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Via Email Transmission – BHeline@urc.in.gov & URC Comments@urc.in.gov

Ms. Beth Heline

General Counsel

Indiana Utility Regulatory Commission

1010 W. Washington, Suite 1500 East

Indianapolis, Indiana 46204

INDIEC Comments on GAO Strawman Regarding Improving Procedural Efficiencies Initiative

Dear Ms. Heline,

Indiana Industrial Energy Consumers, Inc., (INDIEC) is pleased to provide comments to the General Administrative Order (GAO) strawman that would implement the Commission's Improving Procedural Efficiencies Initiative. As noted in our October 9, 2020 Comments, INDIEC members have a strong interest in ensuring Commission proceedings remain transparent, efficient and fair to all participants; and result in just and reasonable rates. INDIEC, accordingly, remains supportive of the Commission's ongoing efforts to improve its procedural processes.

With respect to the strawman, INDIEC is generally supportive of the proposed procedural reforms. INDIEC does, however, have some concerns with the proposals and would suggest modification to some aspects of the GAO strawman. From INDIEC's perspective, adoption of these changes would promote greater efficiency and fairness, while still addressing the underlying issues prompting the language in the GAO strawman.

Specific commentary is provided in these narrative remarks on key issues of concern. A redline of all of INDIEC's proposed changes to the GAO strawman is attached for ease of reference.

Strawman Section I:

INDIEC generally supports the decision to establish guidelines for when various hearings may be held electronically. INDIEC, however, believes that certain modifications to the proposed language in the GAO would better capture the range of

hearings which occur on a regular basis, and limit the ability of one party to control the use of electronic hearings for strategic advantage.

Accordingly, INDIEC would suggest that in addition to pre-hearing conferences, attorney's conferences, technical conferences, both uncontested settlement and evidentiary hearings be able to be held electronically. INDIEC would further propose that the Commission have the clear authority to order these largely uncontroversial hearings be held electronically upon agreement of all parties or at the affirmative request of any party.

INDIEC would suggest that the GAO strawman also make clear the Commission's authority to order that contested hearings, including evidentiary hearings or settlement hearings, be held electronically; but only if agreed to by all parties or, if a party requests an electronic hearing, upon a showing of good cause.

INDIEC would also recommend preserving the right of any party objecting to the holding of an electronic, rather than in-person, hearing.

INDIEC would also recommend that the Commission adopt language generally allowing the conduct of a hearing by electronic means as necessary to protect the health and safety of the participants.

The effect of these changes would be to confirm the Commission's authority to allow all hearings to be conducted electronically, including instances which require due regard for the health and safety of all participants. In the case of contested hearings, absent agreement of all parties, the proposed changes would require parties to present good cause as to why a hearing should be conducted electronically, while still preserving the right of parties to object to such a request. This would ensure that the use of electronic hearings for contested cases be based on either agreement of the parties or demonstrated need. In so doing, the language should promote collaboration among parties and counsel to arrive at solutions without the Commission's intervention. These changes would also mitigate INDIEC's concerns expressed in its October 9th comments that the use of electronic hearings in contested matters be utilized in a controlled manner to ensure that the orderly process of the hearing is not slowed down, subject to technical constraints, or faced with other obstacles that would reduce the efficiency, fairness and transparency of the hearing process.

Consistent with those concerns, and understanding that electronic hearings have only recently emerged, INDIEC would suggest that the Commission begin a public process including consultation with regular participants in Commission proceedings, as a supplement to any informal process, in order to establish best practices for the conduct of future electronic hearings so as to preserve efficiencies and ensure due process rights are protected during the conduct of electronic hearings.

Strawman Section II:

With respect to Section II of the language of the strawman, INDIEC has broad concern with the language in Sections II D, E 3 and F.

INDIEC is generally appreciative of the Commission's willingness to protect "confidential settlement negotiations" as many pre-filing discussions with petitioners occur in the context of settlement discussions. INDIEC, however, would request that petitioners also be restricted from disclosing confidential information more generally. This is primarily because such pre-filing discussions may address customer specific information or concerns that are, even if outside the context of settlement, generally considered confidential.

With respect to Section II E 3 INDIEC is concerned with the use of the term "new factual arguments". INDIEC is unclear as to what that phrase means and, as expressed in its October 9th comments, is concerned that it may be construed to preclude new arguments not founded on pre-filed testimony when there are a myriad of means by which evidence may be properly introduced into the record. Further, INDIEC remains concerned that parties would be precluded from raising new arguments in a proposed order even if the evidence of record supports new positions. Likewise, INDIEC is concerned that the proposed GAO language would preclude parties from arguing that a petitioner has failed to meet their burden of proof after the close of evidence.

With respect to the first issue, INDIEC, based on discussions with Commission staff, understands that the primary concern is the presentation of arguments without evidence in the record at all. If that is the concern, INDIEC would suggest that Section II E 3 by modified, to clarify that point in the following manner to require that proposed orders:

"Not include any new evidence; or arguments not supported by evidence no matter how introduced into the record."

Regarding the second concern, INDIEC would suggest making explicit within Section III of the GAO, that non-petitioning parties are not precluded from arguing a petitioner has failed to meet its burden of proof.

With respect II F, INDIEC would simply suggest that the language be modified to allow parties to present evidence in opposition to settlement agreements in order to ensure that right is preserved.

Strawman Section III:

INDIEC does not object to requiring petitioners to state that proposed rates increases, and the total increase sought, be included as part of a petitioner's request for rate increases or cost recovery and would suggest this section be limited to such proceedings. INDIEC continues to support the increases be broken out by rate class/tariff. INDIEC would also recommend that in cases involving a "phase in" of increases, such information be clearly provided for each phase.

Conclusion

INDIEC thanks the Commission for the opportunity to provide comments in response to the GAO strawman. It remains INDIEC's overall position that the more complete and transparent a petition filing is, the more orderly and efficient a proceeding will be.

Should you have further questions, or would like further clarification regarding INDIEC's positions, please do not hesitate to contact me.

Regards,
Joseph P. Rompala

Attachment: Redline of Draft Strawman Appendix A to GAO 2020-XX