

October 9, 2020

Via Email Transmission – [Bheline@urc.in.gov](mailto:Bheline@urc.in.gov) & [URCCComments@urc.in.gov](mailto:URCCComments@urc.in.gov)

Ms. Beth Helene

General Counsel

Indiana Utility Regulatory Commission

101 W. Washington, Suite 1500 East

Indianapolis, Indiana 46204

**INDIEC Response to Commission's Request for Additional Comments Improving  
Procedural Efficiencies Initiative**

Dear Ms. Helene,

Indiana Industrial Energy Consumers, Inc., (INDIEC) is pleased to provide this response to the Commission's request for additional stakeholder comments in relation to Commission's ongoing Improving Procedural Efficiencies (IPE) Initiative. As you are aware, INDIEC represents over 20 of the state's largest industrial consumers, many of who frequently participate in Commission proceedings as part of Industrial Groups. As large ratepayers, therefore, INDIEC members have a vested interest in Commission proceedings that are transparent, efficient and fair to all participants that result in fair, just and reasonable rates. INDIEC, accordingly, is generally supportive of efforts by the Commission to improve the procedural processes in order to achieve those ends.

With respect to the list of issues to be addressed as part of the Commission's IPE Initiative released on September 9, 2020, INDIEC offers the following comments.

**I A: Submission of Supporting Testimony with Petition in All Docketed Proceedings**

INDIEC generally supports a requirement that petitions filed pursuant to 170 IAC 1-1.1-9 be accompanied by supporting testimony. Such a requirement should speed review and assessment of the case, allow for early identification of issues by interested parties, and generally improve transparency related to the request. This is particularly important with respect to proceedings operating under statutory deadlines including those seeking to establish base rates, requesting pre-approval of programs or capital expenditures, and tracker adjustments where a petitioner's delay in the provision of supporting evidence may impede the timely review of the case.

It is INDIEC's view that, in general, this process is already followed by most large utilities, and formal imposition of the requirement should not, therefore, pose an undue burden on petitioners.

#### **I B 1: Identification of Requested Increase**

INDIEC supports a requirement that Petitioners include information in petitions for relief identifying, by rate class and or code, the dollar and percentage increase for which cost recovery is sought. Such a requirement would identify, up front, an important element of the requested relief and aid in the initial assessment of the case.

INDIEC would recommend that the Commission adopt a uniform means to present the increase. INDIEC has seen numerous methods for presenting such information in rate cases. Such disparity can confuse the issue and present an inaccurate impression of the actual relief sought. Uniformity in presentation, then, should be sought in order to minimize such outcomes.

#### **I B 2: Inclusion of Responses to Questions from Pre-Filing Meetings**

INDIEC has concerns with the inclusion of the proposal to include responses to questions asked during pre-filing meetings. Such communications between utility representatives and stakeholders are almost always conducted under the mutual expectation of confidential treatment. This mutual understanding fosters an environment that promotes open dialogue and furthers the parties mutual interest in having a core understanding of the issues prior to filing. Further, such communications may involve discussions of customer specific information that both the utility and customer consider confidential.

Disclosure of such questions, then, runs the risk of chilling meaningful pre-filing dialogue and potential administrative burden associated with taking the necessary steps to protect customer information. Creating a requirement of disclosure would, therefore, run counter to the goal of creating a more efficient process.

#### **I B 3: Production of Workpapers as Excel Spreadsheets with Formulas Intact**

To the extent that Petitioners do not, already, produce workpapers supporting their testimony in Excel format with formulas intact at the time of filing, INDIEC supports a requirement to do so. This would promote transparency and ease of review, while eliminating any delay associated with waiting to submit and receive discovery.

With respect to confidential material in workpapers, INDIEC believes those can be submitted to the Commission following an appropriate ruling by the Commission and then made available to parties upon formalization of necessary confidentiality/non-disclosure agreements.

### **I C: Production of an Index Regarding Testimony**

INDIEC does not oppose the adoption of a process whereby parties submit an index of testimony cross-referencing issues with the testifying witness as was done in Exhibit A to I&M's Petition in Cause No. 45235. INDIEC believes that the criteria proposed (a case involving a utility with over 8,000 customers, four witnesses by the submitting party, and two or more of those witnesses testifying on the same issue) strike a reasonable balance between improving transparency and the case review process and the additional burden of producing such an index.

INDIEC does, however, oppose the imposition of a process that would include the creation of a "summary" of witness testimony akin to that provided as Exhibit B to I&M's Petition in Cause No. 45235. It is INDIEC's position that such a summary provides another opportunity for a party to argue its case, and to do so outside the context of ordinary forms of evidence. Requiring such a summary would also generally add to the burden of parties, not only additional work in creating the material, but also reviewing the material which can, and should, be contained in the witnesses' pre-filed testimony.

