



INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

October 31, 2016

DeAnna Poon
Assistant General Counsel
Indiana Utility Regulatory Commission
101 W. Washington St. Suite 1500E
Indianapolis IN 46204

Re: RM 15-02, Comments on procedural rules

Dear Ms. Poon,

Attached are the Indiana Office of Utility Consumer Counselor's ("OUCC") comments on the pending revision to the procedural rules set forth in 170 Ind. Admin. Code.

In addition, in consultation with administrative staff at the OUCC who are responsible for naming and filing documents at the Commission, we have identified some questions regarding the User Manual (most recently updated on October 21, 2016).

1. The User Manual lists permissible filing types in Appendix B, section 2, pages 42-43. Are additional types of documents allowable? As an example, this list does not include proposed orders or stipulations and settlement agreements.

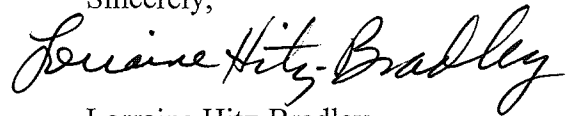
2. Related to #1, can document names include additional descriptive language? Ex.: Cause 12345_OUCC_Supplemental Testimony_Smith_01012017.

3. Regarding the need to use the "submit" button more than once in the electronic filing process: we are getting two different acknowledgement emails as a result. This is somewhat confusing, and seems to be extra work for Commission staff.

4. Using the search function in the new EFS is difficult. Knowing how to phrase a utility name to do a successful search is hit and miss (Indiana Michigan, I&M, or I & M, etc.) The old system recognized choices. It would be helpful if the new system had this functionality as well.

As we continue to use the new EFS, we will let you know if we identify any other issues. Thank you for this opportunity to add our comments to the rulemaking, and to provide feedback on the User Manual.

Sincerely,

A handwritten signature in black ink that reads "Lorraine Hitz-Bradley". The signature is written in a cursive style with a large initial "L" and a long, sweeping tail.

Lorraine Hitz-Bradley
Deputy Consumer Counselor

LHB/tmd
Enclosure

**Strawman Draft Procedural Rule
170 IAC 1**

Version 02-19-2016

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GAO Matters

Please note that the purpose of this rulemaking is to explain the IURC's electronic filing process and to add safeguards for how to file when electronic resources are not available. In addition to the rulemaking, there will be a companion General Administrative Order (GAO) noting a user manual will be updated periodically as technology changes or administrative issues are discovered. Generally, the purpose of administrative rules is to codify those processes that remain relatively constant such as when it is appropriate to file a motion, what a petition should include, and how to intervene in a proceeding. A GAO is more appropriate for items that can fluctuate due to technological advances or for ease of administration. For example, the current GAO discusses the appropriate Dots Per Inch (DPI) standard, but DPI will be irrelevant in the new filing system, so the GAO will be updated to remove the DPI requirement.

When reviewing the rulemaking, please note that the following subjects will be noted in a GAO or in Docket Entries for flexibility.

- Maximum file size.
- DPI and/or other scanning quality standards.
- Allowable file types.
- Required fonts and/or other formatting.
- Numbers of and minimum document page sizes where hard copies are required.
- Logistics of filing confidential information.
- Cause number generation and modification.
- How to file non-docketed matters.
- How to subscribe to cases when you are not a party.
- How to receive a proof of receipt from the electronic filing system.
- Definition of compliance filing and how to file it.
- How to separate testimony and exhibits when filing.
- Naming conventions for file names, including 30-day filings.
- Explanation of if/how an item will be "file stamped" or a cause number will be added.

Summary of Changes

170 IAC 1-1.1-1 Application and scope

- Removes references to 170 IAC 1-1, which was repealed in 2000.
- No longer differentiates between pre- and post-November 29, 2000 filings.
- Notes that rulemakings are not governed by this section but by IC 4-22 (Administrative Rules and Procedures).
- Notes that technical and readability specs will be in a GAO or the electronic filing system.

170 IAC 1-1.1-2 Definitions

- Notes that petitions may be written or electronic.
- Adds definition for “electronic filing system” and “signature equivalent.”
- Considers that documents may not be signed but have a signature equivalent if they are electronically filed.
- Notes that service lists may also be maintained in EFS

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

- Requires all filings to be done electronically unless prohibited by technical problems.
- Notes that “filing” through EFS does not constitute acceptance of the filing, only a notice of acceptance does that.
- Changes required number and style of hard copies to provide when filing.
- Adds what time a day ends for filing purposes.
- Moves remittances portion to a new section.

