

STATE of INDIANA



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April 1, 2019

Micah Vincent
Director
Indiana Office of Management and Budget
200 West Washington Street, Room 212
Indianapolis, Indiana 46204

Dear Mr. Vincent:

Please find attached for your review and information the proposed rule that the Indiana Utility Regulatory Commission (“Commission”) would like to adopt. This proposed rule updates the Commission’s rules about practice and procedure before the Commission (170 IAC 1-1.1) and ex parte (170 IAC 1-1.5). The Commission changed to an upgraded electronic filing system (“EFS”) at the end of 2016, and certain procedural rules need to be updated to match the new system. The Commission also used the opportunity to clarify its ex parte rules and add an exception that did not exist at the time the ex parte rules were originally drafted. As you can see from the attached email, counsel to Governor Holcomb reviewed and approved proceeding with this request for a rule moratorium exception for this proposed rule.

Note that Commission staff completed extensive outreach and provided numerous opportunities for interested parties to participate in drafting this rule, as summarized below. In addition to meeting exceptions to the rulemaking moratorium, the rule reduces fiscal and financial costs.

Summary of the Proposed Rule

External Participation in the Rule Development and Financial Impact Analysis

Commission staff worked with stakeholders throughout the creation of the new EFS. Invitations for an initial meeting went to parties that had accounts in the old document system, members of the Utility Section of the Indiana State Bar Association, and Commission staff affected by or working on the new EFS. Those participants were invited to join a listserv if they wanted to continue participation in the process. The listserv currently includes more than 50 participants.

Initially, there was an open workshop in May 2015 explaining that the Commission is moving to a new EFS. Staff solicited proposed changes to the administrative rules and to the filing system. A year later, when the EFS was near completion, Commission staff held another workshop to review suggestions to date. A week later, Commission staff previewed the EFS with external administrative and IT staff.

A couple weeks before go-live, Commission Staff gave a presentation at the Fall Utility Bar about the new system and possible changes to the procedural rules. Participants and listserv members were asked to provide additional comments by October 31, 2016.

Over the next year, Commission staff continued updating the EFS to address bugs, new procedures, and feedback from internal and external users. The *Indiana Lawyer Update* published an article about mandatory efilings, including the Commission. At their request, Citizens Action Coalition (“CAC”) met with Commission staff to discuss CAC’s requested changes to the procedural rule. The EFS was fine-tuned to address matters such as confidential filings and requests from Commission court reporting and administrative staff related to labeling and filing exhibits.

An updated draft rule was sent to the participant listserv in October 2018, requesting financial impact comments. The rule was further edited in response to those comments.

Summary of the Content of the Proposed Rule

The rule updates the Commission’s rules related to Practice and Procedure before the Commission, 170 IAC 1-1.1. Provisions are updated to reflect the realities of electronic filings, including adding definitions for terms like “electronic filing system” and “signature equivalent”; changing filing deadlines from business hours to midnight; setting out procedures to follow when there are technical difficulties that prevent e-filing; and providing procedures for filing confidential documents, exhibits, etc. The rule also reorganizes several sections for clarity.

The Commission’s ex parte rules, 170 IAC 1-1.5, were also updated. In addition to general cleanup, the rules were updated two ways. First, definitions were provided for “formal public hearing” and “public field hearing” to distinguish how ex parte applies to formal evidentiary hearings and not to field hearings. Second, rather than generically stating that proceedings where ex parte prohibitions apply do not include information investigations, the rule was clarified to provide a laundry list of non-proceedings. Sections within the 30-Day Administrative Filing Procedures and Guidelines Rule, 170 IAC 1-6, and the Small Utilities Rule, 170 IAC 14, were modified as appropriate to match the new ex parte information.

Reduced Fiscal Impact

Staff for the Commission requested financial impact comments from interested parties. Four entities responded, which comprise the bulk of affected entities:

- Indiana Energy Association (“IEA”), which includes electric and gas utilities serving four million Hoosiers
- Indiana Industrial Energy Consumers, Inc. (“INDIEC”), which includes most large industrial customers
- Indiana Office of the Utility Consumer Counselor (“OUCC”), which by statute may appear on behalf of ratepayers, consumers, and the public in hearings before the Commission
- Citizens Action Coalition, which is one of the main intervenors in rate cases and some other matters

While entities did not provide hard numbers, all of them reported cost savings as a result of this rule. INDIEC stated, “[W]e believe the ability to electronically file documents provides net cost savings to INDIEC members based on the reduction of time and resources related to costs of printing, copying, and delivering paper documents to the Commission. Electronic filing will also streamline the review process of filed materials and reduce the need for, and related expense of, managing and protecting large volumes of paper documents.” Only one entity reported direct costs. IEA stated generally, “IEA does not anticipate significant added direct costs because of the rulemaking.” IEA did not elaborate or provide examples of specific costs it anticipates.

