

**INDIANA UTILITY REGULATORY COMMISSION AND TECHNICAL STAFF'S
REQUEST FOR INPUT AND FEEDBACK ON IMPROVING PROCEDURAL
EFFICIENCIES**

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S
JUNE 5, 2020 COMMENTS**

On April 6, 2020, the Indiana Utility Regulatory Commission (“Commission”) invited input on two areas in which Commission Staff considered procedural efficiencies could be achieved: (1) improvements to information in initial case filings and (2) improvements to the organization of information. In addition to requesting feedback and input with respect to these two areas, the Commission invited parties to identify other items they believed should be considered. The Commission identified more specific items within those areas, which the OUCC repeats below:

- I. Improve the information provided in initial filings and petitions to ensure better education and background on issues being presented**
 - a. Detail needed in case-in-chief and direct testimony: Getting more information up front, rather than waiting for rebuttal
 - b. Improved pilot program requests: Creating standard for information necessary in pilot program requests
 - c. Amendment to 170 IAC 1-5 Minimum Standard Filing Requirements (“MSFRs”) (likely including changing the name of the rule): Updating MSFRs to reflect Ind. Code § 8-1-2-42.7 requirements and options (such as forward-looking test year) and evaluating current MSFRs for outdated requirements

- II. Improve the organization of information in docketed cases to ensure consistency from all parties**
 - a. Indexing of issues: Providing indexes of all issues addressed in petitions, direct testimony, and rebuttal
 - b. Consistent accounting schedules: Adopting a standard IURC presentation for select rate accounting schedules
 - c. Proper proposed orders: Drafting proposed orders consistent with the record and from the Commission's perspective

The Commission also explained its list is only preliminary. The Commission invited all interested stakeholders to provide additional items that they believe should be considered by the Commission, even if they do not necessarily fall into the above two categories.

OUCC's General Comments:

I. Improve the information provided in initial filings and petitions to ensure better education and background on issues being presented

a. Detail needed in case-in-chief and direct testimony: Getting more information up front, rather than waiting for rebuttal.

The OUCC supports this proposition. In addition to providing more complete information for the education of the Commission, this improvement is consistent with the well-established principle that the party petitioning for relief has the burden of making a *prima facie* case. Based on the procedural structure of cases, the consumer parties are afforded due process when they are afforded an opportunity to respond to fully formed *prima facie* cases. Cases made in rebuttal, when the OUCC and any intervenors have already expended their one and only opportunity to present pre-filed evidence, deny consumer parties this due process.

The OUCC stresses the importance of providing information specific to the type of filing made by petitioner. Most cases fall into one of the following categories, each of which calls for certain information basic to the type of case:

- (1) Rate Cases
- (2) Certificate for Public Convenience and Necessity ("CPCN") Cases
- (3) Cost Adjustment Tracker Cases
- (4) Alternate Regulatory Plan ("ARP")/Declination of Jurisdiction Cases

For every type of case within these categories, certain information is essential to form complete cases-in-chiefs that make *prima facie* cases for review of the OUCC and consumer parties and determination by the Commission. The OUCC is in the process of cataloging what specific information it believes should be considered essential and how that information should best be presented to promote an efficient review by the Commission and any consumer parties including the OUCC. We look forward to sharing our thoughts in more detail in the near future, and we are hopeful the Commission staff will find these helpful in finalizing its list of procedural improvements.

b. Improved pilot program requests: Creating a standard for information necessary in pilot program requests.

The OUCC supports exploration of this improvement. To guide in this undertaking the OUCC believes defining what constitutes a pilot program will aid in creating a standard for information necessary to support pilot program requests. Broadly speaking, pilot programs should be presented as a proof-of-concept through a scalable project, not a preapproval for spending, which circumvents the traditional ratemaking process. As such, the Commission should consider establishing a maximum timeframe within which each pilot may be tested and include a process

to reopen and evaluate the merits of the program as implemented and determine whether continuation of the pilot is warranted. Typical pilot programs run approximately three (3) years.

