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SUBMISSION OF INDIANA INDUSTRIAL ENERGY CONSUMERS, INC.  
TO THE  
INDIANA UTILITY REGULATORY COMMISSION

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INDIEC'S COMMENTS REGARDING THE COMMISSION'S DRAFT  
"FINDINGS RELATED TO ELECTRIC UTILITIES' BACKUP, MAINTENANCE, AND  
SUPPLEMENTAL POWER RATES" PREPARED  
PURSUANT TO INDIANA CODE § 8-1-2.4-4(H) and GAO 2017-3

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Indiana Industrial Energy Consumers, Inc. (“INDIEC”), submits these comments responsive to the Indiana Utility Regulatory Commission’ (“IURC” or “Commission”) draft “Findings Related to Electric Utilities’ Backup, Maintenance, and Supplemental Power Rates” (“Draft”) prepared by the Commission Staff (“Staff”) and distributed to interested parties on July 25, 2018.

INDIEC would like to thank the Commission and its Staff for the dedication shown in undertaking the analysis required by Indiana Code §8-1-2.4-4(h) and for giving interested parties such as INDIEC an opportunity to provide input at various points during the analysis. While INDIEC believes there are some positive aspects of the Draft, it also believes there are serious flaws. This submission addresses both those positive, and negative, aspects of the Draft.

First, INDIEC recognizes the positive steps taken by the Draft. In particular, the Draft acknowledges that private energy projects could be better encouraged through: 1) the creation of specific tariff offerings for cogeneration units; 2) recognition of the value and cost justification for the reduced use of demand ratchets applied to standby service; and 3) the recognition that rates for standby service should reflect reduced costs to the system when such a customer using those services accepts a “reduced service firmness” from the utility.

The Draft’s recognition of these points properly reflects key ratemaking and cost of service principles: (1) standby rates should not simply mirror tariff structures for full-requirements customers; (2) standby rates should reflect expected outage rates and the ability of private energy project customers to schedule maintenance with a utility to avoid coincident peaks; (3) properly designed standby rates should recognize that a utility does not necessarily need to plan for or construct its system to meet incremental demand caused by use of standby services on an ongoing basis; and (4) the ratemaking rationale for the imposition of demand

ratchets is inapplicable to standby services that do not cause a utility to secure and preserve additional capacity.

The Draft, however, should be more explicit in affirmatively adopting those basic ratemaking principles as best practices to be employed in crafting standby service tariffs. The Draft does not take this step, at least in part, based on the assertion that the class of customers requiring standby service is “heterogeneous” in composition. Regardless of whether the characteristics of customers with private energy projects may be “heterogeneous,” customer classifications rarely yield strict homogeneity within the context of ratemaking. The heterogeneity or homogeneity of the customer class requiring standby service is, accordingly, not itself adequate justification to avoid affirmatively adopting uniform best practices.

This is particularly true because while Indiana Code Chapter 8-1-2.4 embraces a wide range of private energy projects, within that coverage the technologies are established and there is every reason to expect the customer’s private energy projects are and will be reliable with low forced outage rates — a critical issue in determining the cost basis for standby rates and the appropriateness of demand ratchets. As with standard ratemaking for customer classes having a range of characteristics, affirmative best practices for standby rates should be structured on the basis of expected performance. Describing the class as “heterogeneous” thus does not preclude standard ratemaking or call for individualized determinations in each instance.

Importantly, none of the best practices recommended by INDIEC requires the Commission to adopt an inflexible standby formula that would bar or supersede a comprehensive assessment in a rate case or specialized proceeding. Affirmative adoption of these best practices, does, however, provide a strong and unambiguous signal that standby service rates which are soundly based on the identified ratemaking principles are more likely to encourage private

energy projects in furtherance of Indiana and federal policy than those which do not incorporate those principles.

INDIEC also takes issue with the Draft's broad conclusion that each utility has, presently, a standby tariff offering that is just and reasonable and nondiscriminatory simply because each utility's tariff was approved in its last rate case. As the most obvious example, Duke has rates based on a test year that is approximately 15 years old despite major changes to its own cost structure during the intervening period. At the time of the test year in Duke's last rate case, the wholesale market administered by MISO was still at an early stage of development. To categorically conclude that Duke's offering on standby services must be just and reasonable today just because it was included in a tariff that was approved based on conditions 15 years ago is not a sound inference.

More importantly, however, the asserted presumption that the range of tariffs offered by the utilities are "just and reasonable", even if they do not incorporate any of the Draft's conclusions regarding appropriate modifications to encourage private energy projects, immediately undercuts any bargaining power a customer might have in any negotiations with the utility for a standby rate that differs from that offered by the utility. Further, it makes any challenge under the Commission's rules, including 170 IAC 4-4.1-12, a problematic undertaking that places the burden on a customer to engage in litigation and demonstrate an offered rate is unjust and unreasonable. In that situation, it is too easy for the utility to take an unreasonable negotiating position and force the customer to litigate. This is an extraordinary expense, and one that could easily deter, rather than encourage, investment in private energy projects. At the very least, it reinforces the bargaining power of the monopoly service provider and places the customer in a difficult position.

The Draft also suggests a problematic and inaccurate false equivalency between full requirements and partial requirements customers, in terms of the incremental capacity that must be maintained by the utility. There is a significant difference, in the context of standby services, between the duty to serve and a duty to build. In particular, federal law expressly prohibits formulating standby rates on an assumption that all private energy projects will experience outages simultaneously and at system peak. The assumption required by law, rather, is that existing reserves will be available to meet the sporadic demand for standby services. In addition, efficient sizing of the utility's capacity portfolio can be enhanced by tariff provisions that take advantage of the flexibility of the modern wholesale market, such as NIPSCO's standby provision that gives the utility the option to sell the power at the defined rate and, if the utility elects not to do so, gives the customer the option to buy through to the MISO market.

The Draft's reliance on the false equivalence results in the Draft failing to acknowledge that while a utility may have an obligation to serve, it has no commensurate obligation to retain capacity that otherwise stands idle except in the extraordinary instance in which the utility cannot meet the standby needs of a customer private energy project. Recognizing this reality relieves the utility of the need to construct excessive amounts of generation, and is imperative to properly pricing standby services. Further, all ratepayers realize value when a private energy project reduces the capacity the utility must build and maintain, one of the many benefits of promoting private energy projects. That opportunity for savings is undermined if standby services are priced on an assumption that the utility will need to hold the same incremental capacity to meet the occasional needs of a partial requirements customer as it would maintain for the daily needs of a full requirements customer.

The Commission's Draft properly recognized that a number of steps could be taken to encourage investment in private energy projects. The Commission, in preparing its final report, should identify and endorse affirmative and concrete best practices for standby service tariffs, and ground those best practices in established ratemaking principles. Doing so is feasible and would meaningfully advance the federal and state policy encouraging the development of private energy projects as a viable, economical, and efficient source of energy supply for ratepayers.