

To: Beth K. Roads, General Counsel, Indiana Utility Regulatory Commission
DeAnna Poon, Assistant General Counsel

From: Northern Indiana Public Service Company, Indiana Michigan Power
Company, Duke Energy Indiana, Vectren Energy Delivery of Indiana
(collectively “the Commenters”)

Date: June 12, 2015

RE: Pre Rulemaking Comments – RM # 15-02

The following informal comments are provided to the Indiana Utility Regulatory Commission (the “Commission”) in the pre-rulemaking stage of RM # 15-02 in support of the development of amendments to the Commission’s Rules of Practice and Procedure, 170 IAC 1-1.1. Attached to these comments is a redlined version of the current Rule for consideration by the Commission and other stakeholders. These comments are divided into two sections: the first explains the rationale behind some of the edits shown in the redline, while the second addresses general issues related to the features and functionality that are desirable in accommodating the transition to an electronic filing regime.

I. Discussion of Issues Raised in Redline.

a. Elimination of Hard Copy filing – 170 IAC 1-1.1-3(a), 170 IAC 1-1.1-13

The Commenters support the transition to a fully electronic filing regime by the Commission. Elimination of hard copy filing entirely (other than for exhibits submitted during an evidentiary hearing) will reduce the enormous volume of paper the Commission must handle and process and thereby free Commission staff resources for other responsibilities. The processing, cataloging, and storage of hard copy material is wasteful, expensive, and inefficient, and a fully electronic regime would allow the Commission to create hard copies of documents only as needed. The Commenters (and presumably most other stakeholders) have moved away from hard copy storage and toward an electronic-only document management process. As discussed below, electronic filing poses some technological and timing challenges, but assuming that the Commission’s system is stable and accessible to users the savings in terms of resources and efficiency for both the Commission and its stakeholders would be substantial.

While there was some discussion at the May 26 Pre-Rulemaking Workshop (the “Workshop”) about maintaining a backup capability to accommodate filing in instances

where the electronic filing system is unavailable, that backup capability can be provided electronically rather than via a hard copy option. For example, a dedicated email address could be established for use under such circumstances that would establish a date and time stamp to ensure that jurisdictional deadlines are not placed in jeopardy. The Commenters propose that the presiding officer retain the authority to order hard copy filing, so some accommodation for front desk filing would have to be retained for such limited circumstances, but such situations should be limited.

The federal bankruptcy court has utilized a fully electronic filing system for years, and has developed a system for addressing technological problems encountered with their paperless filing system.¹ The system general provides for submission of a “Declaration that was Party Was Unable to File in a Timely Manner Due to Technical Difficulties” accompanied by the error page. Adoption of a similar system by the Commission is advisable as a reasonable and efficient means to protect all parties in the event of a technological issue that could impact compliance with procedural dates or statutory filing deadlines.

b. Font/OCR – 170 IAC 1-1.1-3(c), 170 IAC 1-1.1-27(a) (*new*)

As discussed in greater detail below, the Commenters propose that the Rule only capture a basic page formatting requirement and requirement of searchability rather than attempting to specify font size or technology employed. This was done in recognition that the technological approach of stakeholders varies and will continue to do so as technology improves and advances. The point of the requirement is to place the onus on the filing party to provide an accurate and searchable pdf file as part of any submission, thereby eliminating the inefficiency and risk associated with the scanning and indexing of documents by the Commission. The combination of these provisions with the elimination of hard copy filing should also all but eliminate the issues experienced when hard copies are scanned by the Commission for inclusion in the current *Polaris* database.

