STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF HAMILTON SOUTHEASTERN UTILITIES, INC. TO: 1) INCREASE ITS SEWER RATES AND CHARGES PURSUANT TO THE COMMISSION'S MINIMUM STANDARD FILING REQUIREMENTS; 2) ADOPT A NEW RATE SCHEDULE REFLECTING THE APPROVED RATES AND CHARGES; 3) INCREASE ITS SYSTEM DEVELOPMENT CHARGES; 4) IMPLEMENT A FATS, OILS AND GREASE CHARGE; AND 5) UPDATE ITS RULES AND REGULATIONS	)	**CAUSE NO. 44683**

HAMILTON SOUTHEASTERN UTILITIES, INC.'S PETITION FOR RECONSIDERATION AND CLARIFICATION

Hamilton Southeastern Utilities, Inc. ("Petitioner" or "HSE"), by counsel, pursuant to 170 IAC 1-1.1-22(e), hereby respectfully files this Petition for Reconsideration and Clarification of the Commission's November 9, 2016 Final Order ("Final Order") in Cause No. 44683. HSE requests that the Commission reconsider and revise the Final Order regarding the following:

1) the removal from HSE's operating expenses of the requested 3% increase in HSE's contract operations cost with SAMCO;

2) the removal from HSE's operating expenses of the 10% management fee which SAMCO charges for ordering, storing and inventorying, and financing the purchasing of equipment and supplies for HSE and for subcontractor work;

3) the removal from HSE's calculation of rate base the working capital necessary to timely pay the operating expenses of SAMCO;

4) the application of NARUC Guidelines to HSE's contract with SAMCO; and

5) the requirement that HSE offer evidence in its next rate case supporting "SAMCO's fully allocated cost."

Additionally, HSE seeks clarification regarding the Commission's approved SDC charge of $3,650 for the Flatfork Creek CTA when HSE only requested the SDC charge be increased to $2,850.

Request for Reconsideration

I. The Commission Should Reverse Its Findings Declining to Approve HSE's Proposed 3% Increase in Its Contract Operations Cost with SAMCO and Approving the OUCC's Requested Reduction Related to SAMCO's 10% Management Fee.

A. The Commission Adopted a Rule in the Final Order, and HSE Had No Notice That the Guidelines for Cost Allocations and Affiliate Transactions (the "NARUC Guidelines") Must Be Followed for Affiliate Contracts.

The Commission's Final Order promulgated a rule requiring HSE (and any other utility seeking a rate increase related to an affiliate) to comply with the NARUC Guidelines without having followed any of the rulemaking requirements mandated by Indiana law for administrative agencies. Indiana Code § 4-22-2 *et seq.* places certain requirements on administrative agencies when an agency enacts a new "rule." Those statutes require, among other things, that the agency notify the public of its intention to adopt the proposed rule and subsequently hold a public hearing on the proposed rule. Ind. Code § 4-22-2-24, 26. The failure to follow the proper rulemaking procedures renders a rule invalid and prevents an agency from enforcing it. *Indiana-Kentucky Elec. Corp. v. Comm'r, Indiana Dep't of Envtl. Mgmt.*, 820 N.E.2d 771, 781 (Ind. Ct. App. 2005).

The procedural requirements set out by Indiana Code § 4-22-2 *et seq.* only apply to "rules," however, and do not apply to other "agency actions." Ind. Code § 4-22-2-13(a), (c). The

Final Order clearly contains a rule regarding the NARUC Guidelines. A "rule" is defined as follows:

> "Rule" means the whole or any part of an agency statement of general applicability that:
>
> (1) has or is designed to have the effect of law; and
> (2) implements, interprets, or prescribes:
> (A) law or policy; or
> (B) the organization, procedure, or practice requirements of an agency.

Ind. Code § 4-22-2-3(b). The Code defines "rulemaking action" as "the process of formulating or adopting a rule. The term does not include an agency action." Ind. Code § 4-22-2-3(c).