When requesting approval for a pilot, the utility's initial filing should describe the product or service being offered by the pilot program, state the goals of the pilot program, set forth meaningful measurements and data to be collected during the pilot, and explain why a temporary pilot program, as opposed to a permanent utility program, is appropriate. A utility's filing should describe its efforts to minimize subsidization of pilot program costs to nonparticipating ratepayers. If the utility believes other ratepayers must subsidize the pilot program costs, utility testimony should document and quantify the ratepayer benefit.

c. Amendment to 170 IAC 1-5 Minimum Standard Filing Requirements ("MSFRs") (likely including changing the name of the rule): Updating MSFRs to reflect Ind. Code § 8-1-2-42.7 requirements and options (such as forward-looking test year) and evaluating current MSFRs for outdated requirements.

The OUCC supports updating the Minimum Standard Filing Requirements (MSFRs) to either add provisions or establish new parallel sections for processing forward looking test year rate cases. The MSFRs were last updated substantially in 2009. In their current form, the MSFRs provide guidance to petitioners and create standards that assist consumer parties and the Commission in evaluating applications for rate increases. The requirements create standards based on historical test years. In their current form, the rules were not designed for forward looking test periods. To update the MSFRs, the process should include determining what new rules are called for by IC 8-1-2-42.7, and what existing rules should be tailored or replicated to accommodate a forward-looking test year. Meanwhile, the parties should recall that historical test years will still be filed and will still require the application of minimum standards. As applied to the historical test year rate case, the MSFRs should require few changes. (One of those few changes required are those timeframes set forth in the rule that are not consistent with those established by IC 8-1-2-42.7.)

A challenge will be to create clear standards applicable to forward looking test years, without dismantling or muddying rules applicable to historic test year cases. The principles of versatility and completeness may not always suit the principles of simplicity, clarity, specificity and effectiveness. This may require sections, or provisions within a section, to specify whether the section or provision applies to historic test periods, forward test period, or both. The Commission may consider whether it would be more efficient or practical to have two minimum standard filing requirements (e.g. 170 IAC 1-5 A and 1-5 B.) Whether two separate sets of rules or one integrated set of rules, the existing MSFR's, based on a historical test year, should serve as a template for the creation of provisions applicable for forward looking test periods.

Finally, in its April 6 communication, the Commission suggested that the name of the rule will likely change. The communication did not explain why the name of the rule should likely change. The OUCC is hopeful that whatever the rule is named, it will continue to set minimum filing standards that applicant's for both historical and forward-looking rate cases must meet to secure the timely relief dictated by statute. The requirements should also recognize applicant's for rate increases have the burden of making a robust prima facie case as well as the limited amount of time consumer parties have to assemble their own cases, which depends largely on information held by the applicants.

II. Improve the organization of information in docketed cases to ensure consistency from all parties

a. Indexing of issues: Providing indexes of all issues addressed in petitions, direct testimony, and rebuttal

Particularly in large, complex cases, the OUCC sees benefit in petitioning parties including an index of issues, requests, and adjustments addressed within the petitioning parties' testimony and any related attachments, schedules, and workpapers with its filing. An index should include a brief description of the request, identify supporting witnesses, and provide specific references to relevant testimony, attachments, and workpapers. An example of an index that has some of these aspects was provided by I&M in Cause No. 45235 - (I&M's "Index of Issues, Requests, and Supporting Witnesses"). (However, I&M's Index did not include specific references to testimony, attachments, or workpapers.)

b. Consistent accounting schedules: Adopting a standard IURC presentation for select rate accounting schedules

- i. The OUCC agrees with the Commission's proposal to standardize Rate Schedules. The OUCC would suggest at least standardizing the following schedules using the OUCC's format: Revenue Requirement, OUCC Schedule 1, Page 1; Gross Revenue Conversion Factor calculation, OUCC Schedule 1, Page 2; Pro forma Net Income, OUCC Schedule 4; and Balance Sheet, OUCC Schedule 2.
- ii. All comparative financial statements should be provided in the same format as the utility's IURC annual report, regardless of any governmental accounting requirements, to simplify verification and comparisons with prior year information.
- iii. Accounting Schedules should be provided in their "native format," with all formulas intact, when the utility files its case-in-chief. If the schedules are password protected, the password should be provided when the utility files its case-in-chief.