170 IAC 1-1.1-3.5 Remittances to the commission

- Moved from section 3 as it logically did not belong there and should be a separate section.

170 IAC 1-1.1-4 Confidential or privileged information

- Requires requests for confidential treatment be filed at least 10 days before the information is required to be filed.
- Mirrors Indiana Court Rules Administrative Rule 9(g) regarding confidentiality and access to court records; see http://www.in.gov/judiciary/rules/admin/index.html#_Toc414970902.

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

- Adds in the process language from the standard docket entry for these type of cases.

170 IAC 1-1.1-5.5 Excavation Damage Cases

- Codifies the existing GAO for excavation damage cases.

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

- Notes that documents may be signed or have a signature equivalent if they are electronically filed.

170 IAC 1-1.1-8 Pleadings; general requirements

- Notes that documents may be signed or have a signature equivalent if they are electronically filed.
- Fixes an incorrect citation.

170 IAC 1-1.1-9 Petitions

- Accepts suggestion by a party that cost recovery amounts should be stated in the petition or it should state no dollars are requested.
- Accepts suggestion by a party that in addition to newspaper notice, a petitioner shall give notice on its website unless it is cost prohibitive or there is another hardship to doing so.

170 IAC 1-1.1-11 Petitions to intervene

- Clarifies that objections to a petition to intervene must be served on all parties.

170 IAC 1-1.1-13 Service

- Notes that service must be done through EFS or email unless otherwise permitted by the IURC or agreed to by the parties.
- Does the OUCC still want 2 hard copies under subsection (c)? If they want e-copies, ask them to provide an email address.
- Adds the date of service for electronic filings and emails.
- Requires a certificate of service be included with all electronically filed pleadings.
- Notes further instructions on how to use EFS will be in a GAO.
- Removes the requirement that an interested person receive case information only at the discretion of the presiding officer. Removes the requirement that such information be mailed. Instead, an interested person can subscribe in the EFS.

170 IAC 1-1.1-15 Preliminary hearings

- Removes requirement that technical conferences be conducted on the record.

170 IAC 1-1.1-16 Discovery

- Accepts suggested language by commenters that discovery should be completed within 10 days unless otherwise agreed or directed.
- Removed section related to rulemakings, since they are governed by IC 4-22.

170 IAC 1-1.1-18 Hearing procedure

- Removes the requirement that testimony must be filed at least 15 days prior to the evidentiary hearing, since these dates are determined by a prehearing conference order or agreement.
- Provides requirements for exhibit copies.

170 IAC 1-1.1-19 Consolidation

- Notes that consolidated cases shall keep the earliest cause number.
- Notes the presiding officer can keep the underlying captions or make a new one.

170 IAC 1-1.1-21 Evidence

- Moved administrative notice to its own section.

170 IAC 1-1.1-21.5 Administrative Notice

- Removes administrative notice of “materials” as any materials would be facts; otherwise, there would be no reason to admit them.
- Changes the notification time to match the court rules of evidence Rule 201.
- Removes language about “tenor of the matter.”

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

- Changes the number of required copies.

170 IAC 1-1.1-24 Dismissal of cases

- Modifies rule to note that the commission shall notify parties electronically when possible.

170 IAC 1-1.5-1 Definitions

- Adds the definition of a public field hearing to assist with application of ex parte to small u cases.
- Removes the exception for extended area telephone service petitions, as the IURC does not review these anymore.

170 IAC 1-1.5-4 Communication within the commission

- Changes “settlement judge” to “counsel to testimonial staff.”

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

- Fixes incorrect citations.
- There was an inquiry about why 30-day filings are exempt from ex parte. The rationale is that these filings are mainly done by small utilities where the use of counsel, accountants or auditors would be prohibitively expensive. Without ex parte concerns, IURC technical and legal staff are able to advise utilities about how to properly submit their files.

170 IAC 14-1-1 Definitions

- Defines public field hearing to distinguish it from a formal public hearing.

170 IAC 14-1-5 Hearing on application

- Notes a hearing can also be a public field hearing.