The Code defines an "agency action" as any of the following: "(1) the whole or a part of an order. (2) The failure to issue an order. (3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article." Ind. Code § 4-21.5-1-4; Ind. Code § 4-22-2-3(d). The rulemaking procedural requirements do not apply to agency decisions that involve a "resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law." Ind. Code § 4-22-2-13(c)(1).

The Indiana Court of Appeals has summarized the differences between rulemaking and an agency action (the agency's adjudicatory function) as follows:

> The rulemaking function is distinguished from the adjudicatory function in that the former embraces an element of generality, operating upon a class of individuals or situations whereas an adjudication operates upon a particular individual or circumstance. In addition, the exercise of administrative rulemaking power looks to the future, whereas an adjudication operates retrospectively upon events which occurred in the past.

Blinzinger v. Americana Healthcare Corp., 466 N.E.2d 1371, 1375 (Ind. Ct. App. 1984); *see also Indiana Dep't of Envtl. Mgmt. v. AMAX, Inc.*, 529 N.E.2d 1209, 1212 (Ind. Ct. App. 1988) ("A rulemaking function is distinguished from an adjudicatory function in that the former

involves an element of generality and operates on a class of individuals or situations while an adjudication operates upon a particular individual or circumstance. In addition, administrative rulemaking power has a prospective effect, whereas an adjudication operates retrospectively upon events which have already occurred." (citation omitted)).

The Commission created a rule, but failed to follow rulemaking procedures required by Indiana law, when it made the following findings in the Final Order:

> NARUC guidelines call for affiliate pricing to be at market price, or the fully allocated cost, whichever is lower. Here, HSE presented evidence that shows SAMCO's rates are at or below the rates charged by other similar firms, but presented no evidence concerning what SAMCO's fully allocated cost actually is. . . . Because HSE failed to produce any evidence concerning SAMCO's fully allocated cost, the Commission is unable to determine whether the market prices charged by SAMCO, while at or below costs of its competitors, are at or below SAMCO's fully allocated cost.
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> * * *
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> Because HSE failed to demonstrate SAMCO's fully allocated costs, the Commission declines to approve Petitioner's proposed $115,498 ($54,728+60,770) 3% increase in its contract operations cost with SAMCO . . .
>
> * * *
>
> In its next rate case, we direct HSE to offer evidence supporting SAMCO's fully allocated cost so that the Commission may determine the appropriate level of SAMCO expenses that should be included in HSE's rates.

(Final Order at 22.) Thus, the Commission adopted a rule requiring HSE and all other utilities to meet the NARUC Guidelines with respect to affiliates. The Commission went on to deny HSE's request for an increase in HSE's contract operations costs with SAMCO and deny the inclusion of SAMCO's 10% management fee in HSE's operating expenses because HSE had not met the NARUC Guidelines, and ordered HSE to submit evidence in its next rate case showing that SAMCO's rates comply with the NARUC Guidelines. *Id*.

This series of actions, when reviewed under the relevant statutory definitions and case law discussed above, shows that the Commission promulgated a rule, disguised as an order or agency action, requiring HSE and other utilities to comply with the NARUC Guidelines.

The actions taken by the Commission make clear that the Commission promulgated a rule when it required HSE to comply with the NARUC Guidelines, as the rule enacted in this case is easily distinguishable from an agency action. First, the NARUC Guidelines rule imposed by the Commission "looks to the future," as opposed to agency actions, which "operate retrospectively upon events which occurred in the past." *Blinzinger*, 466 N.E.2d at 1375. Not only did the Commission require that HSE meet the NARUC Guidelines with respect to its current case, it also *ordered* HSE to comply with the NARUC Guidelines in future rate cases. (Final Order at 22.)

