

## **OUCG COMMENTS ON THE JUNE 9, 2022 DRAFT MINIMUM STANDARD FILING REQUIREMENTS (“MSFR”) PROPOSED RULE**

On March 3, 2022 the OUCG submitted its comments in response to the IURC’s 12-16-2021 Reorganized and Revised (MSFR) Strawman Draft. The Indiana Industrial Energy Consumers, Inc. (INDIEC), NIPSCO, Citizens Energy Group, and the IEA likewise provided comments. Of these entities, the OUCG and IEA both submitted proposed language in the form of redlines or provisions to supplement or replace portions of provisions in the Strawman. The OUCG compared the 06-09-2022 Draft Proposed Rule with the OUCG’s proposed language and IEA’s proposed language. The OUCG responds to some of the language proposed by the IEA and incorporated into the 06-09-2022 draft.

### **With Respect To Rate Base Cutoffs And Rate Base Updates**

The OUCG is greatly concerned with one aspect in particular of the insertions proposed by IEA and incorporated by the Commission in its Draft Proposed Rule 06-09-2022. IEA’s proposed insertion of general rate base cutoffs, as incorporated into the Draft Proposed Rule 06-09-2022, would introduce uncertainty and controversy with respect to rate base cutoffs in historical test year rate cases. The OUCG encourages the Commission to remove these latest insertions. These provisions proposed by IEA and inserted into the draft proposed rule appear in Section 2.1(h), Section 12.2(b) and Section 12.2(c).

As proposed in the 12-16-21 strawman, the rate base cut-off for a historical test period or hybrid test period was to be the end of the test period.

**(b) For a historical test period or hybrid test period: (1) the rate base cutoff for all projects placed in service used and useful shall be the end of the test period.**

As proposed by IEA and incorporated into the Draft Proposed Rule 06-09-2022 Rule , the rate base cut-off for an historical test period or hybrid test period is to be the end of the test period unless otherwise authorized by the presiding officer.

**(b) For a historical test period or hybrid test period: (1) the general rate base cutoff for all projects other than major projects placed in service used and useful shall be the end of the test period, unless otherwise authorized by the presiding officer.**

In combination with the proposed and accepted change to Section 2.1(h), which now explicitly lists “general rate base” cutoffs as something the presiding officer must consider in adopting the schedule, these changes suggest an interpretation that the utility may propose a general rate base cutoff other than the end of its historic test year. This decision would need to be made at the earliest juncture of the case when any consumer party would be at a significant disadvantage and would, for practical purposes, be required to establish why that rate base cut-off should not be approved. This underscores another significant problem with this approach. These draft proposed rules provide neither the utility, nor any consumer party, nor the Commission any standard or criteria to consider as to whether a rate base cutoff other than the end of the test year

should be considered reasonable. Nor is there any clear limit as to when such an update in a historical test year can and should be made.

Traditionally, under the current MSFRs, an electing utility could be assured of receiving an order within 10 months or 12 months of the filing of the case-in-chief in exchange for meeting the specific minimum filing requirements. In addition to being permitted to update for major projects, electing utilities were also permitted to update general rate base to a date that occurred before the OUCC was to file its case-in-chief. The ability of a utility to update the general rate base beyond the test year was both assured by the rules and not without known limitation. For historic test years, certainty and comparable limitation should be preserved. In the absence of any reasonable criteria that affords certainty to all parties and limitation that preserves the ability of consumer parties to evaluate the actual rate base additions, the general rate base cutoff should be the end of the test year. This should be the case for both historical test years (1-5-12-2(b)) and forward-looking test years (1-5-12-2(c)).

For forward-looking test period rate base cut-offs, the draft proposed rule also would authorize the presiding officer to set a different rate base cutoff than the test year without any criteria or guidance. Proposed Section 1-5-12-2(c)(2), which applies specifically to forward-looking test years likewise now states that “an electing utility’s cutoff for remaining project(s) placed in service used and useful shall be the end of the test period, **unless otherwise authorized by the presiding officer.** . . .” Again, the rule affords no criteria for such a departure from the current use of the test year. Moreover, the authorizing statute does not authorize rates to be based on information occurring after the end of the forward-looking test year.