170 IAC 14-1-6 Decision on application

- Clarifies that a hearing means a formal public hearing (distinguished from a field hearing).

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

- Corrects citations.

Strawman Draft Proposed Rule Text

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 **cases and all other** matters before the commission arising under the acts of the general assembly conferring powers upon the commission **except for rulemakings which shall be governed by IC 4-22. Technical and readability specifications related to electronic filing shall be noted on the commission's electronic filing system or in a general administrative order.** ~~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)

Comments

- Removes references to 170 IAC 1-1, which was repealed in 2000.
- No longer differentiates between pre- and post-November 29, 2000 filings.
- Notes that rulemakings are not governed by this section but by IC 4-22 (Administrative Rules and Procedures).
- Notes that technical and readability specs will be in a GAO or the electronic filing system.

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) **"Electronic filing system" means the system used by the commission that contains docketed**

and certain non-docketed matters and permits parties to file documents electronically.

(4) "Intervenor" means any 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.

(45) "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.

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

(67) "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.

(78) "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.

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

(910) "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.

(1011) "Service list" refers to the list of attorneys of record and any parties appearing pro se maintained by the secretary of the commission **or in the electronic filing system.**

(1112) **"Signature equivalent" means the confirmation or verification of identity used in the commission's electronic filing system. Suggestion: conform with Trial & Appellate Rules on e-filing.**

(113) "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.

(1214) "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)

Comments

- Notes that petitions may be written or electronic.
- Adds definition for “electronic filing system” and “signature equivalent.”
- Considers that documents may not be signed but have a signature equivalent if they are electronically filed.
- Notes that service lists may also be maintained in EFS

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 be made through the electronic filing system. The transmission of a notice of acceptance of the electronic filing from the commission, not a notice that the electronic filing was received, constitutes filing of the pleading, document or information for all purposes and constitutes entry of the filing on the commission’s docket.**

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

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

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

(c) When filing through the electronic system is prevented by any other circumstance not caused by the filer who was adversely affected, the filer may bring such circumstances to the attention of the commission and

(1) request relief to enlarge the time within which to file, or

(2) revert to filing in person. Filings that are not made through the electronic filing system must include the following to be accepted for filing:

(A) A declaration that the party was unable to file electronically in a timely manner due to technical difficulties.

(B) An attachment of the error page or other documentation that demonstrates the inability to file electronically in a timely manner due to technical difficulties.

(d) A party who makes a filing that is not sent through the electronic filing system must email a copy of the filed document to the assigned administrative law judge and commissioners concurrently, for the filing to be accepted.

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

(ef) Unless otherwise provided by this rule, the petitioner or other party shall file **pleadings** with the secretary

~~of the commission through the electronic filing system an original pleading and four (4) copies, one (1) of which must be unbound and printed on only one (1) side of the page, in proceedings assigned only to an administrative law judge. The petitioner or other party shall file with the secretary of the commission an original and five (5) copies, one (1) of which must be unbound and printed on only one (1) side of the page, in proceedings assigned to a commissioner and administrative law judge. A presiding officer or the commission may require that a different number of copies be filed~~ **hard copies as well. At the discretion of the presiding officers, copies of oversized filings may be submitted to the Commission in electronic fashion such as CDs, etc.**

In instances where filings must be made by hard copy, filings other than:

- (1) territorial maps;
- (2) engineering drawings;
- (3) accounting schedules, or**
- ~~(34)~~ other visual aids;

~~must be made on~~ **shall be formatted for** eight and one-half (8½) inch by eleven (11) inch paper unless otherwise authorized by the presiding officer. **The filing made by hard copy shall be unbound and printed on only one (1) side of the page. Any additional copies shall be stapled or permanently bound and printed on both sides of the page.**

~~(dg)~~ All time periods within which to make filings with the commission are given in calendar days unless otherwise stated. **The end of the commission's official business hours shall be considered the end of the day; filings received after close of business shall be considered as filed the next calendar day. Filings received in the Commission's offices during regular business hours or through the EFS by 11:59 p.m. on the designated filing date will be considered timely filed.** 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.

~~(ef)~~ 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.

