

February 24, 2020

**Sent via e-mail to:**

Ms. DeAnna L. Poon  
Assistant General Counsel  
INDIANA UTILITY REGULATORY COMMISSION  
PNC Center  
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Indianapolis, IN 46204-3407  
[dpoon@urc.in.gov](mailto:dpoon@urc.in.gov)

Re: RM 18-02 / LSA 19-378 - OUCC Supplemental Comments

Dear Ms. Poon:

*The Indiana Office of Utility Consumer Counselor (“OUCC”) appreciates the opportunity to submit the following clarifying and supplemental recommendations which build on various recommendations made in the OUCC’s December 9, 2019 comments in this rulemaking proceeding. The OUCC has included the proposed rule changes in black text, using bold typeface to signal the addition of new language, while striking through language the OUCC recommends deleting from the Commission’s proposed rule. The OUCC’s introduction, explanatory and supplemental comments, and concluding remarks all appear in blue italics.*

1.) *In 170 IAC 1-1.1-11(d), changing the word “will” to “shall” in the Commission’s proposed revised Rule could unnecessarily limit the scope of issues that could be raised in a request for leave to intervene in a pending proceeding. The OUCC recommends using the word “will”, rather than “shall”, as noted below:*

**170 IAC 1-1.1-11(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 a part thereof, and the proposed intervenor’s participation ~~shall~~ **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.

2.) *The OUCC recommends changing the term “testimonial party” back to “testimonial staff”, given the Commission’s statutory role in hearing and deciding cases.*

**170 IAC 1-1.1-14**

(a) The commission shall, at the request of a party, issue subpoenas for the attendance of witnesses and subpoenas duces tecum. Subpoenas shall not be issued for commission staff unless the staff is designated as a testimonial ~~party~~ **staff in** to the proceeding. Subpoenas shall be signed by the secretary of the commission 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 the 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 a member of **the** commission staff who is designated as a testimonial ~~party of the commission staff~~; in a deposition or at a formally docketed hearing, shall:

- (1) Specify the purpose for which the examination or testimony of the commission **testimonial** staff member will be taken;
- (2) Specify the approximate duration of the examinations; and
- (3) ~~e~~Certify that copies of the subpoena, when served, will have been served in the same manner as pleadings are served on the office of utility consumer counselor and other parties of record.

(e) A subpoena to secure the testimony of a member of the commission's technical staff who is designated a **as** testimonial ~~party 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 shall be given, except upon written leave granted by the presiding officer, for good cause shown.

*The same change is required in 170 IAC 1-1.5-3(a) (5):*

...attorney assigned as counsel to a member of **the** commission staff designated as ~~my~~ testimonial **party staff** in this particular proceeding;

*The same change is also required in 170 IAC 1-1.5-4(b):*



**170 IAC 1-1.5-4(b):**

An attorney assigned as counsel to a member of commission staff who is designated as a ~~testimonial party~~ **staff**, a technical employee directed to file a report in a particular proceeding, or a member of commission staff who is designated as a ~~testimonial party~~ **staff** may not communicate regarding the particular proceeding with members of the commission, attorneys not assigned as counsel to a member of commission staff who is designated as a ~~testimonial party~~ **staff**, or technical employees not assigned to file a report in that particular proceeding, or designated as a ~~testimonial party~~ **staff**. Members of the consumer affairs division as defined by 170 IAC 16-1-2 are not testimonial or technical staff.

*3.) The OUCC also recommends the following clarifying changes to:*

**170 IAC 1-1.1-3(a):**

Except as provided in subsections (b), (c), (d), and (e), the filing of **any** a communication, paper, or pleading with the commission shall be made through the electronic filing system. The filing shall comply with this rule and the companion technical and readability specifications as noted in section 1. The filing will be file stamped by the commission to reflect the date the filing was received by the commission. A filing made ~~by~~ **through** the electronic filing system is considered filed on the date reflected in the notice of receipt associated with the filing. Electronic filing must be completed before midnight to be considered filed that day, and compliance with filing deadlines is determined in accordance with prevailing local time **in Indianapolis, Indiana**.

*4.) The OUCC recommends the following changes to improve consistency and clarity concerning the nature of different types of hearings:*

**170 IAC 1-1.1-2(12)**

“Public field hearing” means a hearing **that is open to the public and** conducted **pursuant to applicable legal notice requirements** 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 **public comments for the Commission to consider in reaching its decision. Public field hearings are required in certain general rate proceedings**, ~~including those authorized under IC 8-1-2-61(b) related to general rate proceedings. It is not an evidentiary hearing or a formal public hearing contemplated by IC 8-1-2-61.5, related to small utilities.~~

**170 IAC 1-1.5-1(d)**

“Formal public hearing” means ~~an evidentiary~~ **a hearing in a docketed commission proceeding, including a proceeding under** ~~contemplated by IC 8-1-~~

2-61.5 related to small utilities, which is open to the public and conducted pursuant to applicable legal notice requirements for the purpose of compiling an evidentiary record.

**170 IAC 1-1.5-1(f)**

”Public field hearing” **has the same meaning as in 170 IAC 1-1.1-2(12).** ~~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 an evidentiary hearing or a formal public hearing contemplated by IC 8-1-2-61.5.~~

**170 IAC 14-1-1(e)**

“Formal public hearing” **has the same meaning as in 170 IAC 1-1.5-1(d).** ~~means an evidentiary hearing contemplated by IC 8-1-2-61.5.~~

**170 IAC 14-1-1(h)**

“Public field hearing” **has the same meaning as in 170 IAC 1-1.1-2(12).** ~~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 an evidentiary hearing or a formal public hearing contemplated by IC 8-1-2-61.5.~~

*The OUCC thanks the Commission and its staff for the many long hours of work devoted to this rulemaking proceeding, including its recent decision to reopen the comment period to allow additional clarifying or supplemental comments. The OUCC hopes the ideas and wording supplied in these comments will be of some assistance to the Commission as it works to finalize revisions to its current procedural rules.*

*Respectfully submitted,*

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