¹ See http://www.insb.uscourts.gov/AdminManual/Attorney/Admin_Policies_and_Procedures.htm

c. Pleading Signature - 170 IAC 1-1.1-27(f) (*new*)

New section 170 IAC 1-1.1-27(f) provides for a basic electronic signature format for pleadings. The proposed language is consistent with the process followed in bankruptcy court and would eliminate the need for a scanned pdf signature that conflicts with the Commenters suggested language in 170 IAC 1-1.1-3(c) and 170 IAC 1-1.1-27(a).¹ Addition of scanned signatures complicates the preparation of searchable pdf files, and the Commenters believe that the Rules of Professional Responsibility are more than adequate to ensure that pleadings executed using a basic “s/s” format meet the intent of the general pleadings requirements in 170 IAC 1-1.1-8.

II. Features, Functionality, and Other Technological Considerations.

The following comments are made without a full understanding of the technological capabilities of the electronic filing system being developed for implementation by the Commission, and thus reflect general considerations about features, functionality, and other technical issues that are desirable to produce an efficient and workable transition from the current system.

a. Service Issues

During the Workshop issues associated with electronic service of pleadings, discovery, and communications from the Commission (docket entries, Orders, etc.) were discussed at some length. The attached redline anticipates that service would be accomplished electronically by default (though parties could also make other arrangements by agreement). The use of electronic receipts for service and delivery is highly technology/software/network dependent and is therefore not reliable for verification purposes. The Commenters support the view that issues related to the service can always be presented to and addressed by the presiding officer if required, but the best practice is to require practitioners take whatever steps are required to provide timely service. This view encourages communication between parties and resolution of issues between them.

From a technological perspective, the Commenters support the use of a system similar to that used by FERC whereby the service list functionality of the filing system

automatically provides registered parties with a link to the filed document. This approach completely eliminates challenges associated with the data capacity of individual networks to receive large files. Each party would have the freedom and flexibility to download documents from the Commission system in a manner consistent with their own needs rather than having to process large files through their email systems if that is advantageous. The attached redline reflects the availability of this option in anticipation that the Commission's system will allow it (*See proposed 170 IAC 1-1.1-13(b)*). This approach is also consistent with service options available under local rules in the federal court system.²

b. Font/OCR/File Format

GAO 2015-1 requires that certain technological protocols be followed with respect to font size and the use of optical character recognition ("OCR") attributes of Commission filings. This issue has evidently been largely driven by hard copy filings scanned and OCR processed by the Commission giving rise to inaccuracies in the resulting pdf output. Specifically, files with font sizes below 10 produce widespread inaccuracies. By eliminating hard copy filings, this issue should all but disappear. This is why the attached redline requires only that electronic files filed with the Commission be consistent as to (a) page formatting, (b) file format (pdf), and searchability with a preference for pdf files produced directly from the underlying software. It has been the Commenters' experience that pdf files created directly from Microsoft Office produce readable and accurate files that are both searchable and comparatively small, thereby eliminating the issues that gave rise to GAO 2015-1. The presiding officer can always require the submission of a file in its "native" format, but by requiring pdf as the standard Parties retain the ability to seek confidential treatment of native files based on formulas or models that are proprietary or confidential when a pdf of the same file might not require such treatment. Comments at the Workshop indicated that the imposition of a specific dot per inch ("dpi") resolution poses challenges with some

² See FRCP Rule 5(b)(3) ("*(3) Using Court Facilities*). If a local rule so authorizes, a party may use the court's transmission facilities to make service under [Rule 5\(b\)\(2\)\(E\)](#)."

technologies, so the Commenters suggest that best practice would be not to incorporate specific resolution requirements into the Rule.³

c. Accommodation of non-docketed filings

An effective electronic filing system should be able to accommodate filings for non-docketed filings. These include:

- Statutory and administrative compliance filings
- 30-Day Filings
- Affiliate interest contract filings

With respect to affiliate interest contract submissions in particular, GAO 2010-1 requires the submission of the entire underlying contract every time an amendment or attachment is created or modified. In some instances, this obligates the filing of hundreds of pages of duplicative information to accommodate a very small update. It would be advantageous if the system would accommodate the ability to submit only the updates to the contract rather than the entire resubmission of the agreement.

d. Interface with/Elimination of GAOs

The Commenters encourage the examination of the Commission's GAOs to determine whether some could be eliminated or rescinded in the interest of efficiency and the elimination of wasteful and duplicative regulation. At the Workshop, it became clear that GAO 2015-1 is intended as an interim solution that this rulemaking will supersede. GAO 2010-1 may be another candidate for review and/or elimination.