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

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

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-3; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; readopted

filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670; filed May 21, 2008, 9:29 a.m.: 20080618-IR-170070514FRA; readopted filed Jun 14, 2012, 3:04 p.m.: 20120711-IR-170120199RFA)

Comments

- **Note: If filing is allowable up to midnight as discussed during previous rulemaking sessions, there will need to be a reconciliation between the time/date received and the statement of “acceptance” of filings in 3(a).**
- **Added language about the potential for copies of large documents to be submitted on CD or other electronic media at the discretion of presiding officers.**

170 IAC 1-1.1-3.5 Remittances to the commission

Authority: IC 8-1-1-3; IC 8-1-2-70; IC 8-1-2-85; IC 8-1-26-23

Affected: IC 8-1-1-5; IC 8-1-2-70; IC 8-1-2-85; IC 8-1-26-24

Sec. 3.5. Remittances to the commission for:

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

may be made by:

- (a) money order or
- (b) check

payable to the Indiana utility regulatory commission, except that remittances in payment of the statutory fees for the issuance of:

- (a) bonds,
- (b) notes, or
- (c) other securities

by municipalities under IC 8-1-2-85 shall be:

- (a) by check payable to the "Treasurer of the State of Indiana"; and
- (b) delivered to the secretary of the commission.

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~~ **at least ten (10) days** 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~~ **Indiana rules of trial procedure 26(C)**.

(g) After receiving a preliminary determination that material is entitled to confidential treatment, **confidential** documents submitted shall:

(1) **be filed on green paper;**

(2) **be conspicuously marked “not for public access” or “confidential” with the cause number clearly designated; and**

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

Public access versions of the documents submitted shall:

(1) **be filed on white paper, and**

(2) **any record to be excluded from public access shall be omitted or redacted from this version.**

The omission or redaction shall be indicated at the place it occurs in the public access version. At the discretion of the presiding officers, copies of oversized confidential filings may be submitted to the Commission in electronic fashion such as CDs, etc.

(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)

Comments

- **Requirement that confidential material be filed on white or green paper is at odds with requirement for electronic filing.**

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. **This process will be followed:**

(1) Prior to issuing an order on the appeal, the commission shall afford the parties notice and an opportunity to be heard.

(2) **Once the written request for appeal is timely filed with the commission, the commission's general counsel or designee shall submit a record of information upon which the informal disposition was based to the chief administrative law judge or designee.**

(3) **The chief administrative law judge or designee shall file the record in subsection (2) in the case.**

(4) **The commission's review in the case will be based on:**

(i) a review of the record, and

(ii) consideration of any argument by the parties based on the existing record.

(5) **If the appellant does not wish to appear and offer oral argument at an evidentiary hearing, the appellant shall notify the commission on or before the date set by the administrative law judge in the case.**

(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)

Comments

- Adds in the process language from the standard docket entry for these type of cases.

170 IAC 1-1.1-5.5 Excavation Damage Cases

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

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-26

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

(1) "Advisory committee" means the underground plant protection advisory

committee established by IC 8-1-26-23.

(2) “Complainant” means the advisory committee or the division.

(3) “Division” means the pipeline safety division of the commission or the pipeline safety division's publicly noticed consultant.

(4) “Excavator” means the party that caused damage to a pipeline facility located in the area of excavation or demolition that is the subject of the hearing.

(5) “Hearing” means the public hearing as referenced in IC 8-1-26-23(k).

(6) “Operator” means the operator as defined by IC 8-1-26-10 that owns or operates the pipeline facility that was damaged by the excavator.

(7) “Person” has the same meaning as defined in IC 8-1-26-11.

(8) “Respondent” means the person requesting the hearing.

(b) If a person who receives notice under 170 IAC 5-5-3(f) requests a public hearing, the request must do the following:

(1) Be filed with the commission within the time permitted by 170 IAC 5-5-3(f).

(2) Be served on the utility consumer counselor, the commission’s general counsel on behalf of the division, and the advisory committee.

(3) Comply with

(i) this rule,

(ii) An applicable general administrative order the commission issues and posts on its website regarding excavation damage cases or filing requirements, and

(iii) Other applicable laws.

(4) Include the following:

(i) a case caption that follows this format: IN THE MATTER OF THE PIPELINE SAFETY DIVISION’S INVESTIGATION OF (respondent’s name) IN PIPELINE SAFETY DIVISION CASE NUMBER _____

(ii) A copy of the letter the respondent received regarding the disposition of the case.