### **I D: Conduct of Hearings and Pre-Hearing Conferences Electronically**

INDIEC has no objection generally to the conducting of hearings electronically by agreement of the parties; nor at the discretion of the presiding officer should circumstances so require. INDIEC would urge caution with the use of electronic hearings in contested cases, except in extreme circumstances. Use of such mechanisms can slow the orderly progress of an evidentiary hearing down, cause technical issues for participants, and generally present obstacles to an efficient, fair, and transparent process that may be too difficult to overcome.

### **I E: Content of Proposed Orders**

INDIEC agrees with rules that would require appropriate citation to the record in proposed order to support each party's statement of facts and findings. Likewise, INDIEC understands the impropriety of adding settlement agreements that have not previously been entered into the evidentiary record into a proposed order and agrees to

the Commission requiring the proper introduction and evidentiary support of settlements.

INDIEC does have concerns with any requirement that “limits” the recitation of the facts to those which are substantive to support the Commission’s ultimate conclusions. To begin with, the proposed order is the opportunity for each party to, while speaking in the voice of the Commission, present a reasoned basis for its preferred outcome on a particular issue. In that way, what is a “substantive” fact and what is not, becomes a subjective determination in that what one party considers substantive, others may not. Injecting a specific requirement on this issue may both hamper advocacy and prove too difficult to enforce. It may well also subject parties and the Commission to unnecessary filings that are far more burdensome than more comprehensive recitations of the facts.

INDIEC also does not have an objection to having parties confine themselves to evidence of record while preparing a proposed order, provided that the Commission and all parties recognize the myriad of ways evidence may be entered into the record. This includes not only pre-filed testimony, but live testimony during cross-examination/redirect, exhibits entered into the record during such examination, exhibits agreed to by stipulation, responses to Commission docket entries entered as exhibits and administrative notice.

INDIEC does object to any suggestion that parties be prohibited from presenting new arguments in proposed orders. The exclusion of new arguments from proposed orders seems to be grounded on a theory that a party must submit pre-filed testimony advancing a particular argument. But, as noted above, evidence can be properly adduced in any number of ways. A party should not be confined to a single mechanism, such as the hiring of a witness and the filing of testimony, to present its case, and should not be confined from raising new arguments at the proposed order stage if the evidence presented during the proceeding leads to new reasons in support of a position. Additionally, such a prohibition may conflict with existing statute and case law.

The IURC should also recognize the limited competence of witnesses. Witnesses, even expert witnesses, do not serve the function of providing legal opinions. They provide evidence upon which the Commission is able to rule. In the absence of procedures such as answers to complaints, there is no means other than briefs and proposed orders by which a party may present its legal arguments.

Finally, INDIEC objects to any rule that prohibits a party, particularly a consumer party, from arguing on the basis of the evidence that a petitioner has failed to meet its burden of proof for the first time in a proposed order. This is not a “new” issue. By statute, a petitioner bears the burden of proof on all aspects of its case. Moreover, the petitioner is in control of the case it files and is responsible for supporting that case and requested relief. There should be no prohibition on a party raising the inadequacy of that case; nor any imposition of a requirement that a party present testimony alleging an inadequate case, in order to address the legal question of whether a party has met its burden of proof.

In short, the IURC should not preclude parties from presenting arguments, supported by evidence or addressing legal questions, in proposed orders.

## **II A: Amendment of MSFRs**

INDIEC generally has no objection to the reformation of MSFRs to accommodate future and hybrid test years to the extent necessary to better organize and streamline the presentation of evidence in a standardized form to improve transparency and efficiency. INDIEC would also agree with the expansion of a timeline for parties to review and assess the completeness of a petitioner’s case, as well as enforcement of consequences for the failure to file a complete case and appropriately and timely respond to discovery consistent with applicable statutory provisions.

## **II B: Standardized Accounting Schedules**

INDIEC generally supports standardization of basic accounting schedules to the extent such presentation can facilitate and enhance transparency and efficient review of the relief requested by a utility.

## **III: Pilot Programs**

INDIEC generally agrees with the proposal that filings requesting approval of pilot programs be adequate to support a conclusion that the proposed program is in the public interest and conforms to any applicable statutory requirements.

INDIEC is also sensitive to the need for innovative and, in some instances, time sensitive action to implement pilot programs. Flexibility in implementation and time sensitivity should not, however, replace adequate and thorough review of proposed programs; particularly when other ratepayers are asked to contribute to the costs of, or otherwise support, the pilot. Indeed, to the extent a utility petitions for the approval of a

pilot program and pre-approval of associated cost recovery, the Commission should place a heightened emphasis on ensuring the program is in the public interest as subsequent opportunities for review will be limited.

This sort of review can best be achieved by a comprehensive presentation by the petitioning utility that demonstrates the thoroughness of the utility's own vetting and assessment process.

### **Conclusion**

INDIEC would like to thank the Commission for the opportunity to provide comments in response to the Commission's IPE Initiative. It is INDIEC's overall position that more complete and transparent a utility's case is, the more orderly and more efficient the proceeding can be conducted.

Should you have further questions, or if you or any member of the Commission would like clarification regarding INDIEC's positions, please do not hesitate to contact me.

Regards,  
*Joseph P. Rompala*