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VIA ELECTRONIC MAIL

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RE: INDIEC'S Initial Response to Performance Based Ratemaking Survey

Dear Messrs. Crowley, Romanovs-Malovrh and Goodrich,

I am writing to you on behalf of Indiana Industrial Energy Consumers, Inc. ("INDIEC"), with regards to the Indiana Utility Regulatory Commission's ("IURC" or "Commission") Performance Based Ratemaking ("PBR") study, with which Christensen Associates Energy Consulting, LLC has been retained to assist the Commission.

By way of introduction, INDIEC is a 501(c)(6) organization made up of over 20 member companies who maintain a significant presence in Indiana and are large volume consumers of energy services. INDIEC was formed in the mid-1980s to provide Indiana's large users of energy with an independent voice on energy policy issues. INDIEC is active on energy policy issues before the Commission and the Indiana General Assembly.

Since its inception, INDIEC's membership has consisted of a diverse array of businesses, including representatives from, among other sectors, the automotive, steel production, refining and pharmaceuticals industries. The entities which comprise INDIEC's membership are served by each of the state's five investor owned electric utilities, the three major natural gas utilities, the two large regulated water utilities, REMCs and municipal utilities. INDIEC's membership consists of large, energy intensive users engaged in highly competitive national and global markets, who depend on a supply of efficient, reliable and reasonably priced utility services in order to maintain the vitality of their industrial operations, and to otherwise sustain economic development within Indiana. Further, numerous INDIEC members operate self-generation facilities, or are actively considering the installation of such units.

In short, INDIEC has a substantial interest in energy policy in Indiana, as that policy directly impacts their operations and ability to compete not only in the market, but even internally when corporate resource allocations are made. On behalf of INDIEC, then, I want to express my appreciation to Christensen Associates and the Commission for engaging with stakeholders in a process to review the advisability of introducing PBR concepts into Indiana's regulatory landscape, and we look forward to a productive and collaborative dialogue on the subject with you, the Commission and other stakeholders.

With respect to the two specific questions directed to stakeholders, "Is it advisable to adopt multi-year rate plans in Indiana?" and "Is it advisable to adopt performance incentive mechanisms in Indiana?", INDIEC must reply "No." This letter will set out specific concerns with each proposal in more detail, but generally, INDIEC does not see the need for the introduction of new regulation to implement these PBR mechanism given that statutory authority already exists within Indiana. The use of future test years, extensive multi-year capital trackers and other forms of cost recovery already exist for utilities and have not been shown to reduce long-term impacts on customers. Further, INDIEC is concerned that introducing incentive ratemaking mechanisms on an institutionalized basis will affect utility behavior in unanticipated ways as they try to maximize the economic benefit of PBR.

<u>Question 1: Does your organization consider the adoption of multi-year rate plans advisable in Indiana?</u>

As indicated above, INDIEC does not consider multi-year rate plans which set "base rates and revenue requirements for a period of time" to be necessary or advisable to implement in Indiana. INDIEC's opposition to this form of PBR is rooted in several concerns, namely that the process already exists through various mechanisms, and that utilities have not shown their forecasting ability to be particularly accurate. In addition, the qualification that this form of PBR addresses only "base rates and revenues" suggests it is extremely limited in its value as Indiana utilities also have a vast array of tracking mechanisms available to them in order to address expense recovery in between base rate adjustments.

To begin with, Indiana has adopted future and hybrid test years which the regulated utilities regularly utilize in rate cases. Under Indiana Code §8-1-2-42.7(d)(1), a future test year may begin "not later than twenty-four months after the date on which a utility petitions" for a base rate adjustment. Given that rate cases filed under Section 42.7 must be concluded within 300 days of their filing, this means that a utility may set rates for a period of time extending at least two years after the conclusion of a base rate proceeding.[1] In many instances, utilities further seek to implement rates on a staggard basis so that customers see increases shortly after the order date and then at the conclusion of the test year. In a current example, CenterPoint Energy South sought increases to be implemented at the conclusion of the case, at the one year mark, and the close of the test year as additional capital investment was declared in service.

