

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

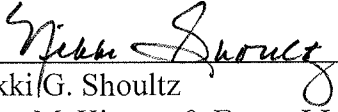
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**COMMENTS ON RM 15-02**  
**REVISIONS TO PROCEDURAL RULES**  
**170 IAC 1-1.1-1 et. seq.**

**Dated: June 9, 2015**

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Submitted on behalf of  
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Response to Comments on General Questions  
Raised at May 26, 2015 Rule Development Workshop

***Use of Electronic Filing System***

- Required Use. Our utility practice's administrative staff reports that they must hand file submissions several times per year due to system or internet problems either at the firm or the IURC. Additionally, we are concerned that a party may inadvertently miss a deadline due to the Commission's proposed temporary requirement that a party obtain a new cause number one day in advance of filing a new petition. If the option to hand file an item is not allowed on an emergency basis, a party may suffer severe consequences of missing a filing deadline simply because of circumstances beyond his or her control. For this reason, we recommend that the IURC's systems and administrative rules allow for paper filings on an emergency basis or in the event of a connectivity or technology failure where failure to submit a paper filing would result in missing a deadline.
- IURC "Received" Stamped Documents. We often submit or file items by hand when it is critical to maintain evidence that an item was submitted to the Commission in a non-docketed matter. For example, 170 I.A.C. 4-4.1-13 requires owners of certain alternate energy production and cogeneration facilities to "submit" to the Commission certain information but does not require a docketed proceeding. We traditionally submit multiple copies of these notifications and ask that a "received" stamped copy be returned for our records. Other examples of such submissions are affiliate interest contracts. If the Commission requires that such submission may only be made electronically, the electronic system should be configured to generate a document evidencing proof that the Commission received the document.
- Subscriptions. We encourage the IURC to configure the new system to permit subscriptions in order to receive notifications of filings in a specific proceeding. This option would be very helpful to practitioners and parties.

***Technical Requirements for Documents***

- DPI. The industry standard for scanning a high resolution image is 300 DPI (dots per inch). The copiers at Bose McKinney & Evans are presently incapable of scanning at 600 DPI unless the firm obtains a memory upgrade on its equipment. In the majority of cases there is negligible visual improvement gained by increasing the scanning resolution from 300 DPI to 600 DPI. The only time one would see an improvement is when scanning color photographs. Increasing the scan resolution from 300DPI to 600DPI significantly increases the file size and the time required to scan a document. Contrasting samples of color scans are attached: one at 300DPI and one at 600DPI. There is no perceptible difference in the quality, but the 600DPI scan is three times the size of the other and took twice as long to scan.

Our firm's scanners adjust automatically for color or black and white and select the DPI resolution that will optimize an image's size and quality. If we are required to achieve a resolution of 600 DPI for filings that contain both black & white and color print, we must scan the colored items separately and then use an Adobe program to integrate the pages. This is an extremely time consuming process, particularly when a filing is several hundred pages. The resulting file size when converted to 600 DPI is significantly larger than when scanned at 300 DPI. On balance, the minimal improvement in quality does not appear to outweigh the increased time and file size that result from requiring a 600 DPI resolution.

As a result, we recommend that the rules *not* require 600 DPI. Instead, we recommend that in instances where the Presiding Officers believe that a 600 DPI resolution is necessary, an inquiry to the filing party be made to determine if resolution closer to 600 DPI can be provided.

- Spreadsheets. Not all spreadsheets are significant. The formulas embedded into many ratemaking spreadsheets are often proprietary. If the default requirement is to submit a "working" Excel file that is capable of manipulation, there will likely be an influx of requests for confidential treatment, which adds a significant delay and burdensome layer of work to both the submitting party and the Commission staff. We recommend that in instances where a particular spreadsheet must be available for manipulation, the Presiding Officers through a docket entry or a party through a properly supported motion seek the refiling of a particular spreadsheet as a "working" Excel file.

### *Service*

- We recommend that the Commission's new system be configured to post and update the service list for every docketed proceeding. We also recommend that the Commission maintain and update the electronic service list as appearances are added and withdrawn. This function will be particularly helpful in cases that remain open and active over a number of years with multiple and ever-changing appearances. One example of such a proceeding is Cause No. 42144. This proceeding has remained somewhat active for over 14 years and appearances continue to be submitted and withdrawn from time to time. Accuracy and efficiency of service would be enhanced greatly if the Commission's electronic document system tracked and updated the service list as appearances are filed and withdrawals granted.

### *Signatures*

- Appendix A of GAO 2015-1 regarding submitting documents electronically states in pertinent part that "[a]ny prefiled testimony offered into evidence at a hearing must still have an original signature." We recommend that the Commission allow prefiled testimony offered into evidence to be accompanied by a verification, which may be accompanied by an original or electronic signature.

Our research suggests that an original signature is not required by the Indiana Code, the Indiana Rules of Evidence or the Indiana Rules of Trial Procedure. Indiana Code § 26-2-8-112 provides: “In a legal proceeding, evidence of an electronic record or electronic signature may not be excluded because it is an electronic record or electronic signature or it is not an original or is not in its original form.” Rule 1003 of the Indiana Rules of Evidence states: “A duplicate is admissible to the same extent as an original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.” Indiana TR 11(B) governing verification by affirmation or representation does not explicitly require an original signature. Additionally, Ind. TR 9.2(B – D) suggests that proof of execution is not required unless execution is denied under oath or otherwise challenged. According to the 2014 Update of the Trial Handbook for Indiana Lawyers:

Because Indiana Evidence Rule 1003 makes duplicates virtually as admissible as originals, the distinction rarely will be significant. Executed carbon copies and copies subsequently executed by all parties to the original ordinarily will be found to be originals. *Morris v. State*, 273 Ind. 614, 406 N.E.2d 1187, 1192 (1980). A printout or readable display is an original if it shown to reflect the data accurately. *Laughner v. State*, 769 N.E.2d 1147, 1159 (Ind. Ct. App. 2002) (abrogated on other grounds by, *Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007)). Indiana's version of the Uniform Electronic Transactions Act provides that an electronic record or electronic signature is not to be excluded from evidence because it is not an original or in original form. Indiana Code 26-2-8-112. An original photograph includes any print made from the negative and the negative itself. See Miller, *Indiana Handbook on Evidence*. 6 Ind. Prac., Trial Handbook For Indiana Lawyers § 38:1.

Based on the foregoing, we recommend that the Commission not require an original signature for the admission of prefiled testimony. The better practice would be to adopt the approach of Ind. TR 9.2(D) which presumes valid execution absent evidence to the contrary, and places the ultimate burden of proving the execution of a written instrument upon the party claiming its validity.