(iii) Respondent’s contact information, including:

(A) mailing address,

(B) telephone number,

(C) fax number, if available, and

(D) email address, if available.

(iv) Whether respondent is contesting the division’s findings, the advisory committee’s recommendations, or both;

(v) The reasons why the respondent believes the findings or recommendations are in error;

(vi) The requested relief; and

(vii) Additional information the respondent believes is pertinent.

(c) The division’s case-in-chief shall include, at a minimum, the following documents:

(1) documents submitted by the excavator and operator in the underlying case; and

(2) the division’s investigation summary report.

(d) The advisory committee’s case-in-chief shall include, at a minimum, the following documents:

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

Comments

- Codifies the existing GAO for excavation damage cases.

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, or **provide a signature equivalent in the electronic filing system**, 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, or **provide a signature equivalent in the electronic filing system**, 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*)

Comments

- Notes that documents may be signed or have a signature equivalent if they are electronically filed.

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, **or provide a signature equivalent in the electronic filing system**, all pleadings filed with the commission or as otherwise required by statute or as follows:

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

(b) Petitions and complaints may be amended or supplemented upon written or oral motion. Leave to amend a petition or complaint shall be freely granted upon failure of any other 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, **or signature equivalent in the electronic filing system**, of the party, if an individual, or of a duly authorized representative, if the party is an entity, or of the attorney for the party

constitutes a certificate that:

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

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

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

Signed _____
Date _____".

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

(f) Every 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*)

Comments

- Notes that documents may be signed or have a signature equivalent if they are electronically filed.
- Fixes an incorrect citation.

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. **This should include dollar amounts for cost recovery or the petition should state that no monetary amount is 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.

(d) In any proceeding in which the petitioner is required by law to publish notice through a newspaper, the petitioner shall certify to the commission that a substantially similar notice was posted on the petitioner's website or certify that petitioner does not have a website or could not add the posting without substantial cost or hardship.

(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)

Comments

- Accepts suggestion by a party that cost recovery amounts should be stated in the petition or it should state no dollars are requested.
- Accepts suggestion by a party that in addition to newspaper notice, a petitioner shall give notice on its website unless it is cost prohibitive or there is another hardship to doing so.

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. **The response shall be served on all other parties.** 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*)

Comments

- Clarifies that objections to a petition to intervene must be served on all parties.

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 ~~effected~~ **required** by United States mail.

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

(c) Petitions instituting proceedings shall be served by the petitioner upon each named respondent, **the utility consumer counselor** 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 **170 IAC 1-1.1-10(a).** ~~Two (2) copies of any petition or complaint shall be served on the utility consumer counselor on the same day the petition or complaint is filed with the commission.~~

(d) **Service by parties.** All pleadings, briefs, and other documents filed in proceedings pending before the commission shall be served on all parties **and the utility consumer counselor** 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.

(1) 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, or as otherwise agreed to by the parties~~ **through the following means:**

- (i) **electronic mail;**
- (ii) **by United States mail, properly addressed with postage prepaid; or**
- (iii) **as agreed to by the parties.**

(2) **Service by electronic mail shall be deemed complete upon transmission, except service by e-mail that occurs on**

- (i) **a Saturday,**
 - (ii) **a Sunday,**
 - (iii) **a legal holiday,**
 - (iv) **a day the commission is closed, or**
 - (v) **after the end of the commission's official business hours**
- shall be deemed complete the next business day.**

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

(4) **Further instructions on how to use the current electronic filing system shall be made through a general administrative order.**

(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) **sent via email;**

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

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

(4) delivered as otherwise agreed by the parties.

(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 provides.

~~(h) Two (2) copies of any petition or complaint shall be served on the utility consumer counselor on the same day the petition or complaint is filed with the commission.~~

(i) A dated certificate of service must accompany and be attached to each 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 issued~~ by the commission **by subscribing to the case in the electronic filing system.** ~~Such requests may be granted at the discretion of a presiding officer, although~~ **However,** any such 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*)

Comments

Notes that service must be done through EFS or email unless otherwise permitted by the IURC or agreed to by the parties.

Does the OUCC still want 2 hard copies under subsection (c)? If they want e-copies, ask them to provide an email address.

The OUCC has added language above to indicate that parties must serve the OUCC at the same time as documents are filed/served. Service upon infomgt@oucc.in.gov is preferable.

