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Comments on RM #21-02 Creating 170 IAC 4-10

We appreciate the opportunity to provide staff and the commission comments. Saber Partners, LLC – its people not just the firm - has a 20+ year history specifically with the issues raised by investor-owned utility securitization. We have helped five state regulatory commissions set up their securitization programs. We have reviewed 15 investor-owned utility financing order applications on behalf of commission and staff to protect ratepayer interests. We have also provided expert witness testimony on many applications surrounding the issues of “best practices” related to investor-owned utility securitization.

The most important part of proposed rules should be to specific in requirements for a complete and transparent record at the outset. This will avoid ambiguities and therefore avoid disputes in the future.

This will also save commission staff time and resources by eliminating the need for numerous data requests during the financing order process. By requiring specific and detailed information from the applicant at the outset, it will promote a cooperative and collaborative process.

Investor-owned utility securitization will save money compared to traditional utility finance mechanisms. The premise of securitization is to replace the utility’s weighted average cost of capital that includes the cost of equity, taxes, fees and the cost of the utility’s own debt with solely the costs of issue a AAA bond that is non-recourse to the utility and a direct borrowing on the customers. The AAA bond will be a joint obligation of all customers – if one customer doesn’t pay their charge it will be redistributed to all other customers.

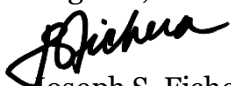
So there will be savings. The question is how much savings will there be? Will ratepayers be overpaying Wall Street and investors? Will ratepayers be “leaving money on the table” to do the deal?

The commission once the financing order is issued and the bonds sold will be giving up all future regulatory review. The asset is taken out of rate base. There is no further chance to correct any mistakes or mispricings. This is unlike the Commission’s ongoing oversight of the utility’s cost of capital and rate base.

So it is important that a commission establish a process and set of rules that is clear and comprehensive. It has one shot to get it right.

Here are our annotated comments

Regards,



Joseph S. Fichera
Chief Executive Officer

Under definitions add a specific definition of “net present value.” It is important to specify this so that there will be no misunderstanding on how ratepayer benefits are calculated Math should be math. By leaving the actual rate out of the rule, it leaves open a loop that should be closed. If one believe it goes without saying, then repeating it here would not be controversial.

170 IAC 4-10-4 Definitions

Authority: IC 8-1-1-3; IC 8-1-40.5-19

Affected: IC 8-1-40.5

Sec. 4. (a) The definitions in IC 8-1-40.5 and this section apply throughout this rule:

- (b) “Case-in-chief” means the evidence and documentation provided by the utility in support of its petition, including, but not limited to, those listed in subsection 5(c) below.
- (c) “Commission” means the Indiana utility regulatory commission.
- (d) **“Net present value” means the discount of future costs and benefits by a rate that reflects the alternative cost of money, which shall be calculated using the utility’s weighted average cost of capital (“WACC”) from its most recent general rate case as the discount rate.**

Under the actual Petition add that more than one alternative should be analyzed within the proposed term that should EQUAL the remaining asset life that is currently in rate base. It is important to have an apples to apples comparison and there may be alternative bond structures that achieve lower costs than just one. The commission should see alternatives before approving the application so that it can make sure ratepayers get optimal benefits.

170 IAC 4-10-5 Petition and case-in-chief

Authority: IC 8-1-1-3; IC 8-1.5-3-8.3

Affected: IC 8-1.5-3-8.1; IC 8-1.5-3-8.3

Sec. 5. (a) An electric utility seeking to securitize costs for retired electric utility generation assets shall file its petition and its case-in-chief on the same day. The 240 day timeline in IC 8-1-40.5-10(b) does not start until the case-in-chief is filed and the commission finds that the petition complies with all provisions of paragraphs (b) and (c) of this section.

(b) The electric utility’s petition shall contain, at a minimum, the following:

- (1) The best estimate of the amount and terms of the proposed securitization with the date on which all the bonds must be completely paid in full at a date twelve (12) to twenty-four (24) months after the date on which the principal of the bonds is expected to be paid (not to exceed twenty (20) years), upon which all principal and interest must be repaid or an event of default will be declared.
- (2) The best estimate of the proposed term in years of the securitization bonds **and a sensitivity analysis showing various bond lengths versus savings for ratepayers.** The proposed term shall be no less than the remaining regular depreciation schedule.
- (3) The best estimate of the total jurisdictional rate base at time synchronized with the best estimate of qualified costs at time of bond issuance.
- (4) An executive summary of the request, in addition to specifying all the terms and conditions.

