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Via Email Transmission – Bheline@urc.in.gov & URCComments@urc.in.gov
Ms. Beth Heline
General Counsel
INDIANA UTILITY REGULATORY COMMISSION
101 W. Washington, Suite 1500 East
Indianapolis, Indiana 46204

INDIEC Comments on Minimum Standard Filing Requirements (MSFR)
December 16, 2021 Reorganized and Revised Strawman Draft

Dear Ms. Heline,

The Indiana Industrial Energy Consumers, Inc., (INDIEC), appreciates the continuing efforts on the part of the Commission to update the MSFRs for utility base rates cases, and the continuing opportunities provided to stakeholders to engage in the process. As made clear on several instances, most recently on October 20, 2021, INDIEC's members, as large industrial customers of Indiana's utilities, have a strong interest in Commission proceedings that result in the establishment of fair, just and reasonable rates through a process that is transparent, efficient and fair to all participants. INDIEC wishes to express its ongoing support for the Commission's efforts to improve its procedures in order to maintain that standard. INDIEC recognizes the important role modification of the MSFRs plays in that process.

INDIEC therefore offers the following comments to the "Reorganized and Revised Strawman Draft" of the MSFRs released on December 16, 2021. INDIEC does not offer comments on all the proposed modifications contained in that Draft. The lack of comment on any particular proposed change, however, should not be construed as agreement with, or acquiescence to, the proposed modification.

1. In our October 20th Comments, INDIEC expressed concern with the proposed addition of language in 170 IAC 1-5-0.5 making the MSFRs apply exclusively to rate case petitions filed under I.C. §8-1-2-42.7 and specifically excluding small utility filings. INDIEC continues to have concerns with this proposal.

As previously explained, Section 42.7 is not the sole and exclusive means by which a utility may seek a general rate increase. Utilities can, and do, still seek base rate adjustments through I.C. §8-1-2-42. As the Commission's present rule states, the purpose of the MSFRs is to "assist the commission in thoroughly and expeditiously reviewing"

petitions for changes to base rates and charges, "provide support for" the request and "reduce or avoid disputes" among the parties. *See* 170 IAC 1-5-2(a). While certain aspects of the draft MSFRs, such as the timing of the order and the use of hybrid or future test years, are exclusive to Section 42.7, the basic goals of the MSFRs should remain the same. The MSFRs exist to ensure that essential information is presented to the Commission and the parties to facilitate an orderly and efficient resolution of a base rate case. That should not be dependent upon which statutory provision a utility invokes when seeking a change to its base rates and charges.

Indeed, the upfront submission of testimony and evidence, as well as supporting workpapers, in all rate cases is critical to the efficient and fair resolution of those proceedings. There is simply no reason to require parties to undertake a significant discovery, or to deprive the Commission of critical information on which to assess the utility's requested modification of its rates and charges, by limiting the application of the MSFRs only to cases filed under Section 42.7.

For these reasons INDIEC respectfully suggests that the Commission eliminate the proposed addition of 170 IAC 1-5-0.5, and instead make the MSFRs generally applicable except for specific provisions related to timelines and information related to the use of a hybrid of future test year.

As expressed in our October 20th Comments, INDIEC is cognizant of the burden on small utilities in meeting all the obligations under the MSFRs. To that end, and to address the concerns expressed above, INDIEC suggests this revision the proposed language in 170 IAC 1-5-0.5:

(a) To the extent applicable this rule applies to all rate case petitions filed with the commission except small utility filings under IC 8-1-2-61.5.

(b) Although not all provisions of this rule apply in each rate case petition, utilities should make reasonable efforts to comply with the provisions of this rule.[1]

[1] For similar reasons to those state above, INDIEC recommends the Commission also eliminate the proposed revision to 170 IAC 1-5-2(a)(1) which limits the application of the rule to petitions filed under Section 42.7; and to not remove the language in 170 IAC 1-5-2(a)(3) which indicates the purpose of the rule is to "reduce or avoid dispute" among the parties.

2. With respect to the proposed changes in 170 IAC 1-5-1 "Definitions", INDIEC has several comments:

A) INDIEC reiterates its concern with the proposed revision to the definition of "Base Period." Specifically, as set out in our October 20th Comments, INDIEC believes it is important that the base period reflect a 12-month period that conforms to the applicable test period. If that is not done, it risks a disconnect between the base period and the test period in a manner that may not reflect actual utility operations.