As to the treatment of rate base in forward looking test years, the way of treating rate base as first endorsed by the Commission through the order on Indiana American’s first forward-looking test year rate and as subsequently modified in other orders to afford consumer parties a reasonable opportunity to confirm rate base additions in the test year without delaying the post-test year increase (i.e. rates subject to refund) is a well-balanced approach that could properly be codified in the rules. Under this approach, an electing utility updates its forecasted rate base to actuals as of the end of the test year, reflecting in rate base the projects anticipated in its filing that have been completed and in service up to but not exceeding the projected authorized amount. Thereafter, the OUCC and other consumer parties have a reasonable amount of time to verify and confirm the plant is used and useful and placed in service. Meanwhile the Petitioner is authorized to implement its rate increase subject to refund.

For the foregoing reasons, the OUCC requests the Commission remove from the proposed rule the new changes it made to draft sections 1-5-2.1(h)(2)(B). The OUCC further requests the Commission remove from its latest version of 1-5-12.2(b)(1) and 1-5-12.2(c)(2) the inserted phrase “unless otherwise authorized by the presiding officer.”

Finally, in the course of framing its response, the OUCC determined it needs to request the Commission revisit subsection (a) of proposed new rule 1-5-12.2, which states:

**Sec. 12.2. (a) An electing investor-owned utility’s rate base cutoff may be updated to the extent the cost of plant is not offset by:**

- (1) growth in the depreciation reserve;**
- (2) net contributions in aid of construction;**
- (3) net customer advances; or**
- (4) any combination of clauses (1) through (3);**

**to the plant cutoff date set by the presiding officer under section 2.1(h)(2)(B).**

The foregoing provision appears to have been derived from section 1-5-5(4) of the existing rules. The purpose of the language in the existing rule is to update utility plant in service, as well as the offsets to utility plant in service, when establishing rate base. However, in the context of the proposed rule, it has the different effect of suggesting that a rate base cutoff may be changed, and without guidance as to when that may happen. To avoid that effect, the provision could simply state that **“With respect to any authorized update to rate base, utility plant in service should be offset by accumulated depreciation, net contributions in aid of construction, and net customer advances.”** However, it is unclear what this provision in the context of this rule is designed to address, and whether it should apply equally to forward looking test years and historical test years. It also needs to be determined whether the list of offsets and other components is complete with respect to a future test year update. Accordingly, the OUCB requests this provision be revisited.

### **With Respect To Waivers from the Minimum Standard Filing Requirements**

The OUCB is also particularly concerned with the Draft Proposed Rule’s authorization for electing utilities to depart from the minimum standard filing requirements of the rule. The proposed rules provide no guidance or standard as to when a particular rule should be waived by the presiding officer. This puts all parties and the presiding officers at a significant disadvantage. In lieu of a specific provision authorizing a waiver with established criteria, a waiver provision should be removed. If a utility is unwilling or for some reason unable to comply with a minimum filing requirement, it should not file a case under the rule. Alternatively, the process for identifying deficiencies, particularly as proposed by the OUCB in its proposed process submitted on March 3, 2022 may make the waiver provision less important as the OUCB proposed that if no party asserts there is a deficiency, there would be a presumption that the electing utility has filed a complete case for purposes of establishing a procedural schedule. Utilities that believe a particular requirement should be considered unnecessary or unduly burdensome would be encouraged to communicate that position to the OUCB and any other consumer parties before the case is filed so that an understanding can be reached to the benefit of all parties. Decisions about what need not be provided should be made in advance of the filing of Petitioner’s case. This necessitates communication between the Petitioner and the OUCB and other known parties before the utility files its case.

Such a practice is far superior to encouraging petitioners to request waivers from the rules without any established criteria for being afforded such waiver. According to the best practices, consumer parties have only 98 days to complete their review of petitioner's case. The limited amount of time should not be spent wrangling over information the consumer parties consider relevant and useful and that a petitioner maintains is overly burdensome. Consumer parties are interested in receiving as soon as possible the information they believe is necessary for their review and not requiring information simply because it is technically required by a rule. In fact, in its March 3 comments, the OUCC has identified information that it believes should no longer be required by this Rule. Consumer parties have no reason to seek and review information they consider irrelevant or not useful to its task of understanding a petitioner's case. Such parties are unlikely to go to the trouble of asserting a deficiency based on a requirement that is not useful to their review. Rather than allow such broad waiver language that would subvert the purpose of the minimum standard filing requirements, the OUCC asks the Commission to revisit the OUCC's March 3, 2022 submission and eliminate unnecessary requirements from the proposed rule and incorporate the specific procedures and criteria included in the OUCC's proposed provisions.