³ Specifically, it was indicated that black and white documents scanned at 600 dpi using some technology results in a color output that produced an unnecessarily large file and a color output that required additional processing.

Rule 1.1. Practice and Procedure Before the Commission

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

Sec. 1. This rule shall govern the practice and procedure in 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.

(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)

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) "Complainant" means any person or entity that initiates a formal complaint against a utility under IC 8-1-2-54 or any person or entity who formally requests the commission to initiate an investigation of a utility under Indiana law.

(3) "Intervenor" means any person or entity, other than:

- (A) a petitioner;
- (B) a complainant;
- (C) the utility consumer counselor; or
- (D) a respondent;

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

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

- (A) a petitioner;
- (B) a complainant;
- (C) the utility consumer counselor;
- (D) a respondent; or
- (E) an intervenor.

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

(6) "Petitioner" means any public or municipally-owned utility or other party that meets the standing requirements of IC 8-1-2-54 seeking relief from the commission.

(7) "Pleading" means any:

- (A) petition;
- (B) complaint;
- (C) answer;
- (D) motion;
- (E) response;
- (F) reply; or
- (G) other similar document;

filed to initiate, or in the course of, any proceeding before the commission.

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

(9) "Respondent" means any 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 order of the commission; or

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

(10) "Service list" refers to the list of attorneys of record and any parties appearing pro se maintained by the secretary of the commission.

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

(12) "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)

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) The filing of any communication, paper, or pleading with the commission ~~shall~~ may be made ~~through the United States mail, or in person electronically, and 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. are considered filed on the date received by the commission.~~

(b) A presiding officer at any hearing may permit appropriate pleadings or other papers to be filed with the presiding officer at the hearing, ~~and:~~

~~(c) Unless otherwise provided by this rule, the petitioner or other party shall file with the secretary of the commission 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 may require that physical a different number of copies be filed for documents larger than 100 pages.~~

~~(c) Unless authorized by the presiding officer, Filings other than:~~

~~(1) territorial maps;~~

~~(2) engineering drawings;~~

~~(3) accounting schedules, or~~

~~(3) other visual aids;~~

~~Shall be formatted for must be made on eight and one-half (8½) inch by eleven (11) inch paper and submitted in accordance with Section 27 of this Rule, unless otherwise authorized by the presiding officer.~~

(d) All time periods within which to make filings with the commission are given in calendar days unless otherwise stated. In computing any period of time prescribed or allowed by this rule, by order of the commission or the presiding officer, or by any 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. The last day of the period so computed is to be included unless it is a:

(1) Saturday;

(2) Sunday;

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

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

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

(1) Saturday;

(2) Sunday;

(3) legal holiday; or

(4) day on which the commission is closed for business.

When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays, and days on which the ~~commission~~ office is closed shall be excluded from the computations.

~~(e) 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)

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 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 apply for a finding by the commission, on or before the date (if any) the information is required to be filed, that the information is confidential. The written application for a confidentiality finding must be served on all parties of record. At any time after ten (10) days, or earlier with the consent of the parties or as ordered by the presiding officers, following an application by any 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) The application required by subsection (a) shall be accompanied by the sworn statement or testimony of a party 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.

(c) At the request of the presiding officer or any party, an in camera inspection shall be conducted for the purpose of hearing argument on confidentiality of information submitted under this rule. If an in camera inspection is conducted under this section, the 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.

(d) 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 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.

(e) 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.

(f) 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 Trial Rule 26(C).