INDIEC has no specific objection to the proposed language setting an "ending date" for the base period of no more than two hundred seventy (270) days from the date of the utility's filing, except that it would ask the Commission to consider whether such an ending date might lead to a stale base period.

In INDIEC's October 20th Comments, we proposed revised language to the definition of "base period" in 170 IAC 1-5-1. INDIEC would be satisfied if the language "that mirrors the utility's hybrid or forward-looking test period ending date" were retained in the definition.

B) INDIEC would suggest that the definition of "Contingency" be expanded to include any percentage, "whether added by the utility or created as part of an engineering estimate." As the Commission is well aware, project cost estimates often contain not only contingencies based not only on the "class" of the estimate, but also contingencies added by the utility. Any estimated project cost should clearly identify all contingencies, including the total amount of the contingency.

3. With respect to 170 IAC 1-5-2.1, as set out in our October 20th Comments, INDIEC continues to recommend that forty-five (45) days is a more reasonable length of time to allow for parties to object to the completeness of the utility's case-in-chief than the twenty (20) days presently proposed. Likewise, INDIEC continues to recommend that language be inserted ensuring that the rule is not meant to foreclose the right of parties to raise assertions that a utility has failed to meet its statutory burden of proof at a later stage of the proceeding. INDIEC would also like to raise the following points:

A) INDIEC is uncertain as to the intent behind the proposed language in 170 IAC 1-5-2.1(d). Specifically, it is unclear whether this language is meant to serve as a timeline for a *sua sponte* determination by the IURC that the utility has not filed a complete

case-in-chief, or the timeline for a ruling by the IURC if an objection is filed. INDIEC would suggest that this be clarified.

B) INDIEC would also like to raise its concern over proposed insertion of this language as it relates to procedural timelines: "A standard procedural schedule set forth in a commission general administrative order shall be presumed to be an equitable division of time." Based on experience of counsel before the Commission, INDIEC believes 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. 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.

It is, therefore, INDIEC's 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. Such a presumption runs the risk of becoming rigidly relied upon by parties in discussions over the procedural schedule. Such rigidity not only undermines the flexibility that is necessary in setting any schedule over the course of a year, but hampers the ability of the parties to accommodate the various scheduling needs of all involved in a major rate case. INDIEC, accordingly, respectfully recommends that any presumption as to appropriate scheduling be removed.

4. With respect to the proposed changes to 170 IAC 1-5-15, INDIEC would recommend removing the proposed language "investor-owned" from subsection (b). There is no apparent reason that only investor-owned utilities should produce a class cost of service study with the enumerated information. Limiting the requirements to only investor-owned utilities would, for example exclude major municipal utilities and entities such as Citizens Water and CWA Authority from the requirement to provide a complete and reviewable cost of service studies. INDIEC does not believe that the requirements set forth in subsection (c) and (d), which are applicable to water and wastewater utilities, are sufficient. Those subsections require conformity to technical guidance from the applicable industry's primary professional organizations; they do not require production of a class cost of service study that provides the material required in subsection (b). Such information should be required regardless of the nature of the utility as the information is essential for the development of fair, just and reasonable rates.

INDIEC is also concerned with the continued use of "electing" utility in this section. Again, the provision of a class cost of service should not be dependent upon the statutory basis used by the utility to initiate the rate case.

5. The Commission has asked for specific comments with respect to the language in the proposed 170 IAC 1-5-15(g), allowing a utility to provide underlying information related to the class cost of service study during business hours at the utility's premises. INDIEC's primary concern with regards to the production of cost of service models is that they be made available to the Commission and parties and produced in a transparent manner that is subject to modification.

With respect to the information to be provided to itself, the Commission has set a high bar for the utility to invoke the option making information available at its premises only if it is "impossible or impractical" for the utility to provide it directly to the Commission. To the extent that the Commission feels this is adequate to ensure its own access to necessary information, INDIEC does not take any position with regards to this language.

INDIEC, however, strongly encourages the Commission to ensure that class cost of service models remain available to itself and the other parties except under the most extraordinary circumstances as, even with access to information, the reproduction of such models is a practical impossibility for other parties and the Commission.

INDIEC again thanks the Commission for the opportunity to participate in the stakeholder process involving modification of the MSFRs. To the extent you, or Commission staff, believes it would be beneficial to have further discussion with INDIEC regarding our concerns and recommendations, please do not hesitate to contact me.

Regards,

Joseph P. Rompala

Legislative Director, INDIEC