STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SOUTHERN INDIANA GAS AND ELECTRIC COMPANY D/B/A CENTERPOINT ENERGY INDIANA SOUTH PURSUANT TO INDIANA CODE CH. 8-1-40.5 FOR (1) AUTHORITY TO (A) ISSUE SECURITIZATION BONDS; (B) COLLECT SECURITIZATION CHARGES; AND (C) ENCUMBER SECURITIZATION PROPERTY WITH A LIEN AND SECURITY INTEREST; (2) A DETERMINATION OF TOTAL QUALIFIED COSTS AND AUTHORIZATION OF RELATED ACCOUNTING TREATMENT; (3) AUTHORIZATION OF ACCOUNTING TREATMENT RELATED TO ISSUANCE OF SECURITIZATION BONDS AND IMPLEMENTATION OF SECURITIZATION CHARGES; (4) APPROVAL OF PROPOSED TERMS AND STRUCTURE FOR THE SECURITIZATION FINANCING; (5) APPROVAL OF PROPOSED TARIFFS TO (A) IMPLEMENT THE SECURITIZATION CHARGES AUTHORIZED BY THE FINANCING ORDER IN THIS PROCEEDING, (B) REFLECT A CREDIT FOR ACCUMULATED DEFERRED INCOME TAXES, AND (C) REFLECT A REDUCTION IN PETITIONER'S BASE RATES AND CHARGES TO REMOVE ANY QUALIFIED COSTS FROM BASE RATES; AND (6) ESTABLISHMENT OF A TRUE-UP MECHANISM PURSUANT TO INDIANA CODE § 8-1-40.5-12(c).	**CAUSE NO. 45722**

CENTERPOINT ENERGY INDIANA SOUTH'S POST-HEARING BRIEF

This proceeding is about much more than simply ensuring Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South's ("CEI South") securitization plan is just and reasonable. The outcome will also influence whether securitization of costs that have become "stranded" becomes a more widely available tool to balance recovery of prudently incurred investments with customer impacts. This tool could provide a mechanism for Indiana to more cost effectively manage through significant utility industry transitions. Yet the positions taken by the consumer parties will discourage continuation of securitization by rending

securitization far less attractive for utilities managing stranded costs than other approaches that have been accepted by the Indiana Utility Regulatory Commission ("Commission").

The Commission should (and must) adhere to the balance struck in the language of Ind. Code ch. 8-1-40.5 (the "Securitization Statute") which ensures substantial benefits to Indiana customers without turning securitization into a financial penalty for utilities. The Commission is charged with balancing "the public's need for adequate, efficient, and reasonable service with the public utility's need for sufficient revenue to meet the cost of furnishing service and to earn a reasonable profit" and the plain language of the Securitization Statute fits precisely with this balance. *NIPSCO Industrial Group v. Northern Indiana Pub. Serv. Co.*, 100 N.E.3d 234, 238 (Ind. 2018). In enacting the Securitization Statute, the General Assembly has provided a tool to help navigate the oft-conflicting five pillars of electric utility service identified by the 21st Century Energy Policy Development Task Force for crafting Statewide Energy Policy, and the General Assembly has carefully set the guardrails that will lead to win-win transactions. In this brief, CEI South specifically addresses the following additional consumer advocate positions that upset those guardrails and that the Commission should reject:

1. Potential O&M cost reductions resulting from retirement of the A.B. Brown Generating Facility coal-fired generators (the "Brown Coal Generators") should be dealt with in CEI South's next rate case and not through the Securitization Rate Reduction ("SRR") credit mechanism.

2. The SRR should be based on the book value of the Brown Coal Generators today, as required by the Securitization Statute, and not the value recorded on CEI South's books at the time of its last electric rate proceeding.

3. The Indiana Office of Utility Consumer Counselor ("OUCC") should not be in the driver's seat for determining the bond terms to be offered if the Commission grants CEI South's request to securitize the Brown Coal Generators' costs.