Moreover, the Commission's rule requiring compliance with the NARUC Guidelines will, moving forward, undoubtedly be applied to all utilities; it will not be, and cannot be, applied solely to HSE. *Blinzinger*, 466 N.E.2d at 1375. The Indiana Code mandates that the Commission fix non-discriminatory rates:

> Whenever, upon an investigation, the commission shall find any rates, tolls, charges, schedules, or joint rate or rates to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this chapter, *the commission shall determine and by order fix just and reasonable rate*s, tolls, charges, schedules, or joint rates to be imposed, observed, and followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this chapter.

Ind. Code § 8-1-2-68 (emphasis added). If the Commission were to apply the NARUC Guidelines only to HSE, it would lead to discriminatory rates being charged by other utilities. Without having to meet the NARUC Guidelines, other utilities would be permitted to calculate and charge rates to their customers based upon different cost components. The

Commission is required to apply policies and rules in a non-discriminatory manner so that the result is uniformity in how rates are calculated. Therefore, the Commission is required to apply the NARUC Guidelines to all similarly situated utilities moving forward. To do otherwise would be an express violation of the Commission's statutory mandate. Thus, the rule the Commission adopted in the Final Order is a rule of general applicability, and must be applied to all utilities.

Furthermore, it cannot be said that the rule adopted in this case involves a "resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law." Ind. Code § 4-22-2-13(c)(1); *Indiana Dep't of Envtl. Mgmt. v. Twin Eagle LLC*, 798 N.E.2d 839, 848 (Ind. 2003) ("Agency actions that result in resolutions or directives that relate solely to internal policy, procedure, or organization, and do not have the effect of law, are not subject to the [procedural rulemaking] requirements."). When evaluating this consideration, Indiana appellate courts look to whether the primary impact of the rule at issue is internal or external to the agency. *Villegas v. Silverman*, 832 N.E.2d 598, 609 (Ind. Ct. App. 2005) ("The primary impact of the identification requirements is external, and it is the primary impact that is paramount.").

In this case, the requirement that HSE (and other similar utilities) comply with the NARUC Guidelines cannot be said to have any internal impact on the Commission or its employees, let alone a primary impact. The only impact this rule will have is on the utilities that will be required to comply with it moving forward. *Compare id.* ("The new identification requirements do not relate primarily to the BMV's internal policies, procedures, or organization. The primary impact of the identification requirements is

external, and it is the primary impact that is paramount."), *with Conquest v. State Employee's Appeals Comm'n*, 565 N.E.2d 1086, 1088 (Ind. Ct. App. 1991) ("Here, the [agency's] home visit policy directly impacts upon parole agents' conduct. The home visit policy affects parole agents' work hours and therefore, is an internal policy, not an administrative rule." (citation omitted)).

Finally, the fact that the Commission's newly-adopted rule is contained in the Final Order matters not. While it is true that an "agency action" includes the "whole or a part of an order[,]" Ind. Code § 4-21.5-1-4; Ind. Code § 4-22-2-3(d), "it is the substance of agency action, not the label given, that controls" the determination of whether an agency has promulgated a rule. *S.S. v. Review Bd. of Indiana Dep't of Workforce Dev.*, 941 N.E.2d 550, 557 n.1 (Ind. Ct. App. 2011). Here, the Commission has adopted a prospective, generally applicable rule, and the fact that the Commission adopted the rule through the Final Order does not excuse the Commission from complying with the procedural rulemaking requirements set out in Indiana Code § 4-22-2 *et seq*.

B. The Commission's Findings Are Arbitrary and Capricious Because They Are Not Based on Ascertainable Standards.

Even if the Commission were to determine that it did not engage in rulemaking in its Final Order, the Commission should still reconsider and vacate the Final Order because its decision was arbitrary and capricious. "Decisions of administrative agencies must be based on ascertainable standards to protect against arbitrary and capricious decisions. Such standards are also necessary to give fair warning as to what factors agencies consider in making decisions." *Indiana Dep't of Envtl. Mgmt. v. Constr. Mgmt. Associates, L.L.C.*, 890 N.E.2d 107, 114 (Ind. Ct. App. 2008) (citation omitted); *see also State Bd. of Tax Comm'rs*

v. New Castle Lodge #147, Loyal Order of Moose, Inc., 765 N.E.2d 1257, 1264 (Ind. 2002) ("Administrative decisions must . . . be based on ascertainable standards in order to be fair and consistent rather than arbitrary and capricious."). The only standards that HSE had available to it prior to the Final Order were the Commission's August 18, 2010 order in HSE's last rate case in Cause No. 43761 and the Commission's General Administrative Order 2010-1 establishing guidelines for the filing of affiliate contracts. A review of those documents reveals that prior to the Final Order, the Commission had never given any indication that the NARUC Guidelines must be followed.