(g) After receiving a preliminary determination that material is entitled to confidential treatment, documents submitted shall comply with the specific directives set forth in the determination. (*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*)

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 individual or entity may informally complain to the commission's consumer affairs division, with respect to any 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 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 is rendered. Prior to issuing an order on the appeal, the commission shall afford the parties notice and an opportunity to be heard. (*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)

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 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*)

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

- (1) sign and verify any pleadings or documents in accordance with section 8(d) of this rule; and
- (2) comply with all rules applicable to commission proceedings.

(b) 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.

(c) 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, unless authorized by the presiding officers to appear at the hearing without the presence of co-counsel. Local counsel shall:

(A) sign all briefs, papers, and pleadings in such cause; and

(B) be jointly responsible therefor.

(d) Any withdrawal of appearance by an attorney on behalf of any 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.

(e) 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*)

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

Sec. 8. (a) An attorney eligible to practice before the commission shall sign 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 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 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 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 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 was repealed by P.L.126-2012, SECTION 53, effective July 1, 2012.].

(f) Every 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 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*)

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 address.

(6) The name of the respondent as required.

(7) Specific prayers for the relief requested.

(b) In any 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 proceeding, which shall be binding upon all parties.

(c) In any 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. (*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*)

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

Sec. 10. (a) In addition to the matters required by sections 8 and 9 of this rule, complaints must also state the name of each respondent and each individual or entity, if any, who, under any 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 been unable to ascertain the address upon reasonable inquiry.

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

(c) Answers to any 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 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)

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 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 part thereof, and the proposed intervenor's participation will 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 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 objection to the granting of the petition. Any 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. Any 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 hearing or prehearing conference if there exists insufficient time prior to the hearing or conference to make 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)*

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 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 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.

(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 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 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 shall be made in accordance with any 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*)

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 ~~required effected~~ by United States mail.

(b) Unless the commission or a presiding officer specifies another method, all orders, notices, and other documents originating with the commission shall be served ~~electronically to the person or persons designated in the commission's service list for that cause, and 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. When a party designates multiple persons to receive service, a presiding officer may limit service to one (1) or more persons per party. Service may be accomplished through the electronic service portal maintained by the commission.~~

(c) Petitions instituting proceedings shall be served by the petitioner upon each named respondent and other individual or entity who is required to be named in the petition under section 10(a) [170 IAC 1-1.1-10(a)] of this rule.

(d) All pleadings, briefs, and other documents filed in proceedings pending before the commission shall be served on all parties in the proceeding on the same day the pleading, brief, or other document is filed with the commission, except as may be otherwise ordered by the commission. ~~Electronic service shall be made to each party by delivering in person or by mailing a copy by United States mail, properly addressed with postage prepaid, unless or as otherwise agreed to by the parties or unless a serving party receives notification that electronic service has failed or reasonably believes service by United States mail, properly addressed with postage prepaid, is necessary to effectuate service.~~

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

~~(2) delivered in person delivered electronically.~~

(g) Whenever a party has the right or is required to do some act or take some 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 provide.

(h) ~~Two (2) copies of a~~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 pleading or other document filed with the commission when service is required and shall identify those served.

(j) Any 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 by the commission~~. Such requests may be granted at the discretion of a presiding officer, although any such interested nonparty will not be added to the service list maintained by the secretary of the commission for that proceeding. (*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*)

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 party, issue subpoenas for the attendance of witnesses and subpoenas duces tecum. Subpoenas shall be signed by the secretary 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 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 member 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 subpoena, when served, have also been served in the same manner as pleadings are served on the utility consumer counselor and all other parties of record.

(e) A subpoena to secure the testimony of any member 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 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*)

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 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 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 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 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 to the disposition of any issues on which evidence was taken at the preliminary hearing as reflected in any 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:

(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)

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 party may issue a written request for discovery to any other party which shall be satisfied within ten (10) days unless otherwise agreed by the parties or directed by the presiding officer, provided that discovery served after 4:00 pm shall be deemed received on the next business day. ~~Unless otherwise directed by the presiding officer, if~~ the party against whom the discovery is directed does not satisfy the request ~~as required, 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 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;
- (2) set appropriate discovery parameters; and
- (3) 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.