- iv. Any workpapers provided should be paginated and clearly labeled with the associated adjustment number.

c. Proper proposed orders: Drafting proposed orders consistent with the record and from the Commission's perspective

Under the category of organizing information in docketed cases to ensure consistency from all parties, the Commission focuses on the drafting of proposed orders that are consistent with the record and stated from the Commission's perspective.

The OUCC agrees with the Commission's goal of encouraging all parties to submit proposed orders that consistently restate the evidence accurately. To ensure parties consistently do this, the Commission would presumably want to encourage parties to include page citations that show precisely where the recited evidence can be reviewed for accuracy, particularly with respect to contested matters of fact. Citations of the location of evidence provide a means by which the Commission can verify the accuracy of the description of the evidence. In addition, citations to the record allow the presiding officers and Commission staff to review the evidence in context to evaluate the strength of competing conclusions of fact. Advocates are naturally incited to include well placed citations, particularly if the Commission communicates a strong preference for orders that accurately state the facts and include citations to the record.

Proposed orders should also accurately and fully characterize the arguments of opposing parties. An accurate characterization of each party's arguments allows the Commission to more substantively and robustly evaluate the parties' competing arguments to apply or formulate regulatory policies consistent with the regulatory purpose and public interest underlying those policies.

The second prong -- submitting proposed orders from the Commission's perspective -- is more elusive. Parties submitting proposed orders are attempting to persuade the Commission to adopt an order that conforms to the submitting party's perspective. Addressing the Indiana State Bar Association's Utility Law Section, the Commission's Chief Administrative Law Judge provided comments that suggest the Commission's perspective is a matter of tone and decorum. Chief Judge Seyfried encouraged parties to recognize that the Commission prefers proposed orders that treat other parties with respect and decorum.

Improvements and maintenance of these good practices by party advocates is not best achieved by the adoption of specific rules. It would be very difficult to create rules that accomplished the Commission's apparent goals without seeming to regulate the practice of law or foreclose advocacy. Moreover, the Commission's apparent goals can be best be achieved by means the Commission has already undertaken to inform parties directly and indirectly of its preferences with respect to proposed orders. Advocates know that submitting a proposed order that conforms

to the Commission's own best practices is in the best interest of their client because such proposed orders and proposed findings have a better chance of being approved and adopted. Moreover, the Commission has the additional assurance that such attorneys are guided by the rules of professional conduct and know well the Commission's preferences through its orders and less formal communications.

II. Additional Items the Commission Should Consider

- This list is only preliminary; the Commission invites all interested stakeholders to provide additional items that they believe should be considered by the Commission. They do not necessarily have to fall into the above two categories; that is just how Commission staff has organized current suggestions.

a. Formatting requirements

Creating a standard format of electronic submissions will create efficiencies in the process. All submissions in Portable Document Format ("PDF") should have fonts embedded and should use machine-readable text data instead of images, scanned documents, and photos whenever possible. Embedding fonts ensures all font information used to make a document look the way it does is stored in the PDF file. This ensures the reader will be able to see the file as it was intended to be seen. When fonts are not embedded, the PDF reader will guess at font substitution using whatever fonts are available on the reader's computer. Substitution can result in significant differences between the intended output and what the reader observes. The OUCC has experienced what it assumes is text displayed as boxes. Having machine-readable text data rather than images, scanned documents, and photos whenever possible allows readers to search through text and copy text for quoting more easily without having to perform optical character recognition ("OCR"). While OCR technology is useful, it is not 100% accurate. Finally, when submitting maps, photos, or engineering plans as electronic images, please have no more than one image per 8 ½ by 11-inch sheet. The OUCC has had difficulty viewing images when more than one appears on the same sheet. All images should be legible without numerous overlays. Maps should indicate true north, an indication of scale, and provide a legend.

Respectfully Submitted by:

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