I. Indiana's Securitization Statute

The energy industry is experiencing a rapid transition as it shifts its generation fleet towards a more diversified generation fleet consisting of renewables, natural gas, storage, and hydropower. This transition requires the retirement of coal-fired generation which has long served as the workhorse of the North American power grid but faces significant environmental compliance costs and is not designed to operate efficiently in the new environment. The transition will bring lower emissions and balance customers' exposure to significant price impacts that may impact one form of generation or another, but it comes at the cost of leaving some coal-fired generation costs "stranded."

Securitization offers an additional tool to manage stranded costs that can be significantly lower cost than alternative options in the right circumstances. CEI South, with the support of the Indiana Legislature, is pursuing a pilot securitization program that offers substantial savings to CEI South customers through the closure of the Brown Coal Generators. *See* Ind. Code §§ 8-1-40.5-3(3) and (10). The Legislature will evaluate the pilot and must take action if it is to broaden the availability of securitization. The outcome of this proceeding will determine whether securitization continues to be an attractive tool that can be used to manage the energy transition cost for Indiana customers.

II. Any O&M Savings Attributable to the Brown Coal Generators Should Be Dealt With in CEI South's Next Rate Case.

The Commission must find CEI South's "books and records will reflect a reduction in rate base associated with the receipt of proceeds from the securitization bonds," which reduction is to "be reflected in retail rates when the securitization bonds are issued." Ind. Code §8-1-40.5-10(d)(2). To accomplish this, CEI South has proposed a SRR mechanism consistent with Ind.

Code § 8-1-40.5-10(d)(5)(A) to "reflect a reduction in the electric utility's base rates and charges. . . so as to remove qualified costs from the electric utility's base rates." The Securitization Statute specifically defines "qualified costs" (*see* Ind. Code § 8-1-40.5-6), and that definition does not include operation and maintenance ("O&M") expenses. Qualified costs instead refer to "the net original cost of the facility and any associated investments, as reflected on the electric utility's accounting system, and as adjusted for depreciation to be incurred until the facility is retired" along with other enumerated types of costs (among which O&M is *not* enumerated). *Id*. Neither is O&M expense included in "rate base," which is what is to be reduced to produce the rate reduction. Notwithstanding the explicit statutory instructions for calculation of the SRR credit, CenterPoint Indiana South Industrial Group (the "Industrial Group") advocates for an additional credit in the SRR for the fixed O&M, coal and materials and supply inventories and the avoided property taxes from the Brown Coal Generators "as a matter of regulatory balance." Industrial Group Ex. 1, pp. 30 and 32. Aside from Mr. Gorman's opinion on regulatory balance, the Industrial Group has not yet offered any analysis as to how the additional O&M credits fit within any category of qualified costs that the Securitization Statute requires to be reflected in the SRR.

The language of the Securitization Statute is clear about what the SRR includes and, by absence of other terms, what it does not include. "[W]hen certain items or words are specified or enumerated in a statute, other items or words not so specified or enumerated are, by implication, excluded." *Hammons v. Jenkins-Griffith*, 764 N.E.2d 303, 305 (Ind.Ct.App. 2002). The Securitization Statute expressly enumerates specific items to be included in the SRR, but the O&M credits the Industrial Group claims should be included are not part of the enumerated list. Ind. Code § 8-1-40.5-10(d)(5)(A). The Statute does ultimately require the Commission to conclude that the securitization proposal is "just and reasonable" but adding unenumerated costs to the

crediting mechanism under the guise of getting to a just and reasonable result violates the plain intent of the Legislature about what is to be included, and by implication what is not to be included, in the SRR. The Commission "derives its power and authority solely from the statute, and unless a grant of power and authority can be found in the statute it must be concluded that there is none." *Indiana Bell Telephone Co. Inc. v. Indiana Util. Reg. Comm'n*, 715 N.E.2d 351, 354 n.3 (Ind. 1999) (also citing *Collier v. Collier,* 702 N.E.2d 351, 354 (Ind.1998); *Indiana Dep't of State Revenue v. Horizon Bancorp,* 644 N.E.2d 870, 872 (1994) ("nothing may be read into a statute which is not within the manifest intention of the legislature" as ascertained from "the plain and obvious meaning" of the words of the statute).

