IEA's changes with respect to 170 IAC 1-5-2.1(f). However, the OUCC considers its language more specific and less prone to misconstruction. The OUCC has communicated its revision to IEA. Through its counsel, IEA indicated to the undersigned that it does not object to the OUCC's revision to this subsection.

170 IAC 1-5-4:

Language proposed by IEA (170 IAC 1-5-4):

(b) Within forty-five (45) calendar days of the date an electing utility's case-in-chief and the supporting workpapers are filed with the commission, the presiding officer may notify the electing utility and all parties to the proceeding that the case-in-chief and working papers do not comply with the requirements of this rule. The notice shall identify the nature of the defect(s) and state with specificity the requirements necessary to cure any and all defects. The electing utility shall either cure such defect(s), or contest whether defects exist, within ten (10) business days of such notice. In the event a dispute exists regarding compliance, a hearing shall be held to resolve any such issue. The schedule established under section 2.1 shall not be modified unless a material non-compliance issue is found to exist.

OUC's revision to language proposed by IEA:

(b) Within forty-five (45) calendar days of the date an electing utility's case-in-chief and the supporting workpapers are filed with the commission, the presiding officer may notify the electing utility and all parties to the proceeding that the case-in-chief and working papers do not comply with the requirements of this rule. The notice shall identify the nature of the defect(s) and state with specificity the requirements necessary to cure any and all defects. The electing utility shall ~~either~~ cure any such defect(s) ~~or contest whether defects exist,~~ within ten (10) business days of such notice. ~~In the event a dispute exists regarding compliance, a hearing shall be held to resolve any such issue.~~ The schedule established under section 2.1 shall not be modified as a result of the defect unless good cause for modifying the schedule is found to exist. ~~a material non-compliance issue is found to exist.~~

OUC's revision to language proposed by IEA (clean version):

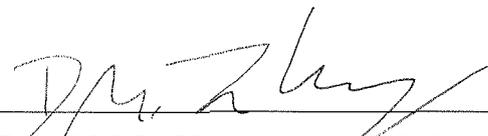
(b) Within forty-five (45) calendar days of the date an electing utility's case-in-chief and the supporting workpapers are filed with the commission, the presiding officer may notify the electing utility and all parties to the proceeding that the case-in-chief and working papers do not comply with the requirements of this rule. The notice shall identify the nature of the defect(s) and state with specificity the requirements necessary to cure any and all defects. The electing utility shall cure any such defect within ten (10) business days of such notice. The schedule established under section 2.1 shall not be modified as a result of the defect unless good cause for modifying the schedule is found to exist.

OUC's Comments with respect to IEA's proposed changes to 170 IAC 1-5-4:

In its version, the OUC removed the reference to the utility contesting whether the defect exists. Under this rule, the Commission is making the determination.

Therefore, the proposed language would afford the utility the opportunity to contest the commission's determination before the commission. This does not make sense. While appeals may be made to the entire Commission, that course need not be suggested in this rule. As to contesting whether a defect raised by the OUCC exists, the utility would have an opportunity to respond before the Commission makes its own determination. The OUCC also removed the requirement for a hearing to resolve disputes about compliance. A hearing may be appropriate, but there may also be instances when the Commission can make a determination based on the filings. Finally, the OUCC removed the reference to a "material non-compliance issue" as a basis to modify the procedural schedule in favor of "good cause," which is less legalistic, conforms to other parts of the MSFR's and would be more directly based on the practicalities of the process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. M. Le Vay", written over a horizontal line.

Daniel M. Le Vay, Atty. No. 22184-49
Assistant Consumer Counselor
Carol A. Stephan
Director of Case Management