There has been a cost savings to the Commission as well. Previously, the Commission had a document center administrator, one system support specialist, and an information technology director. The majority of the duties of the information technology director were to keep the old EFS running, as it was old technology and the original vendor no longer offered software support. The two major duties of the document center administrator were to (1) scan and upload hard copy filings to the EFS and (2) organize hard copies of filings and catalog, save, forward, or destroy records according to the retention schedules set by the Indiana Archives and Records Administration (“IARA”). After the new EFS was in place, the Commission restructured duties, and the information technology department director position was eliminated as there was no need for this position. The Commission now has maintenance support through an ongoing vendor relationship. In addition, system support staff are trained in troubleshooting the system. Any other duties of the information technology director were transitioned to the system support staff. Eliminating this position saves the Commission **\$107,068** annually in salary plus benefits. The document center administrator transitioned to a system support specialist. In the new EFS, there is little need to scan and upload hard copies, and there is sufficient existing administrative support to do this task and to organize electronic documents for the IARA, as explained in more detail below.

Executive Order Rule Moratorium Exceptions Apply

The Commission is aware of the suspension of rulemakings that is addressed in Executive Order 13-03. This rulemaking falls under permitted exceptions to the moratorium, specifically Paragraph 6(b), “rules that repeal existing rules or reduce their regulatory impact,” Paragraph 6(e), “rules to address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within a state agency or wasteful or abusive activities perpetrated against a state agency,” and Paragraph 6(f), “rules that reduce State spending.”

Generally, the rulemaking strikes provisions related to paper filing and provides the procedure for filing electronically. This falls under “regulatory impact” as regulated agencies filing with the Commission can now file documents through an internet connection, rather than incurring the cost and effort of printing, binding, and signing hard copies, along with delivering them using personnel, couriers, or incurring postage costs. Also, under the existing rule, items must be filed in person or by mail by the end of regular business hours (4:45 p.m. Eastern time). Under the amended rule, filings are done electronically and may be submitted anytime that calendar day, giving filers up to seven additional hours to complete filings before submitting them.

The rule also addresses mitigation or eradication of waste within a state agency and reduction of State spending. In the new EFS, most types of documents can be filed and there is a process for filing exhibits. In addition, the new rule now requires using the EFS; there was no such requirement in the old rule. Because the entire formal case will now be in the EFS, Commission staff can send formal records to the IARA as a batch of PDFs rather than hard copies. This eliminates waste by saving the personnel costs required to scan and review the documents, and saves delivery and storage costs for the hard copies, as well as protects the integrity of the records by using electronic files rather than paper.

Finally, the rule reduces the regulatory impact of the ex parte rule. Generally, a party and that party's representative, including legal counsel, cannot discuss pending proceedings with Commission commissioners or assigned staff. The ex parte rule clarifies that "proceeding" excludes certain matters. This means that ex parte may not apply and parties and their representatives may speak directly with Commission staff for assistance on certain matters. The rule has been updated to include as exclusions integrated resource planning, as these did not exist in their current form when the rule was initially drafted. The rule also clarifies that small utility filings are also excluded from ex parte, even if a public field hearing occurs. Finally, rather than generically excluding "informal investigation[s]", the rule now specifies what constitutes informal investigations, clarifying the rule. These changes are essential to allow parties navigating these matters to seek assistance directly from Commission staff instead of or in addition to hiring their own attorneys and accountants. In particular, this will help small utilities with limited resources. We believe, based on these considerations, an exception from the rule moratorium should be granted.

Please contact me if you have any questions or if you need additional information. Thank you for your consideration.

Sincerely,



DeAnna L. Poon
Assistant General Counsel

cc: Beth E. Heline, General Counsel, IURC
Ryan Heater, Executive Director of External Affairs, IURC

Attachments to the cover email transmitting this letter:

- Commission's letter to counsel for Governor Holcomb dated March 12, 2019
- Draft Proposed Rule
- Draft Fiscal Impact Analysis
- Draft Cost Benefit Analysis