Setting aside the statutory construction challenges in the Industrial Group's position, the result sought by the Industrial Group is neither just nor reasonable. The Statutes' exclusion of O&M expenses from the credits required to be offered to customers jives with the contemplation that that the facility may continue to operate for some period beyond issuance of the securitization bonds. *See* Ind. Code § 8-1-40.5-10(b). Indeed, that is the case here as the Brown Coal Generators will continue to operate through October 15, 2023.[1]

Adjusting CEI South's rate structure to remove a specific expense outside the context of a base rate case or explicit statutory authority also violates fundamental principles of ratemaking long recognized in Indiana. The Commission itself has recognized a general prohibition against single issue ratemaking:

> A decrease in an expense may be offset by a decrease in revenues. An increase in an expense may be offset by an increase in revenues. Making mid-course rate

[1] Presumably, the Industrial Group wants the SRR updated at the time the plant is retired to remove the O&M costs. While the Securitization Statute contemplates updates to securitization charges, the statute is silent on updates to the credit. *Compare* Ind. Code § 8-1-40.5-10(d)(5)with 8-1-40.5-12(c). Again, the Securitization Statue's structure is inconsistent with the interpretation sought by the Industrial Group.

> corrections looking only at one item of revenue or expense carries great risk of producing distorted or false results. It is these types of concerns which have led to the general prohibition of single issue ratemaking which this proposal appears to suggest.

In re Indiana Michigan Power Company, Cause No. 39314, 1993 Ind. PUC LEXIS 460, at * 378 (IURC 11-12-1993). Utility rates in Indiana are set at a point in time and cease to represent actual costs incurred for specific expenses soon after they are established. While CEI South may experience some cost reductions upon the retirement of the Brown Coal Generators, other expenses have increased since its base rates were last set in Cause No. 43839 ("2009 Rate Case"). The FAC earnings test tracks an electric utility's ability to earn at its authorized return. Mr. Rice testified that CEI South has a significant negative earnings bank which demonstrates that its expenses have largely increased from the representative level established in its last base rates. Petitioner's Exhibit No. 8-R, pp. 15-16. In addition, the FAC statute itself specifically guards against the issue concerning Mr. Gorman, prohibiting a fuel cost adjustment unless "actual increases in fuel cost through the last month for which actual fuel costs are available since the last order of the commission approving basic rates and charges of the electric utility have not been offset by actual decreases in other operating expenses." Ind. Code §8-1-2-42(d)(2). CEI South must initiate a base rate case by December 31, 2023, shortly after the Brown Coal Generators are retired, providing the Commission and other interested parties a complete picture of CEI South's financial picture.[2]

The Industrial Group asserts that CEI South must accept an O&M credit because other utilities have agreed to an O&M credit upon the retirement of a plant. Industrial Group Exhibit 1, p. 32-34. These other proceedings do not establish an analogy applicable to the securitization

[2] CEI South obtained approval of a transmission, distribution and storage system plan pursuant to Ind. Code ch. 8-1-39. By electing to become subject to this statute, CEI South is required to initiate a base rate case by December 31, 2023. *See* Ind. Code § 8-1-39-9(e).

rubric. First, both instances Mr. Gorman highlights arose through settlement agreements in which the parties (including the Industrial Group) and the Commission agreed that the decisions were non-precedential and should not be cited as precedent. *In re Indianapolis Power & Light d/b/a AES Indiana,* Cause No. 45502, pp. 8-9 (IURC 11-17-2021); *In re Indiana Michigan Power Co.*, Cause No. 45546, p. 17 (IURC 12-8-21). The citation of these settlement agreements as establishing principles of precedent is at odds with the commitment the Industrial Group made voluntarily in the settlement agreements not to treat them as precedential.

