

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Notice of Proposed Rulemaking

IURC RM #18-02

LSA #19-378

The Indiana Utility Regulatory Commission (the "Commission"), pursuant to IC 8-1-1-3(g) and IC 8-1-2-47, hereby proposes to amend 170 IAC 1-1.1, 170 IAC 1-1.5, 170 IAC 1-6-9, 170 IAC 14-1-1, 170 IAC 14-1-2, 170 IAC 14-1-5, 170 IAC 14-1-6 and 170 IAC 14-1-7 and add 170 IAC 1-1.1-3.5, 170 IAC 1-1.1-5.5, 170 IAC 1-1.1-16.5, 170 IAC 1-1.1-19.5 and 170 IAC 1-1.1-21.5 regarding practice and procedure before the Commission and its ex parte rules. The Commission shall hear public comments on the attached proposed rule at a date and time to be determined, in Suite 220, of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana.

The Secretary of the Commission is hereby directed to maintain five (5) copies of the proposed rule continuously on file in the Commission Offices for public inspection, and forward copies of the attached proposed rule to the Indiana Legislative Services Agency for publication in the Indiana Register.

IT IS SO ORDERED.

HUSTON, FREEMAN, AND ZIEGNER CONCUR; KREVDA AND OBER, ABSENT:

APPROVED: OCT 02 2019

I hereby certify that the above is a true and correct copy of the Rule as approved.

Mary M. Becerra

Secretary to the Commission

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule LSA Document #19-378

DIGEST

Amends 170 IAC 1-1.1, 170 IAC 1-1.5, 170 IAC 1-6-9, 170 IAC 14-1-1, 170 IAC 14-1-2, 170 IAC 14-1-5, 170 IAC 14-1-6 and 170 IAC 14-1-7 and adds 170 IAC 1-1.1-3.5, 170 IAC 1-1.1-5.5, 170 IAC 1-1.1-16.5, 170 IAC 1-1.1-19.5 and 170 IAC 1-1.1-21.5 regarding practice and procedure before the Indiana utility regulatory commission and its ex parte rules. Effective 30 days after filing with the Publisher.

170 IAC 1-1.1-1; 170 IAC 1-1.1-2; 170 IAC 1-1.1-3; 170 IAC 1-1.1-3.5; 170 IAC 1-1.1-4; 170 IAC 1-1.1-5; 170 IAC 1-1.1-5.5; 170 IAC 1-1.1-6; 170 IAC 1-1.1-7; 170 IAC 1-1.1-8; 170 IAC 1-1.1-9; 170 IAC 1-1.1-10; 170 IAC 1-1.1-11; 170 IAC 1-1.1-12; 170 IAC 1-1.1-13; 170 IAC 1-1.1-14; 170 IAC 1-1.1-15; 170 IAC 1-1.1-16; 170 IAC 1-1.1-16.5; 170 IAC 1-1.1-17; 170 IAC 1-1.1-18; 170 IAC 1-1.1-19; 170 IAC 1-1.1-19.5; 170 IAC 1-1.1-20; 170 IAC 1-1.1-21; 170 IAC 1-1.1-21.5; 170 IAC 1-1.1-22; 170 IAC 1-1.1-23; 170 IAC 1-1.1-24; 170 IAC 1-1.1-25; 170 IAC 1-1.1-26; 170 IAC 1-1.5-1; 170 IAC 1-1.5-2; 170 IAC 1-1.5-3; 170 IAC 1-1.5-4; 170 IAC 1-1.5-6; 170 IAC 1-6-9; 170 IAC 14-1-1; 170 IAC 14-1-2; 170 IAC 14-1-5; 170 IAC 14-1-6 170 IAC 14-1-7

SECTION 1. 170 IAC 1-1.1-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-1 Application and scope

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 4-22

Sec. 1. This rule shall govern the practice and procedure in **cases and other** matters before the commission arising under the acts of the general assembly conferring powers upon the commission ~~This rule supersedes 170 IAC 1-1 in its entirety.~~

~~(1) Cases and all other matters arising under the jurisdiction of the Indiana utility regulatory commission initiated on or after November 29, 2000, shall be governed in totality by this rule (170 IAC 1-1.1).~~

~~(2) Any case or other matter arising under the jurisdiction of the Indiana utility regulatory commission initiated prior to November 29, 2000 (the effective date of this rule) shall be governed in totality by the former rules of practice and procedure found at 170 IAC 1-1. **except for rulemakings which shall be governed by IC 4-22. Technical and readability specifications related to electronic filing shall be noted on the commission's electronic filing system or in a general administrative order.** (Indiana Utility Regulatory Commission; 170 IAC 1-1.1-1; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; filed Feb 4, 2002, 1:00 p.m.: 25 IR 1875; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)~~

SECTION 2. 170 IAC 1-1.1-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-2 Definitions

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-2; IC 8-1-1.1-5.1; IC 8-1-2-1; IC 8-1-2-54; IC 8-1.5-1-10

Sec. 2. The following definitions apply throughout this rule:

(1) "Commission" means the Indiana utility regulatory commission.

(2) **Except as noted in 170 IAC 1-1.1-5.5**, "complainant" means:

(A) ~~any~~ a person or entity that initiates a formal complaint against a utility under IC 8-1-2-54; or

(B) ~~any~~ a person or entity who formally requests the commission to initiate an investigation of a utility under Indiana law.

(3) **"Electronic filing system" means the system used by the commission that contains docketed and certain non-docketed matters and permits parties to file documents electronically.**

(4) "Intervenor" means ~~any~~ a person or entity, other than:

(A) a petitioner;

(B) a complainant;

(C) the **office of** utility consumer counselor; or

(D) a respondent;

who is admitted as a participant in ~~any~~ a proceeding conducted before the commission.

(5) **"Informal complaint" means a complaint filed by a customer to consumer affairs in accordance with 170 IAC 16-1.**

(6) "Party" means ~~any~~ a participant in a proceeding before the commission, including:

(A) a petitioner;

(B) a complainant;

(C) the **office of** utility consumer counselor;

(D) a respondent; or

(E) an intervenor.

(7) "Petition" includes ~~any~~ a written request for relief made by a party or parties with standing to seek relief before the commission.

(8) "Petitioner" means ~~any~~ a public or municipally-owned utility or other party that ~~meets~~ **has** the **requisite** standing requirements of IC 8-1-2-54 ~~seeking to seek~~ relief from the commission.

(9) "Pleading" means ~~any~~ a:

(A) petition;

(B) complaint;

(C) answer;

(D) motion;

(E) response;

(F) reply; or

(G) other similar document;

filed to initiate, or **made** in the course of, ~~any~~ a proceeding before the commission.

(10) "Presiding officer" means ~~any~~ a commissioner or administrative law judge assigned to preside in a particular cause before the commission.

(11) **"Prevailing local time" means the time where the commission is located.**

(12) **"Public field hearing" means a hearing conducted in a county in which the utility provides service for the purpose of allowing the utility's customers and others with a substantial interest**

in the matter who are not parties to offer comments, including those authorized under IC 8-1-2-61(b) related to general rate proceedings. It is not an evidentiary hearing or a formal public hearing contemplated by IC 8-1-2-61.5 related to small utilities.

(13) "Respondent" means ~~any~~ a person or entity:

(A) required to:

(i) be named as a respondent by statute, rule, or order of the commission; or

(ii) respond to ~~any~~ an order of the commission; or

(B) against whom an investigation is initiated on motion of a complainant or on the commission's own motion.

~~(14)~~ "Service list" refers to the list of attorneys of record and ~~any~~ parties appearing pro se maintained by the secretary of the commission **or in the electronic filing system.**

~~(15)~~ "Signature equivalent" means a signature that meets the standards set out in **Indiana Trial Rule 86(I).**

(16) "Utility" means ~~any~~ a public utility as defined in IC 8-1-2-1 or municipally-owned utility as defined in IC 8-1.5-1-10.

~~(17)~~ "Utility consumer counselor" means the office established pursuant to IC 8-1-1.1-2.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-2; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 3. 170 IAC 1-1.1-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-3 Filings and communications with the commission, ~~copies,~~ and computation of time

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 3. (a) **Except as provided in subsections (b), (c), (d), and (e), the filing of any a communication, paper, or pleading with the commission shall be made through the electronic filing system. The filing shall comply with this rule and the companion technical and readability specifications as noted in section 1. The filing will be file stamped by the commission to reflect the date the filing was received by the commission. A filing made by the electronic filing system is considered filed on the date reflected in the notice of receipt associated with the filing. Electronic filing must be completed before midnight to be considered filed that day, and compliance with filing deadlines is determined in accordance with prevailing local time.**

(b) Filings related to:

(1) informal complaints;

(2) reviews by the director of consumer affairs or the director's designee under 170 IAC 16-1-5(d); and

(3) reviews by the commission under 170 IAC 16-1-6;

may be made through the electronic filing system. Alternately, those filings may be made by email or mail. The initial informal complaint may also be made by telephone or in person.

(c) **If technological problems occur in the commission's system, a communication, paper, or pleading may be made filed through the United States mail or in person as follows:**

(1) Filings made by mail are considered filed on the date received by the commission. ~~All~~ Filings shall be addressed to the secretary of the commission.

(2) Filings made in person are considered filed on the date received by the commission. Unless authorized by a presiding officer, a filing may not be accepted outside of the regular business hours of the commission on the date due.

(d) When filing through the electronic filing system is prevented by technical problems caused by the commission's system, the filer may bring the circumstances to the attention of the presiding officers and:

- (1) file in person or by mail if the filer can still file timely; or**
- (2) request relief to enlarge the time within which to file.**

Filings that are unable to be made through the electronic filing system must include a declaration that the party was unable to file electronically in a timely manner due to technical problems.

(e) A party that makes a filing under subsections (c) or (d) must do the following:

- (1) For non-confidential filed documents, email a copy to the assigned administrative law judge and commissioners concurrently.**
- (2) For confidential filed documents, deliver a copy by hand or overnight mail to the assigned administrative law judge only.**

(f) A presiding officer at any a hearing may permit appropriate pleadings or other papers to be filed with the presiding officer at the hearing.

(g) Unless otherwise provided by this rule, the petitioner or other party shall file pleadings with the secretary of the commission through the electronic filing system an original pleading and four (4) copies, one (1) of which must be unbound and printed on only one (1) side of the page, in proceedings assigned only to an administrative law judge. The petitioner or other party shall file with the secretary of the commission an original and five (5) copies, one (1) of which must be unbound and printed on only one (1) side of the page, in proceedings assigned to a commissioner and administrative law judge. A presiding officer or the commission may require that a different number of hard copies be filed provided as well.