[1] For example, if a utility filed a case on January 1, 2025, it could use a test year running from January 1, 2027 – December 31, 2027. An order would be expected roughly November 1, 2025. This means that rates would likely be in effect, at least, through all of 2026 and 2027.

In other words, "multi-year rate plans" already exist, and are already utilized within Indiana. This has not, however, substantially reduced burdens on ratepayers. Utilities continue to seek massive increases. NIPSCO's electric utility, for example, just this month, filed a request seeking a 20% increase over its current operating revenues, after having sought a similarly sized increase in September 2022. These increases have been driven, largely, by massive amounts of pre-approved capital investment which have been made by the utility. In the current case, for example, NIPSCO is seeking to roll approximately $3 billion of rate base investment into rates, and of that amount, roughly $2 billion is for new renewable generation and another $769.5 million is tied to investment made pursuant to a multi-year Transmission Distribution and Storage System Improvement ("TDSIC") plan. *See Ind. Code Ch. 8-1-39*. The TDSIC Plan allows utilities to seek pre-approval of investments over a 5 to 7-year horizon, and provides for automatic increases in retail revenues of up to 2% per year of the plan, meaning that in a 7 year plan, retail revenues could increase by as much as 14% from transmission and distribution investment only. *See I.C. §§8-1-39-7.8, -14*.

The state's utilities have taken advantage of the TSDIC statute by filing plans which have sought pre-approval for billions of dollars in new capital investment. In many instances, moreover, utilities have regularly updated their plans to increase plan budgets, or have filed multiple plans which include projects which have a questionable cost justification basis. Although statutory provisions exist to control excessive spending, these provisions, such as Indiana Code Sections 8-1-39-9(g) (requiring specific justification for cost overruns) and -10(b)(3) (requiring a determination that incremental costs of improvements are justified by incremental benefits) have not been rigorously enforced. Indeed, the utilities have actively, and aggressively, opposed any effort to constrain spending under the TDSIC statute before the Commission, Indiana's appellate courts, and the General Assembly where major revisions were made in to the statue in 2019 after a significant appellate court loss.

The TDSIC is not the only tracker available to utilities to recover costs between rate cases in Indiana. In addition to quarterly fuel cost adjustments, utilities may recover costs under the Federally Mandated cost recovery statute[2], the Environmental Compliance Plan statute[3] and routinely use a broad interpretation of the general tracker provision[4] to recovery a wide variety of costs. Moreover, in a recent legislative change, utilities may, without preapproval, defer almost every cost for later recovery.[5] These tracking mechanism unquestionably place upward pressure on rates between base rate cases, and when base rate cases do come, as is the case with the TDSIC,

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[2] Ind. Code Ch. 8-1-8.4.
[3] Ind. Code Ch. 8-1-27.
[4] Ind. Code § 8-1-2-42.
[5] Ind. Code §8-1-2-10. Although there is disagreement between various parties as to whether this was simply a legislative codification of existing practice or a radical change undercutting traditional prohibitions on retroactive ratemaking, there is no question the legislation was introduced in direct response to an Indiana Supreme Court decision denying recovery of costs that were previously deferred without regulatory pre-approval

these trackers can impose massive increases on customers which have already been largely pre-approved.

Collectively, then, there is no basis to conclude that multi-year rate plans which fix only base revenues would materially benefit customers. The existence of tracking mechanisms, the utilities' own lack of precision in forecasting capital costs, and the wide array of tracking mechanisms already in place simply do not suggest this would be a better solution than what presently exists. Accordingly, INDIEC cannot support this solution.

Question 2: Does your organization consider the adoption of performance incentive mechanisms advisable in Indiana?