In HSE's last rate case in Cause No. 43761, the OUCC put forth similar arguments regarding HSE's affiliate contract with SAMCO. The OUCC argued, *inter alia*, that SAMCO's rate increase should not be included in HSE's operating expenses and recommended an additional reduction to HSE's operating expenses related to HSE's use of SAMCO. (IURC Order, Cause No. 43761, at 19-20.) The OUCC's recommended adjustments were based on the following arguments: 1) HSE should use the NARUC Guidelines for affiliate transactions and that NARUC recommended the costs of services between affiliates be at the lower of fully allocated costs or prevailing market; 2) HSE only submitted evidence that the SAMCO charges were at market rates; 3) the SAMCO rates included significant profit consisting of a) a 10% mark-up for the hiring of third-party vendors and for purchasing materials and b) an additional estimated 10% profit margin, yielding a total estimated profit margin of 20%. (*Id*.) The Commission rejected the OUCC's SAMCO reductions entirely. Specifically, the Commission found the following:

> Presently, HSE negotiates [the SAMCO] charges annually and does so based upon market surveys of engineering firms that provide similar services. We are satisfied that HSE has demonstrated the reasonableness of its SAMCO contract … and finds [sic] that the expenses related to SAMCO … are reasonable.

Id. at 21. Notably, the Commission's findings in that order make no mention of the NARUC Guidelines and do not require HSE to comply with the Guidelines going forward.

Relying on the Commission's findings in Cause No. 43761, HSE submitted evidence showing that SAMCO's rates are reasonable and below the market. HSE understood that the criteria used by the Commission to evaluate the affiliate contract with SAMCO in Cause No. 43761 would be the same criteria used in this proceeding. HSE had no notice that any other criteria would apply. HSE, as it did in Cause No. 43761, provided a market study comparing SAMCO's rates to other engineering firms operating in Indiana. The OUCC provided no evidence refuting the market study. The evidence submitted by HSE shows that the rates charged by SAMCO are reasonable and below the market, which is consistent with the Commission's findings in Cause No. 43761.

Furthermore, the Commission's General Administrative Orders regarding affiliate contracts ("Affiliate Guidelines") fail to adopt or even mention the NARUC Guidelines. Likewise, the Affiliate Guidelines do not require services between affiliates to be priced at the lower of market or at cost fully allocated. *See* GAO 2010-1, GAO 2016-1 and GAO 2016-5. The Affiliate Guidelines, as revised by GAO 2016-5,[1] now require that:

> In order to be considered in the public interest, as required by IC 8-1-2-49, affiliate contracts must… include clear and reasonably detailed information regarding costs and how they are calculated. This information should be reasonably detailed relative to the cost of products or services in the contract.[2]

[1] GAO 2016-5 was issued in September 2016, after HSE filed its Verified Petition and after the Commission held its hearing on the Verified Petition.

[2] The effect of this guideline on regulated utilities is unclear since it appears to violate Indiana's rulemaking statutes. See the discussion above regarding a "rule" as compared to an "agency action" under IC 4-22-2 *et seq*. Even if GAO 2016-5 or any of the other previously-issued guidelines did violate the rulemaking requirements and are thus invalid, the fact remains that none of the guidelines gave any indication that the Commission would require HSE to comply with the NARUC Guidelines in this rate case.