(1) Hard copy filing is permitted when electronic filing is not possible due to:

- (i) technical problems;**
- (ii) files that are too large to upload to the electronic filing system; or**
- (iii) an exhibit that exists only in physical form and cannot be changed to an electronic format.**

(2) Filings other than:

- (1i) territorial maps;**
- (2ii) engineering drawings;**
- (iii) accounting schedules;**
- (iv) certain oversize filings approved by the presiding officers; or**
- (3v) other visual aids**

must be made on shall be formatted for eight and one-half (8½) inch by eleven (11) inch paper unless otherwise authorized by the presiding officer.

(3) Filings made by hard copy shall be unbound and printed on only one (1) side of the page. Additional copies shall be stapled or permanently bound and printed on both sides of the page.

(dh) Time periods within which to make filings with the commission are given in calendar days unless otherwise stated. In computing any a period of time prescribed or allowed by this rule, by order of the commission or the presiding officer, or by any an applicable statute that does not contain a provision regarding computation of time, the day 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
 - (4D) day that the office in which the act is to be done is closed during regular business hours.
- (e2) ~~In any event,~~ The period runs until the end of the next day that is not a:
- (1A) Saturday;
 - (2B) Sunday;
 - (3C) legal holiday **as defined by state statute**; or
 - (4D) day on which the commission is closed ~~for business~~ **during regular business hours**.
- (3) ~~When the period of time allowed is less than seven (7) days,~~ intermediate Saturdays, Sundays, legal holidays **as defined by state statute**, and days on which the **commission** office is closed **during regular business hours** shall be excluded from the computations **when the period of time allowed is less than seven (7) days**.

(f) ~~Remittances to the commission should be made by money order or check payable to the Indiana utility regulatory commission, except that remittances in payment of the statutory fees for the issuance of securities by municipalities shall be:~~

- (1) ~~by check payable to the "Treasurer of the State of Indiana"; and~~
- (2) ~~delivered to the secretary of the commission.~~

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-3; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 4. 170 IAC 1-1.1-3.5 IS ADDED TO READ AS FOLLOWS:

170 IAC 1-1.1-3.5 Remittances to the commission

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5; IC 8-1-2-70; IC 8-1-2-85; IC 8-1-22.5-7; IC 8-1-26-23

Sec. 3.5. (a) The following may be remitted to the commission:

- (1) **civil penalties imposed under IC 8-1-26-23 or IC 8-1-22.5-7; or**
- (2) **municipal expenses under IC 8-1-2-70.**

(b) Except as noted in subsection (c), payment may be made by:

- (1) **money order;**
- (2) **check; or**
- (3) **as indicated by the secretary of the commission payable to the Indiana utility regulatory commission.**

(c) Remittances in payment of the statutory fees for the issuance of:

- (1) **bonds;**
- (2) **notes; or**
- (3) **other securities;**

by municipalities under IC 8-1-2-85 shall be by check payable to the "Treasurer of the State of Indiana" and delivered to the secretary of the commission.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-3.5)

SECTION 5. 170 IAC 1-1.1-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-4 Confidential or privileged information

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 5-14-3; IC 8-1-1-8; IC 8-1-2-29

Sec. 4. (a) If a party desires to file with or submit to the commission ~~any~~ a writing, paper, report, study, map, photograph, book, card, tape recording, or other material that the party believes is confidential in accordance with IC 8-1-2-29 and IC 5-14-3, the party shall **do the following:**

(1) Apply for a finding by the commission, ~~on or~~ **as soon as practicable** before the date (if any) the information is required to be filed, that the information is confidential.

(A) **In docketed proceedings, an application shall be done through a motion in accordance with 170 IAC 1-1.1-12.**

(B) **In an instance where confidential treatment is sought by the party and the material is not part of a docketed proceeding, an application shall be done through a petition in accordance with 170 IAC 1-1.1-9.**

(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.**

(b) **For motions filed under clause (a)(1)(A),** the written application for a confidentiality finding must be served on all the parties of record. ~~At any time~~ **After ten (10) five (5) days, or earlier with the consent of if the parties have indicated they shall not object,** or as ordered by the presiding officers, following an application by ~~any~~ a party under this subsection, the commission may take ~~any~~ one (1) or more of the following actions:

(1) Find information to be confidential, in whole or in part.

(2) Find information not to be confidential, in whole or in part.

(3) Issue a protective order or docket entry covering the information.

(4) Find that information found not to be confidential should be filed in accordance with this rule.

~~(b)~~ **For petitions filed under clause (a)(1)(B),**

(1) **If no objections are filed within thirty (30) days and the presiding officer does not otherwise determine a need for an evidentiary hearing, the commission shall proceed to issue an order.**

(2) **If objections are filed within thirty (30) days or the presiding officer determines a need for an evidentiary hearing, the presiding officer shall convene a prehearing conference and establish a procedural schedule.**

(3) **After review of objections and matters raised in an evidentiary hearing, as applicable, the commission may take one (1) or more of the following actions:**

(A) **Find information to be confidential, in whole or in part.**

(B) **Find information not to be confidential, in whole or in part.**

(C) **Issue a protective order covering the information.**

(D) **Find that information found not to be confidential should be filed in accordance with this rule.**

(d) The application required by subsection (a) shall be accompanied by the sworn statement or testimony of a party **setting forth sufficient facts** that describes the following:

(1) The nature of the confidential information.

(2) The reasons why the information should be treated as confidential information under IC 8-1-2-29

and IC 5-14-3.

(3) The efforts the party has made to maintain the confidentiality of the information.

(ee) 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 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:**

(A) **Saturday;**

(B) **Sunday;**

(C) **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:**

~~(A)~~ **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.

(ef) If, during the in camera inspection, the presiding officer determines that the information in question is not confidential or is only partially confidential, the commission shall maintain the confidentiality of the information until:

(1) ~~any~~ **an** appeal to the full commission has been decided; or

(2) until ~~such time~~ as the motion to amend or withdraw the information has been finally ruled upon; whichever occurs later.

(eg) Information filed with or submitted to the commission prior to a finding by the commission that the information is confidential shall be available to the public under IC 8-1-2-29.

(fh) Parties seeking protective orders to prevent or limit discovery of trade secret or other confidential:

(1) research;

(2) development; or

(3) commercial

information shall make a separate motion under **Indiana rules of trial-rule-procedure 26(C)**.

(gi) After receiving a preliminary determination that material is entitled to confidential treatment:

(1) **confidential** documents submitted shall:

(A) **include only the pages of the document that contain confidential information;**

(B) **be filed on green paper when submitted in hard copy;**

(C) **be conspicuously marked “excluded from public access per A. R. 9(g)” with the cause number clearly designated; and**

(D) **comply with the specific directives set forth in the determination.**

At the discretion of the presiding officers, large or oversized filings may be filed on compact discs or in another manner.

(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.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-4; filed Oct 30, 2000, 2:10 p.m.: 24 IR 655; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 6. 170 IAC 1-1.1-5 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-5 Informal complaints; review by commission

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-34.5; IC 8-1-2-54

Sec. 5. (a) ~~Any~~ **An** individual or entity may informally complain to ~~the commission's~~ consumer affairs ~~division~~ **as defined by 170 IAC 16-1-2**, with respect to ~~any~~ **a** matter within the jurisdiction of the commission.

(b) An informal complaint is without prejudice to the right to file a formal petition under IC 8-1-2-54.

(c) An informal disposition rendered by ~~the commission's~~ consumer affairs ~~division~~ may be appealed by ~~any~~ **a** party thereto under IC 8-1-2-34.5 upon written request for appeal filed with the commission within twenty (20) days after the ~~informal disposition determination by the director of consumer affairs or director's designee, as provided in 170 IAC 16-1-6(a)~~, is rendered **in writing**. Prior to issuing an order on the appeal, the commission shall afford the parties notice and an opportunity to be heard. **Commission review is generally limited to a review of the consumer affairs record as compiled during the review conducted under 170 IAC 16-1-5 and to the issues contained therein.**

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-5; filed Oct 30, 2000, 2:10 p.m.: 24 IR 656; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 7. 170 IAC 1-1.1-5.5 IS ADDED TO READ AS FOLLOWS:

170 IAC 1-1.1-5.5 Excavation damage cases

Authority: IC 8-1-1-3; IC 8-1-2-47; IC 8-1-26-26

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-26-10; IC 8-1-26-11; IC 8-1-26-23

Sec. 5.5 (a) **The following definitions in this subsection apply throughout this section:**

(1) **"Advisory committee"** means the underground plant protection advisory committee established by IC 8-1-26-23.

(2) **"Complainant"** means the advisory committee or the division.

(3) **"Division"** means staff in the pipeline safety division of the commission or the pipeline safety division's publicly noticed consultant:

(A) **who are investigating the particular case that is the subject of the hearing under IC 8-1-26-23(g) and (k); and**

(B) **any staff assigned as testimonial by:**

(i) **the director of the pipeline safety division; or**

(ii) **the presiding officers assigned by the commission in the case.**

- (4) "Excavator" means the party that caused damage to a pipeline facility located in the area of excavation or demolition that is the subject of the hearing.
 - (5) "Operator" means the operator as defined by IC 8-1-26-10 that owns or operates the pipeline facility that was damaged by the excavator.
 - (6) "Person" has the same meaning as defined in IC 8-1-26-11.
 - (7) "Public hearing" means the public hearing as referenced in IC 8-1-26-23(k).
 - (8) "Respondent" means the person requesting the hearing.
- (b) If a person who receives notice under 170 IAC 5-5-3(f) requests a hearing, the request

must:

- (1) Be provided in writing to:
 - (A) the commission's general counsel on behalf of the division; and
 - (B) the advisory committee
 at least ten (10) business days before it is filed with the commission.
- (2) Be filed with the commission within the time permitted by 170 IAC 5-5-3(f).
- (3) Be served on the office of utility consumer counselor, the commission's general counsel on behalf of the division, and the advisory committee.
- (4) Comply with:
 - (A) this rule;
 - (B) an applicable general administrative order the commission issues and posts on its website regarding excavation damage cases or filing requirements; and
 - (C) other applicable laws.
- (5) Include the following:
 - (A) A case caption that follows this format: **IN THE MATTER OF THE PIPELINE SAFETY DIVISION'S INVESTIGATION OF (respondent's name) IN PIPELINE SAFETY DIVISION CASE NUMBER _____.**
 - (B) A copy of the letter the respondent received regarding the disposition of the case.
 - (C) Respondent's contact information, including:
 - (i) mailing address;
 - (ii) telephone number;
 - (iii) fax number, if available; and
 - (iv) email address, if available.
 - (D) Confirmation the respondent provided the request to the commission's general counsel on behalf of the division, and the advisory committee at least ten (10) business days before the respondent filed the request with the commission.
 - (E) Whether respondent is contesting the division's findings, the advisory committee's recommendations, or both.
 - (F) The reasons why the respondent believes the findings or recommendations are in error.
 - (G) The requested relief.
 - (H) Additional information the respondent believes is pertinent.
- (c) The division's case-in-chief shall include, at a minimum, the following documents:
 - (1) documents submitted by the excavator and operator in the underlying case; and
 - (2) the division's investigation summary report.
- (d) The advisory committee's case-in-chief shall include, at a minimum, the following

documents:

- (1) the recommendation form; and
- (2) the penalty schedule, if any, used at the time the advisory committee recommended the penalty. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-5.5*)

SECTION 8. 170 IAC 1-1.1-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-6 Office of utility consumer counselor

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 6. The public, as a class, shall be deemed a party in any a proceeding in which the office of utility consumer counselor shall appear on behalf of the public. However, individuals or groups may be granted intervention and be represented by independent counsel. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-6; filed Oct 30, 2000, 2:10 p.m.: 24 IR 656; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 9. 170 IAC 1-1.1-7 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-7 Attorneys; representation; withdrawal of appearance

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 7. (a) **An appearance shall be filed as a separate document.**

(b) ~~Any~~ A person filing an appearance pro se to represent his or her own interest is required to:

- (1) sign, **or provide a signature equivalent in the electronic filing system**, and verify any pleadings or and documents in accordance with section 8(d) of this rule; and
- (2) comply with all rules applicable to commission proceedings.