Again, with respect to whether to implement performance incentive mechanisms in Indiana, INDIEC must take the position that such mechanisms are not advisable. As with the case of multi-year plans, a means to implement these mechanisms already exists. Moreover, the implementation of such incentives has the potential to distort utility behavior in unexpected, and inefficient, ways as utilities respond to economic signals as to how to maximize profits.

To begin with, INDIEC considers it important to note that in Indiana, utilities already have the obligation to serve their customers efficiently and through prudent investment. Through the existing rate setting structure, utilities have the ability to recover their costs and the opportunity to earn a return on their prudent investments at a level which reflects the risk of investment.

INDIEC well understands that one of the purposes of PBR structures, including incentive based ratemaking, is to serve as an alternative to traditional approaches, particularly by breaking the links between capital investment and shareholder returns and sales and revenues. INDIEC does not, however, see that as particularly beneficial in Indiana. To begin with, most Indiana utilities, and certainly electric and gas public utilities, are in a state of capital expansion. Aside from the TDSIC, there are evolving compliance requirements and, for electric utilities, a major transition from coal generation to other resources. These investments need to be compensated in order to pass muster under the Fifth Amendment. At a bare minimum, returns need to be sufficient to attract capital at a reasonable cost, meaning that returns on equity need to match some minimal level of investor expectation. Likewise, utilities already have the right to recover their prudent expenses. Accordingly, it is difficult to see how any penalty imposed under an "incentive" PBR mechanism would provide substantial rate relief.

Notwithstanding those objections, there is a fundamental question which should be addressed. Specifically, why should we reward utilities for meeting their existing obligation to provide reliable service at just and reasonable rates? It may be argued that performance incentives spur new levels of efficiency, but ratepayers will not fully benefit from those efficiencies if utilities are compensated through performance bonuses for achieving them. Not only that, there is every reason to expect that utilities will follow economic signals sent by incentives, potentially with very unexpected consequences. For example, if a utility is incentivized to enhance reliability, there is every reason to expect investment will be made in programs such as tree-trimming, employee hiring and retention programs to reduce outages and outage times. But it should also be expected

that there will be increased capital investment in transmission and distribution systems and other operational areas as well, such as in computer systems to monitor system conditions. In other words, even well intentioned incentives run the risk of sending signals which spur behavior directed at maximizing profit within the allowed parameters. While investment in reliability may be laudable, over-investment or fixation on particular cost categories could undermine investment in other aspects of utility operations. Finding the right balance between and among all the competing factors looks no easier under an incentive based PBR mechanism than it does under traditional regulation.

Further, under existing Indiana law, utilities may, already, seek approval of performance-based incentive plans. Indiana Code Section 8-1-2.5-6(a)(2)(A) explicitly gives the Commission the authority to "establish rates and charges . . . that use performance based rewards or penalties, either related to or unrelated to the energy utility's return or property . . ." as part of a utility Alternative Regulatory Plan. Under that statutory mechanism, such plans are addressed on a case-by-case basis, subject to procedural safeguards and defined standards and criteria, as opposed to industry-wide incentives available without consideration of the particular utility's circumstances and justifications. With this express grant of Commission authority already in statute, INDIEC does not see the value in, or need for, new statutory provisions creating performance-based incentives or Commission rules or sua sponte investigations generating the same. Rather, INDIEC would suggest that if a utility desires to put forward such plans, it should prepare one and have it evaluated by the Commission in its role as the regulatory authority, and subject to the ordinary litigation process. Such process is more likely, from INDIEC's perspective, to produce a workable and balanced mechanism than widespread adoption of uniform incentives.

Ultimately, INDIEC is not prepared to endorse either a multi-year rate plan or performance-based incentives. We understand that other stakeholders may have alternative positions. INDIEC remains committed to engaging in a collaborative fashion in the continuing dialogue on this subject, and welcomes the opportunity to provide further input, and to consider and respond to the positions of other parties.

Please feel free to contact me if you have any questions, or would like further insights into INDIEC's positions.

Regards,

Joseph P. Rompala

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cc: IURC, via electronic mail, PBRstudy@urc.in.gov