- Adds the date of service for electronic filings and emails.
- Requires a certificate of service be included with all electronically filed pleadings.
- Notes further instructions on how to use EFS will be in a GAO.
- Removes the requirement that an interested person receive case information only at the discretion of the presiding officer. Removes the requirement that such information be mailed. Instead, an interested person can subscribe in the EFS.

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)

Comments

- Removes requirement that technical conferences be conducted on the record.

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) calendar days unless otherwise agreed by the parties or directed by the presiding officer, provided that discovery served after the regular business hours of the commission 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 within ten (10) calendar days following receipt thereof as required 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 parameters; and**
- ~~(23)~~ assist the parties in resolving discovery disputes.

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

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

Comments:

- Accepts suggested language by commenters that discovery should be completed within 10 days unless otherwise agreed or directed.
- Removed section related to rulemakings, since they are governed by IC 4-22.
- **Question – does section on discovery served after business hours prohibit parties from other arrangements as agreed (such as “after noon on Friday is considered next business day”)?**

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 prefiling of any testimony without the specific order of a presiding officer or the commission.

(h) Unless otherwise approved by the presiding officer, exhibits that are filed in a hearing must

- (1) be clean copies with no writing on the copy;**
- (2) be single sided;**
- (3) be stapled or bound with comb or coil bindings along the longest edge; and**
- (4) only if confidential, printed on green paper.**

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

(j) 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.

(jk) 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.

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

(lm) 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.

(mn) 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*)

Comments

- Removes the requirement that testimony must be filed at least 15 days prior to the evidentiary hearing, since these dates are determined by a prehearing conference order or agreement.
- Provides requirements for exhibit copies.
- **Binding requirements: are three-ring binders permissible?**

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~~ **cause number of the earliest filed case. The presiding officer may keep the underlying captions or create a new caption for the consolidated cause.** 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)

Comments

- Notes that consolidated cases shall keep the earliest cause number.
- Notes the presiding officer can keep the underlying captions or make a new one.

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)~~

Comments

- Moved administrative notice to its own section.

170 IAC 1-1.1-21.5 Administrative Notice

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

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

Sec. 21.5. (a) The commission shall take administrative notice of any fact that must be judicially noticed by a court of Indiana pursuant to Ind. Rule of Evidence 201.

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

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

(2) provided a copy of the document; and

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

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

(d) Any documents administratively noticed by the commission shall become part of the record for the proceeding.

(e) The commission may cite to its own orders and rules without taking administrative notice of those documents. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-21.5*)

Comments

- Removes administrative notice of “materials” as any materials would be facts; otherwise, there would be no reason to admit them.
- Changes the notification time to match the court rules of evidence Rule 201.
- Removes language about “tenor of the matter.”
- **Note: “upon timely request” is language taken from IRE 201, but IRE 201 is most frequently applied in the context of trials, where a “timely request” is probably before the close of evidence. In the administrative context, a more specific period of time is probably appropriate to avoid arguments about whether an objection is “timely” or not.**

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~~ All briefs shall be filed with the commission **through the electronic filing system** 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*)

Comments

- Changes the number of required copies.

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~~ of its intention to dismiss **in accordance with section 13**. 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*)

Comments

- Modifies rule to note that the commission shall notify parties electronically when possible.

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*)

Comment: Since filings will be accepted until midnight, this section should be modified to reflect that.

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 1-1.5, Ex Parte Contacts

170 IAC 1-1.5-1 Definitions

Authority: IC 8-1-1-3

Affected: IC 8-1

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

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

(c) "To file a report" means written testimony filed by or oral testimony presented by, or both, a

technical employee in a pending proceeding.

(d) "Proceeding" means a formally docketed proceeding before the commission. The term does not include any of the following:

- (1) A rulemaking.
- (2) A thirty (30) day filing under IC 8-1-2-42(a).
- (3) A filing under IC 8-1-2-61.5(a), even if a public field hearing occurs.
- (4) ~~A petition under 170 IAC 7-4.~~
- (5) ~~An informal investigation.~~
- (6) An investigation and disposition by the consumer affairs division of the commission.
- (7) An application or notice of change form filed under IC 8-1-32.5.
- (8) An application or notice of change form filed under IC 8-1-34.