(c) The interest of another person or entity may only be represented by an attorney admitted to practice before the Indiana supreme court in good standing.

(d) An attorney that is not admitted to practice before the Indiana supreme court in good standing, but is a member of the bar of another state or territory of the United States or the District of Columbia must apply for and receive temporary admission through the Indiana Rules for Admission to the Bar and the Discipline of Attorneys Rule 3, Section 2 prior to practicing law before the commission. Upon being granted limited admission to practice before the commission, an attorney must do the following:

- (1) File the following with the commission prior to appearing in a cause:

(A) An appearance in the cause.

(B) A copy of the notice of temporary admission filed with the clerk of the Indiana supreme court.

- (2) Appear with co-counsel admitted to practice in Indiana at any hearing ~~hearings~~, unless authorized by the presiding officers to appear at the hearing without the presence of co-counsel. Local counsel shall:

(A) sign, **or provide a signature equivalent in the electronic filing system**, all briefs, papers, and pleadings in such the cause; and

(B) be jointly responsible therefor.

(~~de~~) **Any A** withdrawal of appearance by an attorney on behalf of ~~any a~~ party must:

- (1) comply with the Indiana Rules of Professional Conduct;
- (2) be in writing; and
- (3) be granted by leave of the presiding officer.

(~~ef~~) Except for good cause shown, a request for withdrawal of appearance by an attorney must be filed with the commission at least ten (10) days prior to the next scheduled hearing date.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-7; filed Oct 30, 2000, 2:10 p.m.: 24 IR 656; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; filed Jul 9, 2012, 2:57 p.m.: 20120808-IR-170110590FRA)

SECTION 10. 170 IAC 1-1.1-8 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-8 Pleadings; general requirements

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 35-44.1-2-1

Sec. 8. (a) An attorney eligible to practice before the commission shall sign, **or provide a signature equivalent in the electronic filing system**, ~~all~~ pleadings filed with the commission or as otherwise required by statute or as follows:

- (1) By the person, if an individual.
- (2) By a partner, if a partnership.
- (3) By a corporate officer or, if officers have not been selected, by an incorporator, if a corporation.
- (4) By a duly authorized official, if a municipal corporation.
- (5) By a bona fide general officer, if an unincorporated association.

(b) Petitions and complaints may be amended or supplemented upon written or oral motion. Leave to amend a petition or complaint shall be freely granted upon failure of ~~any other~~ **another** party to the proceeding to demonstrate undue prejudice. If the amended or supplemented petition or complaint seeks relief substantially different than that originally prayed for:

- (1) the caption of the petition or complaint shall be revised to accurately describe the relief being sought; and
- (2) republication or renotification of ~~any a~~ previously noticed hearing may be required by the commission.

(c) A party may amend his or her pleading once as a matter of course ~~at any time~~ before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the cause has not been set for an evidentiary hearing, he or she may ~~so~~ amend it ~~at any time~~ within thirty (30) days after it is served. Otherwise, a party may amend his or her pleading only by leave of the presiding officer or by written consent of the adverse party, and leave shall be given when justice ~~so~~ requires. A party shall plead in response to an amended pleading within:

- (1) the time remaining for response to the original pleading; or
- (2) twenty (20) days after service of the amended pleading;

whichever period may be ~~the~~ longer, unless the presiding officer otherwise orders.

(d) The signature, **or signature equivalent in the electronic filing system**, of the party, if an individual, or of a duly authorized representative, if the party is an entity, or of the attorney for the party constitutes a certificate that:

- (1) the signatory has read the pleading;
- (2) to the best of the signatory's knowledge, information, and belief, there is a good ground to support the pleading; and
- (3) the pleading is not interposed solely for delay.

If a pleading or other document is not signed, **or a signature equivalent is not provided in the electronic filing system**, as required in this subsection, the pleading may be stricken and the action may proceed as though the pleading had not been served. Except as required by law, pleadings or motions need not be verified. Where a pleading or other document ~~of any kind~~ is required to be verified, or where an oath is required to be taken, it is sufficient if the subscriber simply affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

"I (we) affirm under penalties for perjury that the foregoing representation(s) is (are) true to the best of my (our) knowledge, information, and belief.

Signed _____
Date _____".

(e) An individual who knowingly falsifies an affirmation or representation of fact is subject to the same penalties as prescribed by law for perjury under ~~IC 35-44-2-1~~ **IC 35-44.1-2-1**.

(f) ~~Every~~ **A** pleading of a party represented by an attorney must:

- (1) be signed by at least one (1) attorney of record; and
- (2) include the attorney's:
 - (A) address;
 - (B) telephone number;
 - (C) fax number;
 - (D) ~~electronic mail~~ **email** address; and
 - (E) attorney number.

This subsection does not apply to pleadings and motions made orally and transcribed as a result of a hearing. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-8; filed Oct 30, 2000, 2:10 p.m.: 24 IR 656; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 11. 170 IAC 1-1.1-9 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-9 Petitions

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 9. (a) In addition to the matters required by section 8 of this rule, petitions must comply with the requirements of the statute under which they are filed and must contain the following:

- (1) A caption that describes, in general terms, the relief being sought.
- (2) A plain and concise statement of the facts showing the interest of ~~each of~~ the petitioners in the matters involved in the proceeding.
- (3) A plain and concise statement of the facts that necessitate or justify relief.
- (4) A reference to the statutes under which the commission has jurisdiction and the rules of the commission deemed applicable.
- (5) A statement designating the person in Indiana authorized to accept for the petitioner service of

pleadings in the proceeding, including that person's:

- (A) address;
- (B) telephone number;
- (C) fax number; and
- (D) ~~electronic mail~~ **email** address.

(6) The name of the respondent, as required.

(7) Specific prayers for the relief requested, **including a reasonable amount of detail about the nature of the request.**

(8) A proposed procedural schedule and a statement indicating whether the parties reasonably anticipated to participate in the proceeding are in agreement with the proposed procedural schedule for the prefiling of evidence and the evidentiary hearing. The commission's general administrative orders may provide guidance for determining an appropriate procedural schedule.

(A) This must be followed for cases involving rate adjustment mechanisms, also known as trackers.

(B) For cases not involving rate adjustment mechanisms or trackers, an alternative to providing the proposed procedural schedule when filing the petition is to indicate that a proposed procedural schedule will be filed within thirty (30) days of the filing of the petition.

(b) In ~~any~~ a utility rate proceeding where the petitioner in its petition requests a specific test year and cutoff date, the commission shall, in consultation with the parties at the time of the prehearing conference or by agreement of the parties in writing as set forth in section 15 of this rule, by order, fix the test year and cutoff date for purposes of accounting, engineering, and other evidence to be presented in ~~such~~ **the** proceeding, which shall be binding upon ~~all~~ **the** parties.

(c) In ~~any~~ a proceeding in which the petitioner is required by law to publish notice of the filing of the petition, the petitioner shall, following publication of the notice, certify to the commission that the publication has occurred, listing the names of the newspapers and the county or counties in which the notice was published.

(d) In a proceeding in which the petitioner is required by law to publish notice through a newspaper, the petitioner shall certify to the commission that a substantially similar notice was also posted on the petitioner's website or provide a verified statement as contemplated by section 8(d) of this rule that petitioner does not have a website or could not add the posting without substantial cost or hardship and explain why. (Indiana Utility Regulatory Commission; 170 IAC 1-1.1-9; filed Oct 30, 2000, 2:10 p.m.: 24 IR 657; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 12. 170 IAC 1-1.1-10 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-10 Complaints and answers

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-54

Sec. 10. (a) In addition to the matters required by sections 8 and 9 of this rule, complaints **filed pursuant to IC 8-1-2-54** must also state the name of each respondent and ~~each~~ individual or entity, if any, who, under ~~any~~ **an** applicable statute or commission rule, is required to be named in the complaint because of the individual's or entity's interest or possible interest in the subject matter. The complaint must state the

address of each respondent, individual, or entity, if known. If the address is unknown, the complaint must state that ~~each~~ of the parties joining in the complaint ~~has~~ **have** been unable to ascertain the address upon reasonable inquiry.

(b) Concurrently with the filing of ~~any~~ **a** complaint with the commission, the complainant shall serve a copy on each named respondent.

(c) Answers to ~~any~~ **a** complaint must conform to the following:

(1) Answers to complaints must be filed with the commission within twenty (20) days after service of the complaint unless a different time is prescribed by:

- (A) statute;
- (B) the commission; or
- (C) the presiding officer.

(2) ~~All~~ Answers must be in writing and be drawn as to advise the parties and the commission fully and completely of the nature of the defense. The respondent shall:

- (A) admit or controvert each material allegation of the complaint; and
- (B) state clearly and concisely the facts and matters of law relied upon.

~~Any~~ **An** allegation contained in a complaint that is not specifically admitted or controverted by an answer is considered denied by the respondent. If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state and the statement shall be considered a denial. Failure to file an answer within the time allowed under this subsection constitutes a general denial thereto.

(3) In its answer, a respondent may seek relief against other parties in that proceeding by reason of the presence of common questions of law or fact. The respondent shall set forth in the answer the following:

- (A) The facts constituting the grounds for the claim.
- (B) The provisions of the:
 - (i) statutes;
 - (ii) rules;
 - (iii) regulations; or
 - (iv) orders;

relied upon.

- (C) The injury complained of.
- (D) The relief sought.

The answer must, in ~~all~~ other respects, conform to the requirements of this rule for answers generally.

