

**STATE OF INDIANA**  
**INDIANA UTILITY REGULATORY COMMISSION**

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**IN RE: NOTICE OF PROPOSED RULEMAKING**

**IURC RM #09-08**  
**LSA DOCUMENT #09-792**

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**INITIAL COMMENTS OF THE INDIANA OFFICE**  
**OF UTILITY CONSUMER COUNSELOR**

The Indiana Office of Utility Consumer Counselor (OUCC) submits the following initial comments regarding Indiana Utility Regulatory Commission Proposed Rulemaking RM #09-08 (LSA Document #09-792) to amend various portions of Title 170 of the Indiana Administrative Code concerning utility review of customer complaints and subsequent review by the Commission's consumer affairs division. The changes proposed in this proceeding will help establish a single set of procedural rules for the handling of consumer complaints, regardless of the type of utility service at issue.

Currently, the Commission's consumer complaint rules are located in four separate Articles of Title 170 of the Indiana Administrative Code, each governing a different type of regulated utility service (i.e., water, natural gas, electric and sewer). The OUCC supports the Commission's efforts to isolate, consolidate and simplify those provisions by proposing a new Article dedicated to the handling of informal consumer complaints – 170 IAC 16. The proposed change in the organization and presentation of those provisions will make it easier for consumers to locate, understand, and follow

applicable Commission rules for informal review of consumer complaints. Although the proposed rule changes will help clarify certain procedures, the OUCC has several remaining concerns, discussed in these comments.

First, the proposed rule change only provides seven (7) days for parties to seek further review of adverse decisions by a utility or by the Commission's consumer affairs division, its director or designee. [See 170 IAC 16-1-4(b)(5); 170 IAC 16-1-5(a); and 170 IAC 16-1-5(d).] If a consumer is out of town on business or is recovering from an injury or illness, a 7-day window of opportunity to seek further review could close before the consumer realized that his or her right to further review was already time-barred. Utility employees are generally familiar with time limits imposed by the Commission. However, that is not the case for a typical consumer seeking review of an adverse decision. The Commission should be able to achieve a better, more equitable balance between utility and consumer interests by lengthening the time in which parties are permitted to seek further review. The OUCC therefore encourages the Commission to increase that interval from seven (7) to fourteen (14) days in this rulemaking proceeding.<sup>1</sup>

Second, the proposed rule is inconsistent in identifying events that "start the clock" for interested parties to seek further review within a limited period of time (events referred to in these comments as "triggering" events). The interests of due process are best served when triggering events are tied to receipt of notice or to the date on which a

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<sup>1</sup> Lengthening that seven (7) day time frame to fourteen (14) days would also require similar changes in 170 IAC 4-5-14(a)(2)(B); 170 IAC 4-5-14(b); and 170 IAC 16-1-7(a)(2).

party is first made aware of a new development or decision. The OUCC therefore recommends that the time for seeking further review of utility decisions regarding consumer complaints and for seeking review of decisions rendered by the Commission's consumer affairs division, its director or designee should run from the date the affected party is made aware of the adverse decision – not from the date the decision is made. Although the proposed rule in RM 09-08 uses a notice or awareness trigger in 170 IAC 16-1-5(a), other references to triggering events focus on the rendering or issuance of the decision under review – not on the affected party's receipt or initial awareness of the decision. [See 170 IAC 16-1-4(c)(5); 170 IAC 16-1-5(d); and 170 IAC 16-1-6(a).]

To ensure fair treatment of all parties, the Commission should “start the clock” for seeking further review of decisions on informal consumer complaints (whether made by utilities or by the Commission's consumer affairs division, its director or designees) on the date the adversely affected party receives notice of the decision – not from the date the decision was actually made. What could be considered a relatively minor wording change can significantly impact affected parties' access to full protection under the law. Timely delivery or notification can easily be completed and documented by using certified mail, return receipt requested; facsimile transmission, with retained proof of delivery; or e-mails set to track delivery or review by intended recipients.

Third, the Commission consumer affairs division has a designated amount of time in which to complete its review of informal consumer complaints, thereby helping to ensure that decisions are made without undue delay. A similar time limit should be

considered for informal reviews conducted by the consumer affairs division director, or his or her designee. Utilities generally have sufficient resources available to avoid financial hardship even if the Commission's informal review process takes a fair amount of time to complete. However, that is not always the case for utility customers. Therefore, the OUCC recommends that the consumer affairs division director, or his or her designee, be given thirty (30) days in which to complete review of informal complaints, unless that time is otherwise extend by the Commission, on a case-by-case basis.

Fourth, if a decision issued after an informal review is appealed to the Commission, copies of all documents created or received during the informal review process should be promptly uploaded to the Commission's web-based document retention system. That would provide immediate public access to all pertinent records without requiring affected customers or other interested parties to file public records requests for documents that are likely to be made part of the evidentiary record by the Commission, through administrative notice. If those records are automatically made available on the Commission's web site shortly after a petition for further Commission review is filed, affected parties could proceed more quickly in presenting evidence and arguments to the Commission on review. Making those records available on-line would also make the Commission's informal complaint review process more public and transparent, thereby improving accountability, while providing information that could influence future customer expectations and direct future changes in utility policies and procedures.

In closing, the OUCC recommends that several time intervals for seeking further review of adverse utility decisions or consumer affairs division rulings on informal consumer complaints be increased from seven (7) to fourteen (14) days; that time limits for seeking further review of adverse decisions run from the date the affected party receives notice of the decision; that the Commission consider limiting consumer affairs division director and/or designee review time to thirty (30) days, unless otherwise extended by the Commission, on a case-by-case basis; and that the Commission post consumer affairs division complaint records on its web-based document retention system as soon as reasonably possible after a formal petition for Commission review has been filed.

Respectfully submitted,

*/s/ Karol H. Krohn*

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