GAO 2016-5. At the time HSE filed its petition, however, only GAO 2010-1 had been issued, and GAO 2010-1 contains no requirements regarding the pricing of affiliate contracts or the NARUC Guidelines. Even if GAO 2016-5 had been in effect when HSE filed its petition in this proceeding, the affiliate contract with SAMCO would comply with the requirements of GAO 2016-5. The SAMCO contract, which was last filed with the Commission in 2015, contains detailed information about the services being provided by SAMCO and the costs for such services. The contract includes an attachment with a complete listing of the services provided and the hourly rates charged by SAMCO by the type of employee performing the service. Other categories of services along with the costs for such services are also included in the attachment.

Thus, in preparing its case for a rate change, HSE did not have, and could not have had, any indication whatsoever that the Commission would require HSE to comply with the NARUC Guidelines. As noted above, agency decisions must be based on ascertainable standards to avoid arbitrary and capricious decisions and to give "fair warning" as to the standards an agency will consider when making a decision. *Constr. Mgmt. Associates, L.L.C.*, 890 N.E.2d at 114. In this case, there was no fair warning. The Commission gave no indication that it would require HSE to comply with the NARUC Guidelines. Indeed, in its order in Cause No. 43761, the Commission had explicitly rejected the OUCC's argument that HSE was required to comply with the NARUC Guidelines. The Commission's decision in this case was therefore arbitrary and capricious.

C. The Commission Overlooked Evidence in the Record Establishing That SAMCO's Rates Are Consistent with the NARUC Guidelines.

The Commission found in its Final Order that "HSE failed to provide any evidence concerning SAMCO's fully allocated cost," and because of this, the Commission was

"unable to determine whether the market prices charged by SAMCO, while at or below costs of its competitors, are at or below SAMCO's fully allocated cost." (Final Order at 22.) First, SAMCO's rates are not "market prices." HSE provided evidence that SAMCO's rates are below the market, and the OUCC provided no evidence refuting this. HSE provided copies of SAMCO's invoices along with detailed information showing SAMCO's charges. Second, the SAMCO charges are in accordance with an affiliate contract that has been filed with the Commission on multiple occasions, most recently in 2015. HSE's affiliate agreements with SAMCO have been filed with the Commission for more than 20 years and have never been questioned by the Commission. SAMCO's costs to perform the services it provides to HSE are in the record.

The OUCC disputed SAMCO's costs and argued that the services performed by SAMCO could be performed by HSE in-house at a lower cost by HSE hiring less expensive engineers. However, the OUCC's analysis failed to include other significant costs such as equipment, overhead, transportation and other similar overhead charges necessary to perform such services. The record reflects this analysis. HSE also provided evidence that SAMCO's rates are consistent with the definition of "fully allocated costs" as defined by the NARUC Guidelines. (*See* HSE's Submission of Exceptions and Reply Brief at 9.) There is substantial evidence in the record showing that SAMCO's charges are consistent with the NARUC Guidelines and that HSE's use of SAMCO is reasonable.

Additionally, the Commission overlooked other portions of the NARUC Guidelines that HSE cited in its evidence that show SAMCO's rates are consistent with the Guidelines. (*See id*. at 8-13.) Significantly, the Commission appears to have overlooked the purpose of the NARUC Guidelines. As noted on page 6 of the NARUC Guidelines, the pricing

guidelines are based on the assumption that "affiliate transactions raise the concern of self-dealing where market forces do not necessarily drive prices." (*See* Attachment MAS-13.) The evidence clearly shows that market forces do drive HSE's contract rates with SAMCO and that SAMCO's rates are below the market in most instances. Therefore, the SAMCO rates are consistent with the NARUC Guidelines.

D. The Commission's Findings Are Arbitrary and Capricious Because They Are Inconsistent with the NARUC Guidelines, Indiana law, and Provide Little Guidance as to What "Fully Allocated Cost" Means.