(4) If the respondent desires affirmative relief, the answer shall also contain the following:

- (A) A plain and concise statement of the facts that are deemed to necessitate or justify relief.
- (B) Specific prayers for the relief deemed appropriate.

(5) Unless otherwise permitted by a presiding officer, replies to answers seeking affirmative relief must be filed with the commission:

- (A) not more than ten (10) days after service of the answer; and
- (B) not less than five (5) days prior to the date set for the commencement of the hearing, if any.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-10; filed Oct 30, 2000, 2:10 p.m.: 24 IR 657; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 13. 170 IAC 1-1.1-11 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-11 Petitions to intervene

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 11. (a) A petition to intervene may be filed by ~~any~~ **a** person or entity alleging a substantial interest in the subject matter of the proceeding in which the person or entity requests leave to intervene.

(b) Petitions to intervene shall set out clearly and concisely facts showing the following:

(1) The proposed intervenor's substantial interest in the subject matter of the proceeding.

(2) The position of the proposed intervenor with respect to the matters involved in the proceeding.

(3) Specific prayers for affirmative relief, if desired.

(4) A prayer for leave to intervene and to be made a party to the proceeding.

(c) A petition to intervene shall be filed not less than five (5) days prior to the date set for the initial public evidentiary hearing on the merits. A petition to intervene may be filed and granted thereafter at the discretion of the presiding officer, upon good cause shown.

(d) If a petition to intervene satisfies this section and shows the proposed intervenor has a substantial interest in the subject matter of the proceeding or ~~any~~ **a** part thereof, and the proposed intervenor's participation ~~will~~ **shall** not unduly broaden the issues or result in unreasonable delay of the proceeding, the presiding officer may grant the prayer for leave to intervene, in whole or in part and, thereupon, the intervenor becomes a party to the proceeding with respect to the matters set out in the intervention petition.

(e) An intervenor is bound by ~~all~~ rulings and other matters of record prior to the time the intervenor is made a party and takes the case as the intervenor finds it as of the date of intervention.

(f) Petitions to intervene, when filed with the commission, shall show service thereof upon ~~all~~ **the** parties to the proceeding, in conformity with section 13 of this rule.

(g) A party may object to a petition to intervene, and, absent objection thereto, may be deemed to have waived ~~any~~ **an** objection to the granting of the petition. ~~Any~~ **A** response shall be filed within seven (7) days after service of the petition to intervene ~~and shall be served upon all other parties~~ unless the presiding officer prescribes a different time. **The response shall be served on the other parties.** ~~Any~~ **A** reply to the responses shall be filed within five (5) days after service of the response unless the presiding officer prescribes a different time. Responses or replies may be made orally at the time of ~~the~~ hearing or prehearing conference if there exists insufficient time prior to the hearing or conference to make ~~a~~ written response or reply according to the deadlines provided under this section. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-11; filed Oct 30, 2000, 2:10 p.m.: 24 IR 658; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 14. 170 IAC 1-1.1-12 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-12 Motions

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-3-1

Sec. 12. (a) A motion must state the grounds therefor and the relief sought. Parties may file motions:

(1) to strike ~~any~~ **an** insufficient claim or defense;

(2) to:

(A) add additional parties;

(B) strike out improper parties; or

(C) substitute parties;

(3) to dismiss a proceeding for:

(A) lack of jurisdiction;

(B) insufficiency of the petition; or

(C) other sufficient cause;

(4) for:

(A) a continuance of a hearing; or

(B) an extension of time for:

(i) filing a pleading; or

(ii) complying with an order; or

(5) for other appropriate relief.

(b) Motions based on a matter that does not appear of record shall be supported by affidavit.

(c) Motions may be accompanied by memoranda in support thereof.

(d) A party may make a motion in writing. Motions made during hearings may be stated orally upon the record. The presiding officer may require that ~~such~~ oral motions be:

(1) reduced to writing; and

(2) filed separately.

(e) Responses to motions made during hearings may be stated orally on the record, or the presiding officer may require that oral responses be:

(1) reduced to writing; and

(2) filed separately.

Any A response to a written motion must be filed with the commission within ten (10) days after service of the motion unless the presiding officer prescribes a different time **or unless it is an objection to a request for confidential treatment under 170 IAC 1-1.1-4(a)(1)(A).**

(f) The moving party may reply to a response made to the party's motion. A reply to responses made orally during a hearing may be stated orally on the record, or the presiding officer may require that a reply be reduced to writing and filed separately. **Any A** written reply to a response shall be filed with the commission within seven (7) days after service of the written response or after the response is made orally on the record unless the presiding officer prescribes a different time.

(g) A presiding officer is authorized to rule upon ~~any and all~~ motions. No ruling by a presiding officer upon ~~any a~~ motion shall be deemed a final ruling of the commission for purposes of IC 8-1-3-1 until the commission:

(1) issues a final order in the cause; or

(2) makes a determination upon an appeal of the presiding officer's ruling under section 25 of this rule.

(h) Motions not specifically provided for by this ~~rule~~ **section** shall be made in accordance with ~~any an~~ Indiana rule of trial procedure applicable, consistent with section 26(a) of this rule. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-12; filed Oct 30, 2000, 2:10 p.m.: 24 IR 659; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 15. 170 IAC 1-1.1-13 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-13 Service and extension of time for service by mail

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 13. (a) First class mail must be used when service is effected **required** by United States mail.

(b) **Service by the commission.** Unless the commission or a presiding officer specifies another method, all orders, notices, and other documents originating with the commission shall be served by United States mail by mailing a copy thereof to the person or persons designated in the commission's service list for that cause, at the person's principal office or place of business **email through the electronic filing system**. When a party designates multiple persons to receive service, a presiding officer may limit service to one (1) or more persons per party.

(c) Petitions instituting proceedings shall be served by the petitioner upon **the following**:

(1) Each named respondent;

(2) **the office of utility consumer counselor**; and

(3) ~~other~~ **an individual or entity who is required to be named in the petition under section subsection 10(a) of this rule.**

(d) **Service by parties.** All Pleadings, briefs, and other documents filed in proceedings pending before the commission shall be served on all **the parties** in the proceeding **including the office of utility consumer counselor** on the same day the pleading, brief, or other document is filed with the commission, except as may be otherwise ordered by the commission.

(1) Service shall be made to each party **parties through the following means**:

(A) **email**;

(B) ~~by delivering in person or by mailing a copy by~~ United States mail, properly addressed with postage prepaid; or

(C) as ~~otherwise~~ agreed to by the parties.

(2) **Service by email shall be deemed complete upon transmission, except service by email that occurs on**

(A) **a Saturday**;

(B) **a Sunday**;

(C) **a legal holiday**; or

(D) **a day the commission is closed during regular business hours**

shall be deemed complete the next business day.

(3) **A certificate of service must be included on pleadings filed with the commission. The certificate shall indicate that service was accomplished by email or United States mail. If service is by United States mail, service shall be made by mailing a copy thereof to the person or persons designated in the commission's service list for that cause, at the person's principal office or place of business.**

(e) In a proceeding where an attorney has filed a pleading or other document on behalf of a party or has entered an appearance under section 7 of this rule, ~~any~~ a notice or other written communication required to be served on or furnished to the party shall be served upon or furnished to the attorney in the same manner as prescribed for the party. When ~~any~~ a party has appeared by attorney, service on that attorney is service on the party and separate service on the party is not required.

(f) The date of service is the day the document served is:

(1) **sent via email;**

(2) deposited in the United States mail; ~~or~~

(23) delivered in person; **or**

(4) **delivered as agreed by the parties.**

(g) Whenever a party has the right or is required to do ~~some~~ **an** act or take ~~some~~ **an** action within a prescribed period after service on the party of a pleading, notice, or other document by United States mail, that party has three (3) additional days to the prescribed period unless the presiding officer or this rule otherwise provides.

~~(h) Two (2) copies of any petition or complaint shall be served on the utility consumer counselor on the same day the petition or complaint is filed with the commission.~~(i) A dated certificate of service must accompany and be attached to ~~each~~ **a** pleading or other document filed with the commission when service is required and shall identify those served.

(ji) ~~Any~~ **An** interested person or entity who is not admitted to a proceeding as a party may ~~still request to receive mailings of notices, docket entries, orders, and other documents relating to the proceeding mailed issued by the commission by subscribing to the case in the electronic filing system.~~ Such requests may be granted at the discretion of a presiding officer, although **However**, any such **an** interested nonparty will **shall** not be added to the service list maintained by the secretary of the commission for that proceeding **and the fact a person or entity is subscribed to a case does not negate a party's normal service obligations.** *(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-13; filed Oct 30, 2000, 2:10 p.m.: 24 IR 659; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)*

SECTION 16. 170 IAC 1-1.1-14 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-14 Subpoenas

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-29

Sec. 14. (a) The commission shall, at the request of ~~any~~ **a** party, issue subpoenas for the attendance of witnesses and subpoenas duces tecum. **Subpoenas shall not be issued for commission staff unless the staff is designated as a testimonial party to the proceeding.** Subpoenas shall be signed by the secretary **of the commission** or a commissioner and shall be issued under the seal of the commission.

(b) Parties shall prepare subpoenas for issuance and shall be responsible for service. Service must be shown by the return of the sheriff or the affidavit of the party or attorney serving the subpoena. The return or affidavit shall be filed promptly with the commission.

(c) Upon motion made at or before the time specified for compliance in ~~that~~ **the** subpoena, the presiding officer or commission may quash or modify the subpoena if it is unreasonable, oppressive, or untimely.

(d) In addition to the other requirements of this section, subpoenas to secure the examination or testimony of ~~any~~ **a member of commission staff who is designated as a testimonial party** of the commission staff, in deposition or at a formally docketed hearing, shall:

(1) specify the purpose for which the examination or testimony of the commission staff member will be taken;

(2) specify the approximate duration of the examination; and

(3) certify that copies of such ~~the~~ subpoena, when served, have also been served in the same manner as pleadings are served on the **office of** utility consumer counselor and other parties of record.

(e) A subpoena to secure the testimony of ~~any~~ **a member of commission staff who is designated as a testimonial party** of the commission staff in a formally docketed proceeding before the commission may not be issued less than forty-eight (48) hours prior to the commencement of the hearing in which the testimony ~~will~~ **shall** be given, except upon written leave granted by the presiding officer for good cause shown. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-14; filed Oct 30, 2000, 2:10 p.m.: 24 IR 660; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 17. 170 IAC 1-1.1-15 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-15 Preliminary hearings

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-29

Sec. 15. (a) ~~In order~~ To:

- (1) make possible the more effective use of hearing time in formal proceedings on the merits of a petition or a complaint;
- (2) otherwise expedite the orderly conduct and disposition of those proceedings; and
- (3) serve the public interest;

the commission may require preliminary hearings, which include prehearing, technical, and attorney conferences, among parties to the proceeding prior to the commencement of an evidentiary hearing on the merits of the petition or complaint. Prehearing conferences ~~and technical conferences~~ shall be convened ~~and conducted~~ on the record of the proceeding following proper publication of notice and notice to ~~all~~ **the** parties.

