To: Beth K. Roads, General Counsel, Indiana Utility Regulatory Commission

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

Date: June 5, 2020

RE: Preliminary Comments – IURC Procedural Efficiency Improvements

The following informal 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 improving procedural efficiencies.

I. Improving the information provided in initial filings and petitions

Cases should be decided on the merits.

For Indiana utilities to be able to attract the capital to make the investment that is needed, Indiana must maintain a stable regulatory environment. That requires that utilities be able to look to statutes, rules, and past regulatory decisions as a reliable indicator of how future investment will be judged. Even though IC 8-1-2-42.7 was enacted more than seven years ago, we have only had one fully litigated case decided involving a fully forecasted future test year. In multiple cases, however, parties opposing rate relief have argued that particular adjustments or forecasted rate base should be rejected on the grounds that the petitioning utility did not submit enough information in its case-in-chief without regard to the underlying merits of the adjustment. This is disruptive to a stable regulatory environment. Individual adjustments and rate base additions should be judged on the merits and not based upon the perception of an adversarial party as to what is required to be put in case-in-chief testimony and exhibits. The rules should clearly spell out what is required to constitute an adequate case-in-chief. At that point, the burden of going forward must shift to other parties, with the burden of proof ultimately resting with the petitioner. *See Indiana Michigan Power Co.,* Cause No. 39314 (IURC 11/12/1993), 1993 WL 602559.

Fortunately, the existing Minimum Standard Filing Requirements ("MSFRs") respect this process, and this characteristic should be preserved. 170 IAC 1-5-4(a) provides all parties twenty (20) days after submission to file a notice that the utility has not filed all information required by the rules. Further, 170 IAC 1-5-2.1(c)(1) provides that "at the prehearing conference" the presiding officer is to address "any issues regarding the completeness of the electing utility's case-in-chief." This is the foundation of a stable regulatory environment – make certain at the outset that everything that is needed has been filed, establish the schedule accordingly, and decide the case on the merits. While the MSFRs unquestionably need to be updated for the possibilities of hybrid and forward looking test periods, as well as the possibility that certain types of information may be inapplicable in a given case, it is critical that the modified rules preserve this structure where the completeness of the case-in-chief is decided at the beginning of the case so the Commission can reach the merits in its final order. It is equally critical that the 20-day objection focus on the substantive material required for parties and Commission staff to properly examine the case, and not become the "default" procedure that seeks to delay over technical but immaterial deficiencies. The opportunity for resolution of such objections at the prehearing conference will be critical in ensuring this is so.

Rate Base Forecast

The Commission correctly articulated the proper standard for forecasting rate base in *Indiana Michigan Power Co.,* Cause No. 45235 (3/11/2020), where the Commission found the issue is guided by the standard for preapproval under IC 8-1-2-23.

> For purposes of rate base projections, the Commission is guided by our standard for preapproval of expenditures under Ind. Code§ 8-1-2-23. Our established standard for preapproval under that section confirms the Commission is not approving specific items of utility property or projects, but rather, is approving "expenditures" for improvements. As stated in *American Suburban Utils:*
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> > Petitioner has requested relief pursuant to Section 23 in this proceeding. When faced with such a request, the first question we must ask is whether an expenditure of any amount is reasonably necessary to assure reasonable and adequate service. If so, we must proceed to the second question: what amount reasonably needs to be invested? Once we answer the first question affirmatively, we cannot simply deny in its entirety a request for approval of expenditures. If we did, it would mean that we would deny approval for any amount of expenditures even though we have already found that some level of expenditures is necessary for the provision of reasonable and adequate service. Such a result would be counter to our very purpose. *See Indiana-American,* p. 18 ('We simply cannot condone the OUCC's approach, which we find would lead to inferior water quality and customer complaints.')
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> Cause No. 41254, p. 14, 1999 WL 397655 (IURC April 14, 1999). For purposes of projecting rate base in a forward-looking test year, the Commission recognizes that for a utility such as I&M, it must continually make expenditures for system improvements to continue providing reasonably adequate service and facilities. A petitioning utility should describe how its projection was arrived at and why the types of improvements forecasted are reasonably needed. The particular need for more significant projects also should be provided, but for project property accounts such as pole replacements that are at least partially driven by inspections or accidents, we find the projection in this Cause based upon historical experience to be adequate, provided that if the overall projected additions are going to differ significantly from historical expenditure levels, Petitioner should explain why.

Id., p. 15.

Use of Base Period

Utilities have differed in their approach to building forecasted data for a forward-looking test year. Many have built their forecast completely from the budgeting process. Indiana American has built its forecast from the base period. The ultimate rule that is adopted should not assume one approach over the other. It is also important that appropriate recognition be given to the fact that the budgeting process necessarily incorporates privileged work product. Allowance for redaction of such privileged information should be expected and made.

Discovery

The Commission is not generally privy to discovery requests and responses between the parties unless and until such discovery is included as attachments to prefiled testimony of a particular party. One avenue for improving the efficiency of proceedings, specifically from the perspective of Commission staff's review, might be to encourage staff to issue docket entry questions early in the process (similar to what would be covered at a technical conference) to help bridge the "information gap" that is sometimes created by staff not being a party receiving discovery automatically.

Another avenue might be to require a technical conference early in the proceeding to allow Commission staff and other parties to ask questions and receive more information about specific issues raised in Petitioner's case-in-chief. Holding a technical conference would help bridge the "information gap" by allowing staff access early in the case to information typically only provided to the parties in discovery. A technical conference could also help improve the efficiency of proceedings by allowing staff and the parties to share information more collaboratively than what is contemplated in the traditional discovery process.

Rate Implementation for Forward-Looking Test Periods

Since the first rate case to be filed under Section 42.7, a process for phased or stepped implementation of rates has been necessary in order to reconcile the use of projected data with Indiana law requiring that utility plant be actually in service before it can be considered used and useful for purposes of including it in rates. *See Indiana-American Water Company, Inc.*, Cause No. 44450 Prehearing Conference Order (IURC 3/19/2014), at p.3. To date, no rules have been promulgated regarding stepped rate implementation, but two general methods have been adopted in the handful of future test year cases that have been before the IURC.

Most common is a process whereby Step 1 of a utility's rate increase is implemented by a compliance filing certifying plant in service as of the beginning of the test year (or later date if the order is issued later than such test year commencement). Step 2 rates are then implemented by a compliance filing certifying plant in service as of the end of the test year. Rates take effect as of the later of the compliance filing or the test year commencement (for Step 1) or end (for Step 2) date, on an interim-subject-to-refund basis. After each compliance filing, other parties have a period of time (typically 60 days) to review and submit an objection. If necessary, a hearing may be held to resolve such objection.

Alternatively, a utility may file tariff sheets that reflect the end of test year rates, with a credit to reduce such rates to reflect the actual in-service status of rate base at the time of filing. The credit expires at the end of the test year, when certification of end-of-test-year plant-in-service is made. For each step, there is a similar period of review. In reality, this alternative process is not substantively different from the first process, other than how it is presented in the case in chief.

The Commission should expressly adopt rules permitting these forms of rate implementation parties have found acceptable in these cases.

II. Improving the organization of information in docketed cases

Indexing of Issues

Uniformity and transparency in filings will benefit all parties to proceedings, as well as Commission staff. A useful index should identify all issues presented in a utility's case-in-chief, including all proposed "adjustments" utilized in determining the utility's revenue requirement, by witness, page number and line number where feasible.

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