(e) **"Public field hearing" means a hearing conducted in a county in which the utility provides service for the purpose of allowing the utility's customers and others with a substantial interest in the matter who are not parties to offer comments. It is not a formal public hearing.**

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

Comments

- Adds the definition of a public field hearing to assist with application of ex parte to small u cases.
- Removes the exception for extended area telephone service petitions, as the IURC does not review these anymore.

170 IAC 1-1.5-2 Pending proceeding

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

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

- (1) all petitions for rehearing or reconsideration and all appeals to a court of appellate jurisdiction have been determined or decided;
- (2) any opportunity for a further appeal has been exhausted; and
- (3) no further action is required by the commission.

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

170 IAC 1-1.5-3 Violations

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

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

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

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

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

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

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

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

(d) Only to the extent not otherwise inconsistent with this rule, any person may make educational or informational communications that are not intended to persuade or advocate a position on an issue in a particular proceeding while the proceeding is pending. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.5-3; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

170 IAC 1-1.5-4 Communication within the commission

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 4. Members of the commission, its attorneys, and technical employees may communicate with each other regarding a particular proceeding pending before the commission. However, an attorney assigned as a ~~settlement judge~~ **counsel to testimonial staff** or a technical employee directed to file a report in a particular proceeding **or assigned as testimonial staff** may not communicate regarding the particular proceeding with members of the commission, attorneys not assigned as ~~settlement judges~~ **counsel to testimonial staff**, or

technical employees not assigned to file a report in that particular proceeding **or assigned as technical staff.** (*Indiana Utility Regulatory Commission; 170 IAC 1-1.5-4; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA*)

Comments

- Changes “settlement judge” to “counsel to testimonial staff.”

170 IAC 1-1.5-6 Disclosure

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

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

(1) tender to the record of the proceeding:

(A) all written communications received;

(B) all written responses to the communication; and

(C) a memorandum stating:

(i) the substance of all oral communications received;

(ii) all oral responses made; and

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

and

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

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

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

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

170 IAC 1-6, Thirty-Day Administrative Filing Procedures and Guidelines

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

Authority: IC 8-1-1-3; IC 8-1-1-5; IC 8-1-2-42

Affected: IC 8-1

Sec. 9. (a) The ex parte rules of the commission in 170 IAC 1-1.5 do not apply to communications

made in association with a filing under this rule.

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

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

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

Comments

- Fixes incorrect citations.
- There was an inquiry about why 30-day filings are exempt from ex parte. The rationale is that these filings are mainly done by small utilities where the use of counsel, accountants or auditors would be prohibitively expensive. Without ex parte concerns, IURC technical and legal staff are able to advise utilities about how to properly submit their files. **(Note: Large utilities regularly use 30-day filings.)**

170 IAC 14, Small Utilities

170 IAC 14-1-1 Definitions

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

Affected: IC 8-1-2-61

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

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

- (1) functions as a petition or in support of a petition for rate change; and
 - (2) may include a financing authority request.
- (c) "Commission" means the Indiana utility regulatory commission.

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

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

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

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

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

(g) **"Public field hearing" means a hearing conducted in a county in which the utility provides service for the purpose of allowing the utility's customers and others with a substantial interest in the matter who are not parties to offer comments. It is not a formal public hearing.**

(h) "Request for a formal public hearing" means:

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

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

(hi) "Small utility" means any public or municipally owned utility subject to the jurisdiction of the commission that:

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

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

Comments

- Defines public field hearing to distinguish it from a formal public hearing.

170 IAC 14-1-5 Hearing on application

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

Affected: IC 8-1-2-61

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

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

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

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

Comments

- Notes a hearing can also be a public field hearing.

170 IAC 14-1-6 Decision on application

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

Affected: IC 8-1-2-61

Sec. 6. (a) If no **formal public** hearing is held, the commission may issue an order on the application for rate change based on the data in the application for rate change, the report filed by the OUCC staff concerning the application for rate change, and any written response of the small utility to the OUCC staff report.

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

Comments

- Clarifies that a hearing means a formal public hearing (distinguished from a field hearing).

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

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

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

Sec. 7. Under ~~170 IAC 1-1.5-1(e)(3)~~ **170 IAC 1-1.5-1(d)(3)**, filings under this rule are exempt from the

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

Comments

- Corrects citations.