(b) The commission, or the presiding officer, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct:

- (1) that a preliminary hearing be held; and
- (2) the parties to the proceeding ~~to~~ appear to consider any ~~or all~~ of the matters enumerated in subsection (c).

When a petitioner requests in its petition that a date be promptly fixed for a prehearing conference in the proceeding, the prehearing conference shall be held within forty-five (45) days following the date of filing of the petition.

(c) The presiding officer may consider, among other things, the following at a prehearing conference:

- (1) The possibilities for settlement of the proceeding, subject to the approval of the commission.
- (2) Whether the proceeding is ~~one~~ appropriate for alternative dispute resolution.
- (3) The estimated amount of hearing time that ~~will~~ **shall** be required to dispose of the proceeding and the establishment of a schedule of evidentiary or other hearing dates.
- (4) Arrangements for the submission of written direct testimony of witnesses and exhibits in advance of evidentiary hearing.
- (5) ~~Any other~~ Matters as may aid in expediting the orderly conduct and disposition of the proceeding, including the following:

(A) Simplification of the issues.

(B) Obtaining admissions as to, or stipulations of, facts not remaining in dispute, or obtaining stipulations as to the authenticity of documents that might properly shorten the evidentiary

hearing.

(C) The limitation of the number of witnesses.

(D) Discovery or production of data or other material, and coordination of discovery and a discovery cutoff date.

(d) Representatives of ~~all~~ **the** parties shall:

(1) attend the prehearing conference unless excused by the presiding officer;

(2) be fully prepared to discuss both procedural and substantive matters involved in the proceeding; and

(3) be fully authorized to make commitments with respect to those matters.

In the absence of agreement among parties with respect to procedure and related issues, the parties, unless appearing pro se, ~~should~~ **shall** be prepared to have an attorney present ~~in order~~ to introduce evidence necessary to assist the presiding officer to make factual determinations required to order proper disposition of preliminary matters.

(e) If the parties have previously reached agreement on ~~any or all~~ procedural matters to be considered at a prehearing conference, the agreement may be reduced to writing and filed for approval in lieu of the prehearing conference.

(f) Failure of a party to attend a preliminary hearing, after being served with due notice of the time and place thereof, shall constitute waiver of ~~all~~ objections to ~~any~~ agreements reached by the parties in attendance at the preliminary hearing ~~or~~ **and** to the disposition of ~~any~~ issues on which evidence was taken at the preliminary hearing as reflected in ~~any~~ **an** order or ruling made at the preliminary hearing or issued as a result of the preliminary hearing. If a party is excused from attendance at the prehearing conference, the determination of whether a waiver of ~~all~~ objections to ~~such~~ agreements or the disposition issues still applies is at the discretion of the presiding officer.

(g) The presiding officer is authorized, but not limited to, the following actions at attorney and technical conferences:

(1) Participating in technical and legal discussions.

(2) Arranging for recording stipulations or agreements made by the parties to the proceeding.

(3) Discussing procedural matters and issues that may be addressed at prehearing conferences.

(4) Otherwise assisting the parties in their effort to reach an agreement ~~that will to~~:

(A) expedite the proceeding; and

(B) serve the public interest.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-15; filed Oct 30, 2000, 2:10 p.m.: 24 IR 660; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 18. 170 IAC 1-1.1-16 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-16 Discovery

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-29

Sec. 16. (a) Parties shall be entitled to ~~all~~ the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure as from time to time amended by the Indiana supreme court or general assembly.

(b) ~~Any~~ A party may issue a written request for discovery to ~~any other~~ **another** party. Unless otherwise directed by the presiding officer, if the party against whom the discovery is directed does not satisfy the request within ten (10) calendar days following receipt thereof or reach an agreement with the requesting party as to the nature, scope, and time for the requested discovery, the party seeking discovery may make written application to the commission for an order compelling discovery, specifically setting forth and detailing the:

- (1) discovery sought;
- (2) reasons why it is thought to be relevant to the issues; and
- (3) reasonable efforts taken to reach agreement.

The presiding officers shall thereupon grant, grant in part, or deny the application and shall promptly advise the parties of its determination. Where ~~such~~ **the** application is granted, in whole or in part, the party against whom discovery is sought shall allow discovery as specified by the presiding officers. No continuance of a scheduled hearing shall be granted for inability to complete discovery unless the parties have complied with the foregoing provisions.

~~(c) No discovery shall be ordered with regard to rulemaking proceedings. The commission may, however, in the exercise of its authority, obtain information relating to the subject matter of the proposed rules from any entity under its jurisdiction. Such information shall be available to the public under IC 8-1-2-29.~~ ~~(d) In order~~ To serve the public interest and expedite the discovery process, the presiding officer, with or without motion, may call one (1) or more informal attorneys' conferences for the purpose of discussing, hearing argument on, and resolving discovery disputes, including discovery issues and discovery schedules. The presiding officer may:

- (1) participate in the discussions; and
- (2) assist the parties in resolving discovery disputes.

The presiding officer shall reduce to writing in the form of a docket entry ~~any~~ rulings made at the attorneys' conference.

(ed) Parties may request a protective order pursuant to the requirements set forth in Indiana Trial Rule 26(C) and, as appropriate, section 4 of this rule. Upon ~~such~~ a request, the presiding officer may grant appropriate protective relief, which may include an informal, off the record attorneys' conference ~~in order~~ to conduct an in-camera review of the material sought in discovery. *(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-16; filed Oct 30, 2000, 2:10 p.m.: 24 IR 661; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)*

SECTION 19. 170 IAC 1-1.1-16.5 IS ADDED TO READ AS FOLLOWS:

170 IAC 1-1.1-16.5 Mediation

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 16.5. (a) Parties may voluntarily choose mediation in an attempt to resolve some or all of the issues on which they disagree.

(b) The commission may propose mediation guidelines in a general administrative order. *(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-16.5)*

SECTION 20. 170 IAC 1-1.1-17 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-17 Settlements

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 17. (a) It is the policy of the commission to review and accept appropriate settlements. Nothing contained in this ~~rule~~ **section** shall be construed as precluding parties in a proceeding from submitting, at any time prior to the issuance of a final order in the proceeding, settlement proposals or from requesting a hearing for ~~such~~ **that** purpose.

(b) Settlement agreements by some or all of the parties to a proceeding may be filed with the commission and received into evidence as part of the record of the proceeding.

(c) The commission may reject, in whole or in part, ~~any a~~ proposed settlement under this section if the commission determines that the settlement is not in the public interest. In the event that the commission rejects a proposed settlement, in whole or in part, the commission must state on the record or by written order the reasons for ~~such~~ **the** rejection.

(d) The settlement must be supported by probative evidence. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-17; filed Oct 30, 2000, 2:10 p.m.: 24 IR 661; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 21. 170 IAC 1-1.1-18 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-18 Hearing procedure

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-3-8

Sec. 18. (a) Hearings must be conducted by a commissioner or administrative law judge.

(b) The presiding officer may make rulings with respect to pleadings and other matters not ruled upon.

(c) The presiding officer conducting the hearing must enter upon the record ~~all~~ appearances, with a notation in whose behalf ~~each~~ **the** appearance is made.

(d) In hearings upon complaints or petitions, the complainant, petitioner, or other party having the burden of proof must open and close the presentation of evidence and arguments. In hearings on investigations and in proceedings that have been consolidated for hearing, the presiding officer may direct who shall open and close the record. In proceedings where the evidence is particularly within the knowledge or control of another party, the presiding officer may vary the order of presentation. The presiding officer may, at any time during the hearing, limit repetitive or redundant:

- (1) testimony;
- (2) cross-examination;
- (3) motions; or
- (4) objections.

If the commission initiated the proceeding, the proceeding may be opened by presentation of a report prepared at the direction of the commission under IC 8-1-1-5.

(e) When objections to the admission or exclusion of evidence before the commission or the presiding officer are made, the objecting party must briefly state ~~all~~ the grounds relied upon.

(f) The presiding officer may, at his or her discretion, permit a party to furnish designated exhibits after the close of the hearing with copies to ~~all~~ **the** parties of record. The presiding officer must specifically describe and assign an identifying exhibit number at the time of hearing and may admit it into the record of the proceeding with physical production at a later time, provided a party does not object, or if a party objects, the presiding officer shall direct the mode of admissibility, including granting the objecting party reasonable opportunity to question the sponsor of the exhibit regarding its contents. However, this subsection does not make evidence admissible that would otherwise be inadmissible.

(g) The direct testimony of a witness for ~~any~~ **a** party may be presented in written question and answer form and must have ~~any~~ related exhibits attached unless the presiding officer prescribes another format. ~~In any utility rate proceeding, unless otherwise provided in any prehearing conference order or by stipulation of the parties, such prepared testimony and exhibits shall be filed with the commission and served on all parties at least fifteen (15) days prior to the date of the hearing at which the same is to be offered into evidence. This requirement shall not apply to matters provided for in section 21(f) of this rule. Unless otherwise provided by the presiding officer, any prepared testimony and exhibits must be filed with the commission secretary in accordance with section 3 of this rule and served on all the parties to the proceeding within the deadline established by the preliminary hearing order or docket entry of the presiding officer. However, nothing in this section requires the pre-filing of any testimony without the specific order of a presiding officer or the commission.~~

(h) **Unless otherwise approved by the presiding officer, exhibits that are offered as evidence in a hearing must be:**

(1) clean copies with no writing on the copy, unless the writing is integral to the exhibit; and

(2) hard copies that are:

(A) single sided;

(B) fastened together with:

(i) staples;

(ii) binder clips; or

(iii) other non-permanent bindings, and with no more than three (3)

holes, along the longest edge; and

(C) only if confidential, printed on green paper and provided in a sealed envelope; or

(3) electronic copies stored on a medium that:

(A) is accessible by commission staff; and

(B) only if confidential, marked confidential on the medium, filename, and within the exhibit, if possible.

(i) Unless otherwise directed by the commission, prefiled testimony, when properly authenticated by the witness under oath or affirmation, may be offered as an exhibit. The written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if the testimony were being presented orally.

(ij) ~~Any~~ **A** party to a proceeding may move in writing for an extension of time in which to prefile testimony. The motion ~~should~~ **shall** be filed prior to the time set for the filing of the testimony unless a supporting affidavit establishes that the facts, which are the basis of the motion, did not then exist or were not then known to the moving party. For good cause shown, the presiding officer may reschedule a hearing to a later date, if necessary, and fix the extension of time in which to prefile ~~such~~ **the** testimony ~~in order~~ to avoid undue delay and provide reasonable opportunity for ~~all~~ **the** parties to properly prepare their cases. ~~All~~

Parties shall be given an opportunity to object to ~~any a~~ motion for extension of time.

