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Ms. Beth Heline, General Counsel
Indiana Utility Regulatory Commission
101 W Washington St. Suite 1500E
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VIA EMAIL

June 5, 2020

RE: IURC Procedural Efficiency Comments

Dear Beth:

Thank you for the opportunity to provide input on improving procedural efficiency in docketed cases before the Indiana Utility Regulatory Commission (IURC). I am submitting thoughts on the areas of focus you outlined in your April 6, 2020 email, as well as some additional ideas, on behalf of Duke Energy Indiana, Indianapolis Power & Light Co., Vectren Energy Delivery, and Citizens Energy Group.

Cases-in-Chief

We appreciate the Commission's desire for more information in cases-in-chief, to provide a better background and context for decision-making. We will work to meet this need. We do, however, have a couple of concerns with respect to this topic, relating to the issue of burden of proof. First, a petitioner should not be asked to meet an impossible burden of being required to anticipate all other parties' issues and concerns in its case-in-chief. Rather, other parties should be required to present their issues and concerns, and a petitioner should be allowed to address those issues and concerns in rebuttal testimony. It is important to note that there are existing requirements stating what should be included in a utility's case-in-chief in rate cases. We do not believe and are not suggesting the Commission's initiative to improve procedural efficiencies intends to modify the legal burden of proof applicable to a petitioner, but we are concerned about the potential for unintended consequences of specific requirements regarding what must be included in a petitioner's case-in-chief.¹

¹ The IURC's 1993 decision *In Re Indiana Michigan Power Co.*, Cause No. 39314 (IURC; Nov. 12, 1993) contains an in-depth explanation of burden of proof in IURC proceedings. In that Order, the Commission explained as follows. A petitioner before the IURC generally bears the burden of proof, and the burden of going forward with evidence in its case-in-chief. For example, in a rate proceeding, a petitioning utility has the burden of establishing that its existing rates are unjust and unreasonable, and has the burden of presenting substantial evidence demonstrating its revenues, operating expenses, rate base, return, proposed adjustments, etc. However, once a petitioning utility has presented a *prima facie* case, opposing parties have the burden of going forward with their evidence. See *City of Terre Haute v. Terre Haute Water Works Corp.*, 180 N.E.2d 110

In sum, we will endeavor to provide more background information and educational information in our cases-in-chief, but we believe that the Commission should continue to recognize that the appropriate legal standard is that a petitioner must make a *prima facie* case.

Minimum Standard Filing Requirements (MSFR)

We agree that a review and update of the MSFR rule, to reflect the use of future test years, as well as to identify any outdated requirements, will be a worthwhile undertaking. In addition, we believe it would be helpful for the Commission to provide additional clarity around expectations for workpapers. As an example, are workpapers required only to support calculations, or does the Commission have a broader expectation? Also with respect to workpapers, we believe it would be helpful for the Commission to clarify that workpapers may be considered by the Commission without being introduced into evidence, as there seem to be differing views on that issue.

Procedural Schedules

It may be useful to re-assess the time allotments in the Commission's 300-day rate case procedural schedule per GAO 2013-5. Additionally, it may be helpful for the Commission to solicit further guidance with respect to the preparation and filing of temporary interim rates under Ind. Code § 8-1-2-42.7.

Pilot Program Proposals

We agree with the Commission that it would be helpful, for all parties, to have more guidance for and clarity around the requirements for approval of pilot programs. At the same time, pilots being proposed are typically fact sensitive, and we believe any such guidance must take that into account.

(Ind.App. 1962). A *prima facie* case is one which presents "such evidence as is sufficient to establish a given fact and which if not contradicted will remain sufficient." See *Rene's Restaurant Corp. v. Fro-Du-Co Corp.*, 210 N.E.2d 386 (Ind.App. 1965).

For utility ratemaking purposes, the legal standard applicable to a petitioning utility in a rate proceeding is evidence that the expense levels proposed are neither unreasonable nor excessive. See Ind. Code § 8-1-2-48. Evidence that a certain level of expense will be incurred for ordinary and necessary business expense by the utility is sufficient to present a *prima facie* case. While this burden of proof requires some data supporting the propriety of a given level of revenue or expense, the legal standard is not so high that a given level or type of expense need be proved by a "clear and convincing" evidentiary standard, let alone a "beyond a reasonable doubt" standard. Indeed, the law has long recognized that good faith is to be presumed on the part of the managers of a public utility. In the absence of a showing of inefficiency or improvidence, either by direct or circumstantial evidence, actual historic or specifically identified future expenditures by a utility cannot be merely disregarded for ratemaking purposes. This presumption is reinforced by the law's recognition of a presumption of correctness of the utility's books and records. See *Oaktown Telephone Co. v. Miller*, 194 N.E. 741 (Ind. 1935), *affirmed on this issue and otherwise modified*, 258 U.S. 165 (1922).

Indexing of Issues

We agree that providing summaries of issues, particularly in complex cases, is helpful, and we are agreeable to doing this. It would be helpful to parties for the Commission to provide guidance or a template as to how they would like to see issues summarized and presented. Given that any such summaries will necessarily cover more than one witness' testimony, we recommend that summaries be filed separate and apart from testimony and exhibits.