Second, the Indiana Michigan Power Co. ("I&M") proceeding cited by the Industrial Group did not violate the principle of single-issue ratemaking because the O&M reductions resulting from the termination of the lease for Rockport 2 was evaluated as part of I&M's then pending rate proceeding in Cause No. 45576. CEI South agrees that the impact on O&M of the Brown Coal Generators' retirement must be considered in the context of the rate proceeding it must initiate by December 31, 2023. The Brown Coal Generators' retirement may not align as well as I&M's Rockport 2 lease termination, but the I&M case cannot be seriously relied upon to support the conclusion that O&M cost reductions from a retired plant must be evaluated outside the context of a general rate proceeding.

Third, the Indianapolis Power & Light Company d/b/a AES Indiana, Inc. ("AES Indiana") settlement is far more financially generous to AES Indiana than the outcome the Industrial Group contends is appropriate for CEI South. AES Indiana sought approval to create a regulatory asset for the Petersburg Units 1 and 2 retirements to avoid a write-off on its books. In the settlement, AES Indiana received authority to create a regulatory asset and agreed, among other terms, to reduce the regulatory asset annually by $6.9 million for Peterburg Unit 1 and $10.3 million for Petersburg Unit 2. *In re Indianapolis Power & Light Co.*, Cause No. 45502, p. 6 (IURC 11/17/21).

The annual reductions were far below the total revenue requirement identified by Mr. Gorman, which were approximately $23 million for Petersburg Unit 1 and $60.1 million for Peterburg Unit 2. In the context of securitization, electing utilities are already providing a full credit for the return "on" and "of". Piling on a requirement to return O&M costs would render securitization a much worse option than the AES Indiana settlement and render securitization unattractive.

The consumer parties and the Commission will have ample opportunity to comprehensively review CEI South's expenses as part of a base rate case that will be initiated by December 31, 2023. CEI South's expenses have changed dramatically since its base rates were last reviewed by the Commission. Parsing-out a single expense reduction while ignoring a host of increases outside of a base rate case, particularly when a complete review will occur in the near future, will not result in rates that are just and reasonable and of more concern from a policy perspective, will render securitization an unattractive option for utility's facing stranded assets.

III. The Credit To Customers Should Be Equivalent To The Qualified Costs Reflected in Base Rates.

Second, the OUCC asks the Commission to increase the financial disadvantage to CEI South beyond the terms set forth in the Securitization Statute by crediting customers the net book value at the time of CEI South's 2009 Rate Case rather than based on the qualified costs as defined in the Securitization Statute. The OUCC's recommendation is contrary to the plain language of the statute and, perhaps of greater concern from a policy perspective, would impose more financial harm to a public utility pursuing securitization than one that utilizes other approaches that have been accepted by the Commission.

The Securitization Statute cannot be construed as endorsing the OUCC's interpretation that the credit to customers must be based on the original cost of the retired generation facility at the

time of the utility's last general rate proceeding. Such an interpretation would do violence to the plain language of the Securitization Statute. The Securitization Statute specifically defines "qualified costs" (see Ind. Code § 8-1-40.5-6) to include "the net original cost of the facility and any associated investments, as reflected on the electric utility's accounting system, and as adjusted for depreciation to be incurred until the facility is retired . . . ." The term "qualified costs" is used throughout the statute, but most pertinently, in both Ind. Code § 8-1-40.5-10(d)(5)(A), which addresses the credit an electric utility must adopt, and Ind. Code § 8-1-40.5-10(a), which addresses the value of the property to be securitized. The Legislature's decision to base both the credit and the securitization bond total amount on qualified costs indicates a clear intent for the term to have the same meaning in both contexts. This is also consistent with the Commission's promulgated rule, which requires a petitioner to include "[a]n estimate of the electric utility's total proposed qualified costs, together with descriptions and schedules of the proposed qualified costs to be subject to the securitization, including linking or mapping the proposed qualified costs to the costs currently reflected in utility rates, as applicable." 170 IAC 4-10-5(c)(1).

The OUCC's interpretation, in contrast, requires the term to be interpreted differently for each section. For purposes of determining the level of bonds to be issued, the Legislature intended a utility to be authorized to issue securitization bonds equal to the value of the utility's current accounting records, not the level established at the time its rates were last set. The term cannot mean something different—*e.g.* the value of the retired plant at the time of the utility's last rate case—for purposes of calculating the credit. Yet this is the result the OUCC advocates for.