(jk) With the approval of the presiding officer, corrections or changes in the stenographic record may be made upon the written agreement of ~~all the~~ parties of record filed with the commission within ten (10) days after parties have been notified that the stenographic record has been completely transcribed. Other corrections or changes may be made only upon order of the commission.

(kl) Parties may obtain copies of the stenographic record from the official reporter upon payment of the ~~appropriate charges~~ **reasonable cost** fixed by **general administrative order of the commission as per IC 8-1-3-8.**

(lm) **Following** due legal notice of the initial evidentiary hearing on the merits, having been given and published as required by law, notice of further hearings or other matters agreed upon or ordered by the presiding officer at the hearing **or in a docket entry** do not need to be published. It is the obligation of counsel and parties to a formally docketed cause to keep themselves informed of ~~all~~ actions taken in a proceeding before the commission.

(mn) After being duly notified, a party who fails to be represented at a scheduled conference or hearing in ~~any a~~ proceeding is deemed to have waived the opportunity to participate in the conference or hearing, and is deemed to have consented to, and may not be permitted thereafter to reopen, ~~any a~~ matter resolved or accomplished at ~~such the~~ conference or hearing, and may not be permitted to recall for further examination witnesses who were excused unless the presiding officer determines that the failure to be represented was unavoidable or that the interests of the other parties and of the public would not be unduly prejudiced by permitting ~~such the~~ reopening for further examination. If ~~any a~~ witness is recalled for further examination, then the recalling party must pay ~~any the~~ expert fees, costs, and expenses.

(o) Parties to a proceeding may not offer comments at public field hearings associated with the proceeding.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-18; filed Oct 30, 2000, 2:10 p.m.: 24 IR 662; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 22. 170 IAC 1-1.1-19 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-19 Consolidation

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 19. (a) Causes sharing common issues of fact or law may be consolidated at the discretion of a presiding officer.

(b) A consolidated cause shall continue to list the ~~captions and cause numbers so consolidated~~ **cause number of the earliest filed case. The presiding officer may keep the underlying captions or create a new caption for the consolidated cause.**

(c) Where two (2) or more proceedings are consolidated for hearing, the presiding officer shall determine the order in which ~~all~~ the parties introduce evidence. *(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-19; filed Oct 30, 2000, 2:10 p.m.: 24 IR 663; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR*

2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)

SECTION 23. 170 IAC 1-1.1-19.5 IS ADDED TO READ AS FOLLOWS:

170 IAC 1-1.1-19.5 Sub-Dockets

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 19.5. (a) Causes with issues or facts discreet from the main docketed proceeding may be broken into one or more sub-dockets at the discretion of a presiding officer.

(b) A party to the main docket that wants to be a party in the sub-docket shall file an appearance as outlined in section 7 of this rule.

(c) A person or entity not a party to the main docket that wants to be a party in the sub-docket shall file a petition to intervene as outlined in section 11 of this rule.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-19.5)

SECTION 24. 170 IAC 1-1.1-20 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-20 Continuance

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 20. ~~Any~~ A party may move for continuance of a hearing or filing deadline. Contested motions for continuance of a hearing filed within seven (7) days of the hearing must be verified. If the motion for continuance of a hearing is contested, the moving party must state the positions of the other parties to the case on the issue of continuance. *(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-20; filed Oct 30, 2000, 2:10 p.m.: 24 IR 663; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)*

SECTION 25. 170 IAC 1-1.1-21 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-21 Evidence ~~and administrative notice~~

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 21. (a) The presiding officer has all necessary authority to control the receipt and admissibility of evidence, including, but not limited to, the following:

(1) Ruling on the:

(A) admissibility of evidence; or

(B) qualifications of witnesses;

or both.

(2) Confining the evidence to the issues in the proceeding and imposing, where appropriate, the following:

- (A) Limitations on the number of witnesses to be heard.
- (B) Limitations of time and scope for direct and cross-examinations.
- (C) Limitations on the presentation of further cumulative or repetitious evidence.
- (D) ~~Any~~ Other necessary limitations.

(3) Taking other appropriate action necessary for the expeditious conduct of the hearing. The presiding officer shall actively employ these powers to direct and focus the proceedings consistent with due process.

(b) Except as otherwise provided in this rule, when writings, recordings, or photographs are offered in evidence, copies shall be furnished to the presiding officer and to the parties present at the hearing unless the presiding officer otherwise directs. The presiding officer may require a party to furnish additional copies of exhibits.

(c) Verified petitions, complaints, and answers thereto, and similar verified documents upon which hearings are held, may, without further action, be admitted into evidence:

- (1) by agreement of all parties; or
- (2) provided the affiant is made available for cross-examination.

(d) A party may move for the admission of evidence into the record upon presentation of the sponsoring witness, after authentication, or pursuant to stipulation or agreement.

(e) An offer to prove may be requested when a ruling has been made holding that the witness was not competent to testify or that the evidence to be offered was inadmissible. An offer to prove may also be made when the presiding officer has sustained an objection to the admission of tangible evidence. If the proffered evidence is tangible, the commission shall mark it for identification purposes and that constitutes the offer to prove. If the proffered evidence is oral testimony, the offer to prove must consist of a summary of the evidence that the counsel contends would be adduced by such ~~the~~ testimony. The presiding officer may, when requested, permit an offer to prove to be made orally or by the written prefiled testimony of a witness. The presiding officer may also request a statement of the basis for admissibility of such ~~the~~ evidence.

~~(f) When a party desires to offer in evidence any official publication of the commission, any order of the commission in another proceeding, any exhibit introduced in evidence in another commission proceeding, or any other document in the commission's official files, or any part thereof, it shall be:~~

- ~~(1) plainly designated in the stenographic record and an exhibit number assigned thereto; and~~
- ~~(2) if admitted, deemed read in evidence as part of the testimony in the pending proceeding.~~

~~(g) The commission shall take administrative notice of any fact that must be judicially noticed by a court of Indiana.~~

~~(h) The commission may take administrative notice, on its own motion or upon a party's motion, of relevant administrative rules, commission orders, or other documents previously filed with the commission.~~

~~(i) In order for the commission to take administrative notice of a fact or other material, the parties must be:~~

- ~~(1) notified before or during the hearing of the specific facts or material noticed, and the source of the facts or material noticed, including any memoranda or data of the commission staff related thereto;~~
- ~~(2) provided a copy of any document noticed; and~~
- ~~(3) afforded an opportunity, upon timely request, to be heard as to the propriety of taking administrative notice and the tenor of the matter notice. In the absence of prior notification, the request may be made after administrative notice has been taken.~~

~~(j) A request by a party for administrative notice of a factual matter that should be included in a~~

party's prefiled testimony shall be made at the same time the related evidence is prefiled.

~~(k) Any documents administratively noticed by the commission shall become part of the record for the proceeding. (Indiana Utility Regulatory Commission; 170 IAC 1-1.1-21; filed Oct 30, 2000, 2:10 p.m.: 24 IR 663; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA)~~

SECTION 26. 170 IAC 1-1.1-21.5 IS ADDED TO READ AS FOLLOWS:

170 IAC 1-1.1-21.5 Administrative notice

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 21.5. (a) The commission shall take administrative notice of a fact that must be judicially noticed by a court of Indiana.

(b) The commission may take administrative notice of a fact on its own or upon a party's motion if the parties are:

(1) notified of the specific facts and the source of the facts, including memoranda or data of the commission staff related thereto;

(2) provided a copy of the document; and

(3) afforded an opportunity, upon timely request, to be heard as to the propriety of taking administrative notice. In the absence of prior notification, the request may be made after administrative notice has been taken.

(c) A request by a party for administrative notice of a factual matter that should be included in a party's prefiled testimony shall be made at the same time the related evidence is prefiled.

(d) A party requesting administrative notice must submit at the evidentiary hearing a hard copy of the documents to be offered into evidence.

(e) Documents administratively noticed by the commission shall become part of the record for the proceeding.

(f) The commission and parties may cite to the commission's orders and rules without taking administrative notice of those documents.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-21.5)

SECTION 27. 170 IAC 1-1.1-22 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-22 Posthearing relief

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-3-2; IC 8-1-3-4

Sec. 22. (a) ~~At any time~~ After the record is closed, but before a final order is issued, any a party to the proceeding may file with the commission and serve upon ~~all~~ the parties of record a petition to reopen the proceeding for the purpose of taking additional evidence.

(b) A petition to reopen the record shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including the following:

(1) Material changes of fact or law alleged to have occurred since the conclusion of the hearing.

(2) The reason or reasons ~~such~~ **the** changes of fact or law could not have been reasonably foreseen by the moving party prior to the closing of the record.

(3) A statement of how ~~such~~ **the** changes of fact or law purportedly would affect the outcome of the proceeding if received into evidence.

(4) A showing that ~~such~~ **the** evidence ~~will~~ **shall** not be merely cumulative.

A petition to reopen the record shall be verified or supported by affidavit.

(c) Within ten (10) days following the service of ~~such~~ **the** petition to reopen upon **all** **the** parties to the proceeding, any other party may file a response to the petition unless the presiding officer shall prescribe a different time. ~~Any~~ **A** reply to ~~such~~ **the** responses shall be filed within seven (7) days following service of the response unless the presiding officer shall prescribe a different time.

(d) Before a final order is issued, and upon notice to the parties, the commission, on its own motion, may reopen the proceeding for the receipt of further evidence if justice so requires.

(e) Following a final order, ~~any~~ **a** party to a proceeding may file with the commission and serve upon **all** **the** parties of record a petition for rehearing and reconsideration within twenty (20) days of the entry of the final order, unless an applicable statute shall specifically fix a longer period. The following are required for a petition for rehearing and reconsideration:

(1) ~~Such~~ **The** petition shall be concise, stating the specific grounds relied upon, with appropriate record references and specific requests for the findings or orders desired. If the petition seeks rehearing, it shall be verified or supported by affidavit and shall set forth the following:

(A) The nature and purpose of the evidence to be introduced at rehearing.

(B) The reason or reasons ~~such~~ **the** new evidence was not available at the time of the hearing or could not be discovered with due diligence.

(C) A statement of how ~~such~~ **the** evidence purportedly would affect the outcome of the proceeding if received into the record.

(D) A showing that ~~such~~ **the** evidence ~~will~~ **shall** not be merely cumulative.

(2) Responses to ~~such~~ **the** petitions shall be filed and served within ten (10) days after service of the petition upon the responding party unless the presiding officer shall prescribe a different time. ~~Any~~ **A** reply to ~~such~~ **the** responses shall be filed within seven (7) days after service of the response unless the presiding officer shall prescribe a different time.

