

December 9, 2019

Via Email
Ms. DeAnna Poon
Assistant General Counsel
Indiana Utility Regulatory Commission
dpoon@urc.in.gov

The Indiana Energy Association (IEA) submits the following comment and recommended changes to the Indiana Utility Regulatory Commission (Commission) proposed rulemaking on procedural rules.

1. 170 IAC 1-1.1-4 Confidential or privileged information

(a)

~~(2) If the motion is part of a proceeding, the motion should indicate whether parties to the proceeding object to preliminary confidential treatment of the information.~~

The IEA proposes that proposed 170 IAC 1-1.1-4(a)(2) be stricken from the final Rule. In many instances, Requests for Confidential Treatment are submitted to the Commission at or shortly after the filing of a Petition initiating the proceeding in which Confidential Treatment is sought. In that instance, with the exception of the Indiana Office of Utility Consumer Counselor (“OUCC”), it is not possible to know what other parties might ultimately intervene in the proceeding. Even the OUCC would rarely be in a position to opine on the evidence at issue or the facts impacting even preliminary confidential treatment.

The better and more efficient course is to require the party seeking confidential treatment to provide support necessary for a preliminary finding of confidentiality under 170 IAC 1-1.1-4(d) while preserving the ability of any other party to challenge that treatment should there be a desire to have the protected information made part of the public record. As the Commission is aware, contested findings of confidentiality are infrequent, and when they do occur are typically grounded in a firm understanding of the facts at issue. To require a party to proactively seek agreement of all parties for confidential treatment of materials that have yet to be reviewed would add an additional layer of complexity and delay when the existing process works well.

2. 170 IAC 1-1.1-4 Confidential or privileged information

(i)

(2) If confidential documents are filed, a public access version must also be filed.

(A) Public access versions of the documents filed shall be filed on white paper.

(B) Confidential records or parts of records that are to be excluded from public access shall be omitted or redacted from the public access version. The omission or redaction shall be indicated at the place it occurs in the public access version.

(C) At the request of a party, the presiding officer may elect not to require submission of a public access version of a confidential document if such document is large or oversized and filed on compact discs or in another manner.

The addition of new section (C) above is requested due to the voluminous nature of certain exhibits, and especially workpapers. There are limited circumstances where an excel file that is an exhibit or workpaper in a proceeding contains confidential information, but cannot be reasonably redacted. The excel sheets and cells may be linked to other information, making protecting the confidential cells impossible or unreasonable, and leaving the workpaper unable to calculate correctly. In such situations, making a .pdf of the document is oftentimes also untenable or even impossible due to the size of the file.

3. 170 IAC 1-1.1-4(e)

(e) At the request of the presiding officer or any a party, an in-camera inspection shall be conducted for the purpose of hearing argument on confidentiality of information submitted under this rule section. If an in-camera inspection is conducted under this section, the of the act, event, or default from which the designated period of time begins to run shall not be included.

(1) The last day of the period so computed is to be included unless it is a:

(1A) Saturday;

(2B) Sunday;

(3C) legal holiday as defined by state statute; or

(D) day that the office in which the act is to be done is closed during regular business hours.

(2) In any event The period runs until the end of the next day that is not a:

(1A) Saturday;

~~information for which confidential treatment is requested shall be made available during the in-camera inspection on a provisional basis for the limited purpose of determining its confidentiality. An in-camera inspection conducted under this section may, at the discretion of the presiding officer, be publicly noticed under IC 8-1-1-8.~~

IEA requests that this language be clarified or deleted. It appears that this language may have been inadvertently included in the rule during the editing process.

Thank you for your consideration of these comments.

Sincerely,



Mindy Westrick Brown
Vice President