The OUCC's interpretation also is not just and reasonable and would signal to electric utilities they should use alternatives to securitization to deal with retiring generation facilities. Other Indiana electric utilities have dealt with generation assets that are retiring in advance of their

anticipated useful lives and obtained financial results that would be far better for the utility than the OUCC's recommendation here. AES Indiana's and I&M's settlements are discussed above, and neither involved crediting customers amounts based on the original cost of the asset included in rate base during the last rate proceeding. The OUCC's zeal for getting money back to customers has distracted it from the potential significant benefits that all customers could receive were securitization more broadly available.

IV. The Consumer Parties Propose a Bond Sales Process That Puts the Consumer Parties In The Driver's Seat.

Third, the OUCC proposes an untenable and unprecedented process for sale of the securitization bonds that misapprehends the role the OUCC plays in Commission proceedings. Imposing the structure requested by the OUCC on securitizations would discourage its use. Specifically, the OUCC recommends implementation of a bond team comprised of CEI South and the OUCC in which all are "joint decision makers" in the process.

Mr. Jerasa notes that the OUCC's recommendation would be novel in utility securitizations. Petitioner's Exhibit No. 2-R, pp. 31-32. Participation by state utility commissions is common, but the OUCC proposal would be the first time that decisions on the bond sale process are effectively put in the hands of consumer advocates. CEI South believes that the OUCC plays an important role in utility proceedings of "appear[ing] on behalf of ratepayers, consumers and the public." Ind. Code § 8-1-1.1-4.1(a). But it is another thing entirely to leave the ultimate decision making in the hands of the OUCC.

The OUCC proposal effectively puts it in control of the final terms because CEI South will be unable to move forward without the OUCC's consent. If a dispute arises about certain representations the OUCC believes must be made, for example, CEI South must either agree with

the OUCC and accept the risk that could arise out of that representation or delay the entire securitization to seek a resolution with the Commission. This delay to obtain resolution will render securitization unworkable in the state. This rubric is contrary to the statutory scheme Indiana established for the oversight of public utilities. As noted above, the OUCC was charged with the very important role of representing customers, but the Commission is ultimately charged with protecting the public interest. The OUCC's proposal effectively usurps the role of the Commission for itself.

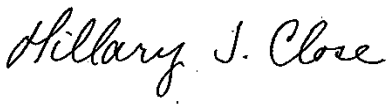
The important differences between the Commission and OUCC roles manifests in Commission decisions that, after balancing all interests, reach results different from those of the OUCC. Numerous examples exist where the OUCC believes one decision is right for customers, yet the Commission concludes that the public interest demands a different result. *See e.g. Southern Indiana Gas and Elec Co.* Cause No. 45564 (IURC 6/28/22) (granting a certificate of public convenience and necessity for the construction of generation facilities despite OUCC recommendation to deny relief); *Southern Indiana Gas and Elec. Co.* Cause No. 45669 (IURC 5/25/22) (IURC approval of a special contract over OUCC objections); *Southern Indiana Gas and Elec. Co.* Cause No. 45378 (IURC 4/7/21) (Commission approval of CEI South excess distributed generation tariff over OUCC objections). The Commission, not the OUCC, should be the one to assure the bond terms are just and reasonable.

Adopting a process for securitization that puts the OUCC in the driver's seat over major decisions that could have a significant impact on participating utilities would discourage the use of securitization. Any oversight the Commission deems necessary should come from the Commission in accordance with the statutory structure adopted by the Indiana Legislature making the Commission ultimately responsible for protecting the public interest.

V. Conclusion

Securitization offers a very cost-effective means of dealing with generation facilities that must be retired before the end of their useful life. Rather than seeking to encourage those benefits to be more generally available, the consumer parties have instead chosen to focus on how much more might be available for customers and for their own involvement in the process. Their over-reach makes securitization unattractive to other electric utilities. The Commission should adopt a more reasonable approach that balances the interests between electric utilities and customers and complies with the clear language of the Securitization Statute.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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DMS 23888708v1