(3) In response to ~~such~~ **a** **the** petition, the commission may:

(A) reconsider the final order and uphold it without modification;

(B) correct errors by modifying or clarifying it without further hearing based upon the existing record;

(C) upon notice to the parties, reopen the proceeding for the receipt of further evidence on particular issues; or

(D) reverse the final order.

(4) A petition for reconsideration shall be deemed a petition for rehearing for purposes of IC 8-1-3-2.

(5) A petition for reconsideration shall be deemed denied if not ruled upon or otherwise addressed within sixty (60) days following its filing.

(f) Upon filing of a written request for the record as provided by IC 8-1-3-4, a copy of the request for the record must be served upon the office of the attorney general of Indiana on the same day the request is filed with the commission. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-22; filed Oct 30, 2000, 2:10 p.m.: 24 IR 664; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-*

170180113RFA)

SECTION 28. 170 IAC 1-1.1-23 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-23 Briefs and oral arguments; posthearing briefs and proposed orders

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 23. (a) Briefs and proposed orders are to be filed and oral arguments heard only at the request of the presiding officer at the times fixed therefor.

(b) ~~An original and four (4) copies of All Briefs and proposed orders~~ shall be filed with the commission, **with an editable version emailed to the administrative law judge assigned to the proceeding**, and a copy served by the submitting party upon ~~all the~~ other parties to the proceeding, ~~such the~~ service and proof thereof to be in accordance with section 13 of this rule.

(c) **Post-hearing briefs and proposed orders are not evidence and therefore are not part of the evidentiary record on which the commission may rely for support of its factual findings.** (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-23; filed Oct 30, 2000, 2:10 p.m.: 24 IR 665; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 29. 170 IAC 1-1.1-24 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-24 Dismissal of cases

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 24. (a) The commission may, in its discretion, dismiss ~~any a~~ proceeding that has been pending upon the commission docket:

(1) that is not currently set for hearing; and

(2) upon which action has not been taken by ~~any a~~ party for a period of sixty (60) days.

(b) Prior to ~~such the~~ dismissal, the commission shall notify ~~all the~~ parties to the proceeding by ~~United States mail~~ of its intention to dismiss **in accordance with section 13 of this rule**. Notice shall be served at least ten (10) days prior to the entry of dismissal. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-24; filed Oct 30, 2000, 2:10 p.m.: 24 IR 665; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 30. 170 IAC 1-1.1-25 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-25 Appeal to the commission of rulings of presiding officer

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-3

Sec. 25. (a) ~~Any A~~ ruling of a presiding officer may be appealed to the commission. The

determination of the commission, when made, shall be noted in the record and, if made after the hearing is closed, the commission ~~will~~ **shall** advise ~~all the~~ parties of record of ~~such the~~ determination.

(b) Appeals of a presiding officer's oral ruling during a proceeding of record may be made orally, and must be made immediately following the ruling that is appealed. Unless granted additional time by a presiding officer, appeals of docket entry rulings must be made in writing and served on ~~all the~~ parties within six (6) business days following the date of ~~such the~~ docket entry.

(c) ~~All~~ Written appeals to the commission shall be served by the appealing party on ~~all the~~ other parties on the same day the appeal is filed with the commission. Any other party ~~wishing~~ **wanting** to be heard with respect to an appeal to the commission shall file a brief setting forth its position by ~~the close of regular business hours on~~ the fifth day following service of the appeal. The appealing party may file a reply to ~~any such a~~ response within five (5) days after service of the ~~appeal~~ **response**. The provisions of section 12 of this rule relating to motions generally do not apply to the extent they are in conflict with this section.

(d) Further proceedings in the cause shall be governed according to the commission's determination of the appeal.

(e) An appeal to the commission does not stay proceedings unless the presiding officer or the commission, on its own motion, orders a stay to protect the substantive rights of any of the parties.

(f) Absent a ruling of the presiding officer being overruled by the commission under this section, rulings of the presiding officer are considered rulings of the commission upon the issuance of a final order in a cause. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-25; filed Oct 30, 2000, 2:10 p.m.: 24 IR 665; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 31. 170 IAC 1-1.1-26 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-26 Application of other rules
Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 26. (a) The commission may be guided generally by relevant provisions of the Indiana Rules of Trial Procedure and the Indiana Rules of Evidence to the extent they are consistent with this rule.

(b) This rule shall be subject to ~~any~~ special rules, regulations, or orders of the commission in effect, from time to time, under or pursuant to the provisions of ~~any~~ laws of the United States of America or regulations or requirements of ~~any a~~ federal agency or commission thereunder. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-26; filed Oct 30, 2000, 2:10 p.m.: 24 IR 666; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA; readopted filed Apr 12, 2018, 11:21 a.m.: 20180509-IR-170180113RFA*)

SECTION 32. 170 IAC 1-1.5-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-1 Definitions
Authority: IC 8-1-1-3
Affected: IC 8-1; IC 8-1-2-34.5; IC 8-1-2-42; IC 8-1-2-52; IC 8-1-2-53; IC 8-1-2-54; IC 8-1-2-58; IC 8-1-2-61.5; IC 8-1-32.5; IC 8-1-34

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Commission" refers to the Indiana utility regulatory commission.

(c) "To file a report" means written testimony filed by or oral testimony presented by, or both, a technical employee in a pending proceeding.

(d) **"Formal public hearing" means an evidentiary hearing contemplated by IC 8-1-2-61.5.**

(e) "Proceeding" means a formally docketed proceeding before the commission. The term does not include **non-docketed matters, including but not limited to** any of the following:

(1) A rulemaking.

(2) A thirty (30) day filing under IC 8-1-2-42(a).

(3) A filing under IC 8-1-2-61.5(a), **even if a public field hearing occurs.**

(4) A ~~petition~~ **document related to integrated resource planning submitted under 170 IAC 7-4 pursuant to 170 IAC 4-7.**

(5) An informal investigation **including but not limited to investigations permitted by the following until a time the matter may become a proceeding:**

(A) **Information and answers submitted under IC 8-1-2-52.**

(B) **Examination of records under IC 8-1-2-53.**

(C) **Complaints against a public utility under IC 8-1-2-54.**

(D) **Investigations of public utilities under IC 8-1-2-58.**

(6) An investigation and disposition by the consumer affairs division of the commission **under IC 8-1-2-34.5.**

(7) An application or notice of change form filed under IC 8-1-32.5.

(8) An application or notice of change form filed under IC 8-1-34.

(e) (f) **"Public field hearing" means a hearing conducted in a county in which the utility provides service for the purpose of allowing the utility's customers and others with a substantial interest in the matter who are not parties to offer comments. It is not an evidentiary hearing or a formal public hearing contemplated by IC 8-1-2-61.5.**

(g) "Technical employee" means an employee within one (1) of the commission's technical divisions. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.5-1; filed Dec 9, 1996, 10:00 a.m.: 20 IR 938; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed May 24, 2007, 4:15 p.m.: 20070620-IR-170060514FRA; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA; filed Sep 29, 2009, 3:49 p.m.: 20091028-IR-170090212FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

SECTION 33. 170 IAC 1-1.5-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-2 Pending proceeding

Authority: IC 8-1-1-3

Affected: IC 8-1

Sec. 2. For purposes of this rule, a proceeding is considered pending from thirty (30) days before the date of filing until the date the commission issues a final order in the proceeding and until:

(1) ~~all~~ petitions for rehearing or reconsideration and ~~all~~ appeals to a court of appellate jurisdiction have been determined or decided;

(2) ~~any~~ opportunity for a further appeal has been exhausted; and

(3) no further action is required by the commission.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.5-2; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA)

SECTION 34. 170 IAC 1-1.5-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-3 Violations

Authority: IC 8-1-1-3

Affected: IC 8-1

Sec. 3. (a) Unless required for the disposition of ex parte matters specifically authorized by statute, rule, or order of the commission, all members of the commission, an attorney assigned to a particular proceeding as an administrative law judge, and a technical employee assigned to advise the commission in a particular proceeding may not communicate, directly or indirectly, regarding any an issue in a proceeding while the proceeding is pending with any a:

- (1) party;
- (2) party's employee, attorney, or representative;
- (3) entity known to act on behalf of a party;
- (4) person who has:
 - (A) a direct interest in the outcome of the proceeding; or
 - (B) served as an investigator or advocate in the proceeding or in its preadjudicative stage;
- (5) attorney assigned as a settlement judge **counsel to a member of commission staff designated as a testimonial party** in a particular proceeding; or
- (6) technical employee directed to file a report in the proceeding

without notice and opportunity for all parties to participate in the communication.

(b) Unless required for the disposition of ex parte matters specifically authorized by statute, rule, or order of the commission, a person described in subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) may not communicate, directly or indirectly, regarding any an issue in a proceeding while the proceeding is pending with any a:

- (1) member of the commission;
- (2) attorney assigned to a particular proceeding as an administrative law judge; or
- (3) technical employee assigned to advise the commission in a particular proceeding

without notice and opportunity for all parties to participate in the communication.

(c) For the purposes of this rule, the director and staff of the commission's consumer affairs division are not parties in docketed proceedings and may be communicated with at any time, including after a consumer affairs division decision or referral is docketed before the commission, by members and employees of the commission and by those listed in subsection (a) above.

(d) This section does not prohibit any a person from communicating ex parte with any a member or employee of the commission with respect to undisputed administrative or procedural matters in connection with a proceeding.

(~~e~~) Only to the extent not otherwise inconsistent with this rule, any a person may make educational or informational communications that are not intended to persuade or advocate a position on an issue in a particular proceeding while the proceeding is pending. *(Indiana Utility Regulatory Commission; 170 IAC 1-1.5-3; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233;*

readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA)

SECTION 35. 170 IAC 1-1.5-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-4 Communication within the commission

Authority: IC 8-1-1-3

Affected: IC 8-1

Sec. 4. (a) **Except as provided in subsection (b)**, members of the commission, its attorneys, and technical employees may communicate with each other **one another** regarding a particular proceeding pending before the commission. ~~However,~~

(b) An attorney assigned as a settlement judge **counsel to a member of commission staff who is designated as a testimonial party**, or a technical employee directed to file a report in a particular proceeding, **or a member of commission staff who is designated as a testimonial party** may not communicate regarding the particular proceeding with members of the commission, attorneys not assigned as settlement judges **counsel to a member of commission staff who is designated as a testimonial party**, or technical employees not assigned to file a report in that particular proceeding, **or designated as a testimonial party**. **Members of the consumer affairs division as defined by 170 IAC 16-1-2 are not testimonial or technical staff.** (*Indiana Utility Regulatory Commission; 170 IAC 1-1.5-4; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

SECTION 36. 170 IAC 1-1.5-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-6 Disclosure

Authority: IC 8-1-1-3

Affected: IC 8-1

Sec. 6. (a) A member of the commission, an attorney, or a technical employee who receives a communication, which that person reasonably believes violates this rule shall:

(1) tender to the record of the proceeding:

(A) ~~all~~ written communications received;

(B) ~~all~~ written responses to the communication; and

(C) a memorandum stating:

(i) the substance of ~~all~~ oral communications received;

(ii) ~~all~~ oral responses made; and

(iii) the identity of ~~each~~ a person from whom an ex parte communication was received; and

(2) advise ~~all~~ **the** parties that the items in subdivision (1) have been tendered to the record.