(e) 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*)

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 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 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 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 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*)

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

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 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 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 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 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 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.

(i) Any party to a proceeding may move in writing for an extension of time in which to prefile testimony. The motion should 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 testimony in order to avoid undue delay and provide reasonable opportunity for all parties to properly prepare their cases. All parties shall be given an opportunity to object to any motion for extension of time.

(j) With the approval of the presiding officer, corrections or changes in the stenographic record may be made upon the written agreement of all 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.

(k) Parties may obtain copies of the stenographic record from the official reporter upon payment of the appropriate charges fixed by the commission.

(l) 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 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.

(m) After being duly notified, a party who fails to be represented at a scheduled conference or hearing in any 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 matter resolved or accomplished at such 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 reopening for further examination. If any witness is recalled for further examination, then the recalling party must pay any expert fees, costs, and expenses. (*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*)

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. Causes sharing common issues of fact or law may be consolidated at the discretion of a presiding officer. A consolidated cause shall continue to list the captions and cause numbers so consolidated. 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*)

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 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*)

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 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 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*)

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 party to the proceeding may file with the commission and serve upon all 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 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 changes of fact or law purportedly would affect the outcome of the proceeding if received into evidence.

(4) A showing that such evidence will 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 petition to reopen upon all parties to the proceeding, any other party may file a response to the petition unless the presiding officer shall prescribe a different time. Any reply to such 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 party to a proceeding may file with the commission and serve upon all 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 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 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 evidence purportedly would affect the outcome of the proceeding if received into the record.

(D) A showing that such evidence will not be merely cumulative.

(2) Responses to such 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 reply to such 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 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*)

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 a~~All briefs shall be filed with the commission and a copy served by the submitting party upon all other parties to the proceeding, such service and proof thereof to be in accordance with section 13 of this rule. (*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*)

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 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 party for a period of sixty (60) days.

(b) Prior to such dismissal, the commission shall notify all parties to the proceeding ~~by United States mail or electronic 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*)

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 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 advise all parties of record of such 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 parties within six (6) business days following the date of such docket entry.

(c) All written appeals to the commission shall be served by the appealing party on all other parties on the same day the appeal is filed with the commission. Any other party wishing 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 response within five (5) days after service of the appeal. The provisions of section 12 of this rule [*170 IAC 1-1.1-12*] 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*)

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 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*)

170 IAC 1-1.1-27 Procedure for electronic filing with the commission

Sec. 27. (a) All filings made electronically shall be submitted to the commission as portable document format (pdf) files, and shall be:

(1) word searchable, whether the file was saved as a pdf file from its native software (preferred) or scanned and processed through optical character recognition software.

(2) Documents filed with the Commission shall be scanned at a minimum of 600 dots per inch (“dpi”).

(b) The presiding officer may request provision of electronic filings in another format.

(c) Filings containing multiple pleadings or documents shall be submitted separately.

(1) each pleading and the testimony of each witness should be submitted as a separate file with any associated exhibits and attachments.

(d) Filings requiring signature or verification may be filed with an electronic signature in a format designated by the commission

(e) If a filing cannot be made electronically because of technical issues, the filing may be sent via email to @urc.in.gov. Service to all intervening parties shall be made at the same time. The filing shall be considered filed at the time it is received in the backup email account and served on all parties of record. The filing shall be submitted electronically as soon as is practically feasible.

(f) Pleadings submitted electronically shall be signed by the submitting attorney designating a “/s” followed by the information required by 170 IAC 1-1.1-8(a), and such shall constitute certification of execution of the pleading consistent with the provisions of 170 IAC 1-1.1-8(a). For pleadings requiring multiple attorney signatures, such as a joint motion, the submitting attorney, by submitting the electronic document, certifies that he or she is authorized to execute the document on behalf of the non-submitting attorney.