(c) The electric utility’s case-in-chief shall contain, at a minimum, the following:

- (1) An estimate of the electric utility’s total proposed qualified costs, together with descriptions and schedules of the proposed qualified costs to be subject to the securitization,

including linking or mapping the proposed qualified costs to the costs currently included in utility rates, as applicable. Any Excel worksheets shall also be submitted with the formulas intact.

Matched maturity bears repeating for an apples to apples comparison

(2) Schedule(s) comparing the net present value of the total of the proposed securitization charges with the net present value of the recovery of the qualified costs through traditional ratemaking, over a period not to exceed twenty (20) years **that matches the remaining amortization of the asset currently in rate base**. Such schedules shall identify the assumption(s) utilized in the net present value analysis and include evidence supporting the assumption(s). Any Excel worksheets shall also be submitted with the formulas intact.

(3) Identification and list of the specific electric utility generation assets to be retired for which securitization is being requested, together with a calculation of the net original cost of the assets adjusted for depreciation to be incurred until the facility is retired.

Adding specifics assists in the efficient and fast consideration of the petition. There should be no surprises. Servicing and administration fees are required for bankruptcy purposes for the special purpose vehicle but whether the parent has actual costs equal to those fees is important to know. Many commissions in other states had any excess fees over actual costs credited back to the ratepayer through a general credit to other rates than the securitization charge. Any credit must be separate.

(4) Proposed process to accomplish the requirements of IC 8-1-40.5-12(c), including **an ongoing rate adjustment mechanism** and a demonstration that the proposed securitization charges are expected to be sufficient to timely provide all payments on debt service and other required amounts and charges in connection with the securitization bonds, **including but not limited to an itemization of servicing fees and administration fees**.

(5) Evidence describing the use of the securitization bonds proceeds and accounting entries at receipt of bond proceeds.

(6) Description of the proposed mechanism to reduce the electric utility's base rates and charges upon assessment of the securitization charges on customer bills, so as to remove any costs associated with the qualified costs that are reflected in the electric utility's retail rates at the time the petition is filed.

(7) Tariffs for:

(A) securitization charges; and

(B) any credits or rate reductions required to remove qualified costs from existing rates.

Work papers utilized in determining such tariffs shall be submitted to the commission and provided to participating parties.

(8) Description of current and anticipated market conditions and expected bond structure, **including how the proposal maximizes net present value savings for customers and contemplates a sensitivity analysis for changes in interest rates**.

(9) Evidence of the anticipated **actual** costs incurred to issue, **service** and maintain the securitization bonds **as well as a proposed mechanism of returning to ratepayers any excess revenues received by the sponsoring utility to ratepayers through other rates**.

(10) Proposed plan for capital investment in Indiana, with justification of any plan investment that is not identified as a clean energy resource.

(11) Schedules and supporting documentation for estimated numbers relied upon to support

the case-in-chief, including all assumptions used in any net present value calculation.

(12) A description of

- (A) any debt or equity securities to be refinanced or retired, and estimated redemption premiums, in any, including previously issued securitization bonds; and
- (B) the use of bond proceeds and the cost of such refinancing or retirement.

Securitization is complex with many moving parts. This means there are many risks to ratepayers that may not be obvious. It is important and customary that all transaction documents be submitted for review so as to analyze the terms, conditions, indemnities and other aspects of the securitization.

(13) A copy of any **and all bond transaction documents**, contract, agreement, or arrangement that is proposed or has been made, or examples of, for the sale of the securitization bonds proposed to be issued, **which includes but is not limited to bond indenture, servicing agreement, administration agreement, establishment of the limited liability company, the underwriting agreement for the sale, and other pertinent documents to the securitization transaction.**

(18) Demonstration of the proposed process to be used to correct any over collections or under collections of securitization charges.

(19) Proposed financing order.

An Issuance Advice Letter should NOT be optional. It is a standard industry practice an documents what was said in the petition versus what was done. Because the financing order is irrevocable upon issuance of the bonds, the Commission need to see the final costs and estimates before the bonds are actually issued. There is ample precedent in other states for this process e.g., Texas, Florida, California, North Carolina etc.

(20) Proposed issuance advice letter for securitization bonds **upon pricing of the bonds and before closing so that the Commission may ensure that the terms of the financing order have been met and if not stop the transaction, if the utility plans to use such a letter.**