The presiding officer shall admit into the record ~~all~~ items tendered under this section.

(b) ~~Any~~ **A** party shall be permitted an opportunity to respond on the record of the affected proceeding within ten (10) days after notice of the disclosed communication.

(c) In ~~any~~ **a** proceeding in which a communication has been disclosed in accordance with subsection

(a), the commission may determine whether any additional action is necessary in order to maintain a fair and impartial proceeding. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.5-6; filed Dec 9, 1996, 10:00 a.m.: 20 IR 940; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

SECTION 37. 170 IAC 1-6-9 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-6-9 Application of ex parte rules

Authority: IC 8-1-1-3

Affected: IC 8-1

Sec. 9. (a) The ex parte rules of the commission in 170 IAC 1-1.5 do not apply to communications made in association with a filing under this rule.

(b) A filing under this rule and related communications shall not be deemed prior communications under 170 IAC 1-1.5-5 and 170 IAC 1-1.5-6, even if the filing is:

- (1) withdrawn by the utility; or
- (2) denied by the commission.

(*Indiana Utility Regulatory Commission; 170 IAC 1-6-9; filed Nov 25, 2008, 1:18 p.m.: 20081217-IR-170070829FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

SECTION 38. 170 IAC 14-1-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-1 Definitions

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Application for rate change" means an application, filed with the commission by a utility in accordance with section 2 of this rule, that:

- (1) functions as a petition or in support of a petition for rate change; and
- (2) may include a financing authority request.

(c) "Commission" means the Indiana utility regulatory commission.

(d) "Customer" means any a person, firm, corporation, municipality, or other government agency that has agreed, orally or otherwise, to pay for service received from a small utility, provided that, for the purposes of this rule, any a customer as defined in this subsection who:

- (1) has more than one (1) connection; and
- (2) is rendered an individual bill for each such connection

shall be counted as one (1) customer for each connection.

(e) "Formal public hearing" means an evidentiary hearing contemplated by IC 8-1-2-61.5.

(f) "Incomplete application" means an application filed under section 2 of this rule in which either one (1) or more of the elements specified is missing or incomplete. Any A blank not filled in or any an interrogatory not answered in the form prescribed under section 2(ab)(3) of this rule constitutes an incomplete element and therefore an incomplete application.

(fg) "OUCC" means the Indiana office of utility consumer counselor.

(gh) “Public field hearing” means a hearing conducted in a county in which the utility provides service for the purpose of allowing the utility’s customers and others with a substantial interest in the matter who are not parties to offer comments. It is not an evidentiary hearing or a formal public hearing contemplated by IC 8-1-2-61.5.

(i) “Request for a formal public hearing” means:

- (1) a written statement that a formal public hearing is wanted;
- (2) filed with the secretary of the commission; and
- (3) signed by those making the request who meet at least one (1) of the following standing requirements:

- (A) A public or municipal corporation.
- (B) Ten (10) individuals, firms, corporations, or associations.
- (C) Ten (10) complainants of all or any of these classes affected by the proposed rate change.
- (D) The OUCC.

(hj) “Small utility” means any a public or municipally owned utility subject to the jurisdiction of the commission that:

- (1) serves less than five thousand (5,000) customers as of the date any an application for rate change is filed;
- (2) primarily provides retail service to customers; and
- (3) does not serve extensively another utility.

(ik) “Small utility rate change application form” means that current set of forms, schedules, blanks, and instructions generated by the commission and made available to those who would petition for a rate change under section 2 of this rule. The commission staff shall develop the set of forms, schedules, blanks, and instructions that comprise the small utility rate change application form. The forms may be revised from time to time as circumstances dictate. Furthermore, commission staff may periodically establish and publish generic rates of return for each type of utility to be used by utilities when submitting a small utility application form. (*Indiana Utility Regulatory Commission; 170 IAC 14-1-1; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2918; errata, 10 IR 254; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1945; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Apr 21, 2008, 3:23 p.m.: 20080521-IR-170070830FRA; errata filed Jul 21, 2009, 1:33 p.m.: 20090819-IR-170090571ACA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

SECTION 39. 170 IAC 14-1-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-2 Application for rate change

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61.5

Sec. 2. (a) ~~Any~~ A small utility availing itself of this procedure must:

- (1) file an original and five (5) copies of an ~~the~~ application for rate change with ~~through~~ the secretary of the commission **electronic filing system**; and
- (2) contemporaneously serve a copy of the application on the OUCC.

(b) The application must include the following:

- (1) A copy of the proposed notice required in subsection (d)(1) exclusive of the date specified in subsection (d)(3)(A). Proof of publication of the actual notice required in subsection (d)(1) must be filed within fifteen (15) days after the filing of the application for rate change.

(2) A copy of the proposed written notice required in subsection (d)(2) exclusive of the date specified in subsection (d)(3)(A). An actual copy of the notice required in subsection (d)(2) must be filed within fifteen (15) days after the filing of the application for rate change.

(3) A complete small utility rate change application form in its current version, which form is available from the commission.

(4) A copy of the resolution or ordinance of the utility's governing body that authorizes the application for rate change.

(c) If the small utility is a not-for-profit water or sewer utility, the application must also include the following:

(1) A verified statement by a responsible officer or manager of the small utility as to whether or not the small utility has an outstanding indebtedness to the federal government.

(2) Written consent from ~~any~~ **an** agency of the federal government that is a creditor of the small utility that the utility may obtain an order affecting its rates without a formal public hearing.

(d) Notice requirements for this procedure comprise the following:

(1) Publication of a notice of filing of the application for rate change, not later than ten (10) days after the filing of the application for rate change in a newspaper of general circulation in ~~any and all~~ counties in which the utility renders service.

(2) Provision of written notice of the application for rate change to ~~each customer~~ **customers** no later than ten (10) days after the filing of the application for rate change.

(3) Both the publication of notice under subdivision (1) and the written notice under subdivision (2) shall contain the following:

(A) The date the application for rate change was filed with the commission.

(B) The statement that the utility has filed its application for rate change under IC 8-1-2-61.5 without the necessary costs of a commission hearing; however, a formal public hearing by the commission may be held if:

(i) a public or municipal corporation;

(ii) ten (10) individuals, firms, corporations, or associations;

(iii) ten (10) complainants of ~~all or~~ any of these classes affected by the proposed rate change; or

(iv) the OUCC;

requests a formal public hearing by filing a written signed request with the secretary of the commission. Written requests for a formal public hearing must be received by the commission within forty (40) days of the date the application for rate change was filed with the commission.

(C) The overall approximate percentage increase in revenues requested by the utility. Furthermore, if the proposed increase is other than an across-the-board increase, then the approximate percentage increase to each class of customers must be described along with any other information that fairly summarizes the nature and extent of the proposed change.

(D) The statement that there likely ~~will~~ **shall** be no hearing in the absence of a written request.

(E) If applicable, the amount of financing authority sought by the utility.

(F) The full name and current address and contact information for the commission.

(Indiana Utility Regulatory Commission; 170 IAC 14-1-2; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2918; errata, 10 IR 254; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1946; filed Jan 5, 2000, 3:52 p.m.: 23 IR 1091; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Apr 21, 2008, 3:23 p.m.: 20080521-IR-170070830FRA; readopted filed Jul 29, 2014,

8:39 a.m.: 20140827-IR-170140181RFA)

SECTION 40. 170 IAC 14-1-5 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-5 Hearing on application

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61

Sec. 5. (a) Subject to section 3(b) of this rule, a request for formal public hearing on an application for rate change filed under this rule shall be filed with the secretary of the commission within forty (40) calendar days of the initial filing of the application for rate change, unless the commission extends the period for filing.

(b) The commission may, upon a request timely filed by ~~any~~ a public or municipal corporation, ten (10) individuals, firms, corporations, or associations, or ten (10) complainants of ~~all, or~~ any of these classes affected by the proposed rate change or by the OUCC, conduct a formal public hearing with respect to ~~any~~ an application for rate change.

(c) The commission may require a formal public hearing **or conduct a public field hearing** on its own motion.

(d) In the event a formal public hearing is held, under this section, the small utility may elect to designate its application to serve as its prefiled evidence, constituting its case-in-chief; however, the small utility is not precluded from filing additional evidence. (*Indiana Utility Regulatory Commission; 170 IAC 14-1-5; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2920; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1947; filed Jan 5, 2000, 3:52 p.m.: 23 IR 1092; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Apr 21, 2008, 3:23 p.m.: 20080521-IR-170070830FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

SECTION 41. 170 IAC 14-1-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-6 Decision on application

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61

Sec. 6. (a) If no **formal public hearing under IC 8-1-2-61.5(a), (b), or (c)** is held, the commission may issue an order on the application for rate change based on the data in the application for rate change, the report filed by the OUCC staff concerning the application for rate change, and ~~any~~ a written response of the small utility to the OUCC staff report.

(b) Subject to section 3(b) of this rule, the commission shall not enter an order under this procedure until at least forty (40) calendar days have elapsed from the date of the initial filing of the application for rate change. (*Indiana Utility Regulatory Commission; 170 IAC 14-1-6; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2920; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1948; filed Jan 5, 2000, 3:52 p.m.: 23 IR 1092; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Apr 21, 2008, 3:23 p.m.: 20080521-IR-170070830FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

SECTION 42. 170 IAC 14-1-7 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-7 Applicability of ex parte rules

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-1-5; IC 8-1-2-61

Sec. 7. Under ~~170 IAC 1-1.5-1(e)(3)~~ **170 IAC 1-1.5-1(e)(3)**, filings under this rule are exempt from the ex parte rules of the commission. However, if a formal public hearing is scheduled under IC 8-1-2-61.5(b), then the ex parte rules of the commission located in 170 IAC 1-1.5 apply from the date the hearing is noticed, except ~~170 IAC 1-1.5-5 regarding prior communications~~ **that under 170 IAC 1-1.5-2, the proceeding shall be considered pending from the date the hearing is noticed rather than the thirty (30) days before the date of filing.** (*Indiana Utility Regulatory Commission; 170 IAC 14-1-7; filed Apr 21, 2008, 3:23 p.m.: 20080521-IR-170070830FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)