The Final Order fails to provide HSE with clear guidance as to how to comply with the NARUC Guidelines. For example, the Commission found that it is "unable to determine whether the market prices charged by SAMCO, while at or below costs of its competitors, are at or below SAMCO's fully allocated cost." (Final Order at 22.) This finding is inconsistent with the NARUC Guidelines. The NARUC Guidelines require that affiliate transactions be priced at the lower of market or fully allocated cost, not below the fully allocated cost. It is not clear from the Final Order how HSE would show that the SAMCO charges are below SAMCO's fully allocated costs. Additionally, the Commission does not have the authority to require an unregulated entity to provide services below its costs. The Commission's jurisdiction over affiliate transactions is limited to the requirements of IC 8-1-2-49. Specifically, IC 8-1-2-49 limits the Commission's jurisdiction over affiliate interests to "access to all accounts and records of joint or general expenses" that may be applicable to an affiliate transaction and gives the Commission the authority to disapprove an affiliate contract, after notice and hearing, if the contract is found to not be in the public interest. Approximately 40% of SAMCO's business is not with HSE but is with other utilities in Indiana. HSE made available all invoices between SAMCO and HSE that were joint expenses. The evidence shows that HSE has satisfied these statutory requirements,

and HSE should not be required to show that SAMCO's rates are below its fully allocated costs.

The Final Order also fails to provide guidance as to how HSE and all other utilities subject to the NARUC Guidelines can comply with the pricing requirements going forward. HSE explained in its evidence that the SAMCO contract is consistent with the NARUC Guidelines based on the definition of "fully allocated costs." (*See* HSE's Submission of Exceptions and Reply Brief at 9.) HSE testified that the SAMCO charges include indirect costs such as overhead, taxes, and employee benefits. The NARUC Guidelines state that other "indirect costs" may be included in fully allocated costs, but what these other costs are is not addressed in the Guidelines, and the Final Order fails to clarify this. HSE submitted sufficient evidence showing that SAMCO's charges are consistent with the NARUC Guidelines, including numerous invoices and supporting information. HSE also provided testimony about what is included in the SAMCO charges. Additionally, the SAMCO rates are in a contract that has been filed with the Commission. If the Commission is going to require compliance with the NARUC Guidelines going forward, the Commission should clarify what additional information is needed to meet the "fully allocated cost" guideline.

II. The Commission Should Reverse Its Finding Requiring the Removal of the SAMCO Charges from HSE's Working Capital Allowance.

A. The Commission's Removal of $688,917 from HSE's Proposed Working Capital Allowance Is Arbitrary and Capricious and Not Supported by the Evidence.

HSE calculated its working capital allowance in accordance with the Commission's findings in HSE's last rate case in Cause No. 43761 and in accordance with the Commission-approved FERC 45-day methodology. The Commission accepted HSE's use

of the FERC 45-day methodology again in this proceeding. The OUCC, using a partial lead-lag study, recommended that the SAMCO charges be removed from HSE's working capital allowance without any analysis of HSE's other revenues and expenses. In the Final Order, the Commission agreed with HSE that the OUCC performed a partial lead-lag study and found that the use of a partial lead-lag study to be an inappropriate method for calculating working capital allowance. (Final Order at 10.) Nevertheless, the Commission removed the SAMCO charges from HSE's working capital allowance even though the evidence shows that there is a gap between when HSE pays its SAMCO charges and when it collects revenue from its customers. The OUCC's partial lead-lag study overlooks other costs and revenues entirely. The Commission therefore approved an incomplete analysis of all of HSE's costs and revenues and essentially upheld the OUCC's partial lead-lag study. This is contrary to Commission policy, contrary to the evidence, and is not the product of reasoned decision-making.

Additionally, the Commission's reasoning for removal of the SAMCO charges from HSE's working capital allowance exceeds its authority under Indiana law. The Commission concluded that SAMCO should be able to adjust its billing cycles so that SAMCO bills would be payable after customer payments were received by HSE. (Final Order at 10-11.) The Commission does not have the authority to regulate SAMCO in such a way. SAMCO is not a utility, and the Commission cannot establish a non-regulated entity's internal billing practices. To do so clearly exceeds the Commission's authority under IC 8-1-2-49.[3]

[3] As noted above, IC 8-1-2-49 establishes the Commission's jurisdiction over affiliate interests.