In addition to establishing criteria, the rule should encourage discussions between the OUCC and petitioners and consensus on the information that may be required by the rules.

**With Respect to Creating a Presumption that the Schedule in the Best Practices is an Equitable Division of Time**

The OUCC restates and incorporates the March 3, 2022 comments of INDIEC with respect to the proposed language that "A standard procedural schedule set forth in a commission general administrative order shall be presumed to be an equitable division of time." The OUCC agrees with INDIEC's stated position that "no presumption should be given to a specific procedural schedule, except the request for approximately ninety (90) days for the Commission to enter an order following post-hearing briefing."

INDIEC's comments that "in most instances the parties to a case are able to agree to a procedural schedule that accommodates the various, and sometimes conflicting, demands of participants' schedules," and that "Such accommodations reflect the overall congenial and professionalism of the attorneys who practice before the Commission as well as respect for the demands on the Commission's time." The OUCC agrees that "such a presumption runs the risk of becoming rigidly relied upon by parties" undermining "the flexibility that is necessary in setting any schedule over the course of a year" while accommodating the various scheduling needs of all involved in a major rate case. The OUCC adds that the best practices have been in place for approximately a decade and the parties have been able in almost all rate cases to present agreed schedules to the Commission without any such presumption being stated in a rule.

## **With Respect To Specific Workpaper Requirements Proposed By The OUCC**

### **1-5-7 General Workpapers**

The current draft proposed rule indicates the utility should provide its general ledger (1-5-7). However, the proposed draft rule does not include the proposed language “a listing of all test year general ledger transactions” which the OUCC had requested in its comments. A list of the general ledger transactions is important to the OUCC’s expedited review and should be made available at the beginning of the limited time the OUCC has to conduct its review, form its opinions and prepare its testimony and schedules.

### **1-5-10 Workpapers – Utility Plant In Service**

The OUCC requests the Commission to incorporate the OUCC’s March 3, 2022 comments including requiring the utility to disclose its capitalization policy. Further, the OUCC asks the Commission to accept the OUCC’s recommendation and make it clear that section 10 should only apply to utilities that have rate base on which they are seeking a return (i.e. typically, investor owned utilities). This would prevent any other utility from having to prepare information that has no bearing on their petition for rates.

### **1-5-15 Workpapers – Cost of Service Study**

The OUCC joins with INDIEC’s comments with respect to costs of service studies presented in MSFR rate cases, including the need to afford other parties access to the electronic cost of service study with formulas intact. Otherwise, the OUCC and other responsive parties do not have the ability to replicate the cost-of-service study in order to make proposed changes. The OUCC also responds to the proposed rule that merely allowing onsite access is expensive as it requires consumer parties’ paid experts to travel out of state. More importantly, it does not permit any meaningful review and manipulation of the data. The OUCC asks the Commission to revisit the OUCC’s March 3 comments beginning on page 18 and INDIEC’s March 3 comments.

### **Requirement of Workpapers for an Extensions and Replacements Revenue Requirement**

The OUCC asks the Commission to reconsider the OUCC’s March 3 proposal that a section be added to state what information a municipal or NFP utility must provide to support any request for an extensions and replacements revenue requirement (OUCC March 3 Comments page 12).

### **1-5-11 Workpapers – Depreciation**

The OUCC asks that the rule provide that any depreciation study included in a rate case should be provided in Excel with formulas intact.

### **Miscellaneous Comments**

The proposed draft rule does not specifically address whether a capital structure should be updated for any phased increases after the initial rates (e.g. as of the end of forward-looking test year). The Rule should provide for such an update or at least not preclude such an update.

## **Financial Impact**

While the proposed rule has the potential to increase workload, it is not possible to estimate the dollars of that impact.