Consistent Accounting Schedules

We agree that the use of consistent accounting schedules may be useful, particularly in rate cases. Other states utilize consistent accounting schedules in rate cases, and we would be happy to provide examples of such if requested. That said, it is important to note that consideration will need to be given to differences between investor owned utilities and municipal/nonprofit ratemaking requirements and formulas, as well as differences (and in some cases, limitations) among utility accounting systems which may constrain a utility's ability to produce accounting schedules in prescribed formats.

Electronic Filings and Treatment of Confidential Information

We recommend that more detail be provided in the acceptance confirmation email with respect to filings. Currently, when a filing is made, the party receives an email confirming that the filing was accepted. However, if multiple documents are filed, there is not enough detail in the confirmation email to tell which specific document was accepted or rejected; this is particularly true of confidential filings. Accordingly, if a filing with multiple documents is made and one of those filings is rejected, the filing party has no way to know which one was rejected except by contacting the Commission.

In addition, we believe it would be helpful for the Commission to provide guidelines on the treatment of confidential information by other parties so as to avoid inadvertent disclosure of confidential information. Finally, given the importance of keeping critical energy infrastructure information confidential, we recommend that the Commission establish special guidelines for such highly confidential information, such as, requiring that such information be maintained at the utility, with viewing access provided on the utility's premises to those parties that have executed acceptable confidentiality agreements.

Paper Filings

Currently, when a filing is made that consists of more than 30 pages, the Commission requires that paper copies also be provided. We recommend eliminating this paper copy requirement, or requiring paper copies only when requested by the Commission.

CD/Excel Filings

We recommend that the Commission investigate how Excel spreadsheets can be electronically provided to the Commission – perhaps by use of an electronic dataroom if the Commission's IT security will allow such. Current practice is to provide the Commission with CDs that contain the Excel spreadsheets with formulae intact.

30-Day Filings

We suggest that, under the 30-day filing procedures, the Commission impose a deadline for comments and objections. Currently, the filing utility (and the Commission) have no way of knowing if/when a party may file comments or objections.

Also, objections to 30-day filings are currently sent directly to the Commission secretary by mail or electronically by email. Since the Commission recently added 30-day filings to the online portal, we recommend that objections be filed electronically, as well. Also, it would be useful if parties could subscribe to a 30-day filings like can be done for other legal dockets. This would allow parties to receive notification when items are filed/posted online.

Prehearing Conferences

Although the administrative law judges do a good job of encouraging the parties to propose agreed upon schedules in lieu of prehearing conferences, we recommend the Commission consider holding prehearing conferences electronically (i.e., via WebEx or conference call) in cases where agreement is not reached. This will save on travel time and expense for parties.

Evidentiary Hearings

Witness and Cross-Examination Schedules – The current practice of filing witness order and cross-examination schedules could be improved. Although the administrative law judges often request that the parties provide witness and cross-examination schedules in complex cases, as a practical matter, exchanging written schedules among parties often fails to produce a realistic schedule. We recommend that the Commission consider using attorneys conferences to facilitate the development of more useful and realistic witness and cross-examination schedules for complex cases.

Uncontested Hearings – We have two suggestions for improving efficiency of uncontested hearings. First, as with our recommendation concerning prehearing conferences, we recommend that the Commission evaluate conducting uncontested hearings electronically, saving travel time and expense. As COVID-19 has taught us, this may protect health and wellbeing, as well. Second, we urge the Commission to consider proposing or supporting a legislative change to allow “paper hearings” (with no in person or even electronic evidentiary hearing) in cases where all parties agree to such. Again, such a change will save travel time and expense, as well as protect health and wellbeing.

Further, if uncontested hearings are completed via an electronic format, we also recommend that parties be allowed to electronically provide exhibits, as opposed to mailing paper copies. On a related note, we recommend that the Commission give consideration to eliminating the need for hard copies for evidentiary hearings altogether (whether contested or uncontested), and particularly for those that are conducted virtually via teleconference, so long as the evidence has been prefiled.

Contested Hearings – As the COVID-19 emergency has constrained travel and public meetings, we believe the Commission should also explore the use of electronic hearings in contested cases, as well. Other states allow out-of-state witnesses to testify and be cross-examined via video, and we believe this would work in Indiana too – for out-of-state witnesses, or for all participants if public health and safety require.

Proposed Orders

We welcome any Commission guidance as to how to better prepare proposed orders and other post-hearing briefs, including a uniform structure and format preferred by the Commission.

Document Management System (DMS)

We encourage the Commission to assess its DMS in an effort to make the interface more user-friendly. For example, it would be helpful if the Petition appeared on the front page of the online case summary; it would also be helpful if the entire case record were easier to print out; and it would be helpful if evidentiary hearing transcripts were ultimately posted to the DMS.

In addition, it would be helpful if the filings could be sorted by the party who filed them; and if there was an option to show all filings on one page, that would be helpful, as well.

Finally, we recommend that the Commission consider building into its DMS the ability for a party to reserve a cause number prior to a filing date.

Thank you for seeking and considering our input.

Sincerely,

A handwritten signature in cursive script that reads "Kelley Kan". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Deputy General Counsel
Duke Energy

On behalf of Duke Energy Indiana, Indianapolis Power & Light Co., Vectren Energy Delivery, and Citizens Energy Group