The Commission's jurisdiction is limited to the review and approval or disapproval of affiliate contracts and to the review of joint and general expenses between affiliates. The Commission cannot establish internal business practices of a non-regulated business. The Commission seemed to recognize this when it declined to agree with the OUCC's argument that HSE should perform the SAMCO services in-house. Requiring SAMCO to transfer its employees to HSE so that HSE could perform the SAMCO services in-house would exceed the Commission's jurisdiction. The same is true regarding SAMCO's billing practices. The evidence shows that SAMCO has 19 other customers in addition to HSE. The 19 other customers represent more than 40% of SAMCO's overall business. It is not reasonable for SAMCO to have to adjust its billing cycle to accommodate just one customer. Requiring SAMCO to do so would affect SAMCO's other customers, some of which are also regulated utilities, by loading more of SAMCO's costs and overhead onto the other customers. The Commission does not have the authority to require SAMCO to change its billing practices to the detriment of SAMCO's other customers.

B. HSE Would Face Additional Costs If It Were to Delay Payment to SAMCO.

In the Final Order, the Commission recognized that there is currently a lag between when HSE must pay SAMCO and when HSE collects revenue from its customers, as evidenced by the Commission finding that a billing cycle adjustment is needed to accommodate HSE's working capital requirements. However, as noted above, the Commission cannot require SAMCO to adjust its billing cycle, and such an adjustment is not reasonable given the amount of SAMCO's other customers. Therefore, the only other way for HSE to address the lag would be to delay payment to SAMCO. A delay in payment to SAMCO would expose HSE to additional costs, to the detriment of HSE's ratepayers.

The affiliate contract with SAMCO, which is on file with the Commission, requires that HSE pay an invoice within 29 days of receipt or be subject to an interest charge of 1.5% per month on any unpaid balance. It is not reasonable for the Commission to suggest that HSE delay payment in order to address its working capital needs. HSE has shown that a lag exists between when it must pay SAMCO and when it collects its revenues. The Commission recognized that such a lag exists. Therefore, the SAMCO charges should be included in HSE's working capital allowance.

III. Request for Clarification Regarding the Flatfork Creek SDC Charge

In its Submission of Exceptions and Reply Brief, HSE indicated that HSE's commitment to the seller of the Flatfork Creek utility to pay $800 for each EDU developed in the Flatfork Creek CTA was satisfied and that HSE stopped collecting the $800 supplemental SDC in the Flatfork Creek CTA. Therefore, HSE proposed that its tariff reflect a uniform SDC charge of $2,850 per EDU in all of HSE's service areas including the Flatfork Creek CTA. In the Final Order, the Commission approved an SDC for the Flatfork Creek CTA of $3,650, which was the amount initially requested by HSE prior to HSE satisfying its commitment to the seller of the Flatfork Creek utility. HSE requests that the Commission clarify that the correct SDC to be charged in the Flatfork Creek CTA is $2,850.

IV. Requested Relief

For all of the above reasons, the Commission should find that: 1) the NARUC Guidelines do not apply to the SAMCO contract in this proceeding; 2) the Commission cannot require compliance with the NARUC Guidelines prospectively unless it adopts the

Guidelines through a rulemaking process consistent with Indiana law; 3) HSE is allowed to recover the SAMCO 3% increase in its rates, resulting in an increase to the operating expense calculation of $115,498; 4) HSE is allowed to recover the SAMCO 10% management fee in its rates, resulting in an increase to the operating expense calculation of $62,330; 5) the SAMCO charges can be included in HSE's working capital allowance, resulting in an increase to working capital allowance of $688,917; and 6) the correct SDC charge for the Flatfork Creek CTA is $2,850.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I have this 29th Day of November, 2016 served by hand delivery or electronic service a copy of the above foregoing document to:

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