



STATE OF INDIANA

Eric J. Holcomb
Governor

STATE BUDGET AGENCY
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Indianapolis, Indiana 46204-2796
317/232-5610

Zachary Q. Jackson
Director

September 18, 2019

DeAnna Poon
Assistant General Counsel
Indiana Department of Utility Regulatory Commission
101 W. Washington St., Suite 1500 East
Indianapolis, IN 46204

Dear Ms. Poon,

Pursuant to the provisions of Executive Order 2-89 and Budget Agency Financial Management circular 2010-4, the State Budget Agency has reviewed the proposed rule that amends 170 IAC 1-1.1 and 170 IAC 1-1.5, (LSA #19-378), which you submitted to the State Budget Agency on July 17, 2019. After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.

Furthermore, the statement and analysis (attached hereto) provided by the Indiana Department of Utility Regulatory Commission is hereby adopted as the Office of Management and Budget's own Fiscal Impact Statement for the purpose of satisfying the requirements under IC 4-22-2-28(d). Also, it is adopted as the Office of Management and Budget's Cost Benefit Analysis under IC 4-3-22-13(a).

If you have questions concerning this action, please contact your budget analyst or SBA at 232-5610.

Sincerely,

Zachary Q. Jackson
Director

ZQJ/bmd

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

COST-BENEFIT ANALYSIS LSA Document #19-378

I. Statement of Need.

A. Intention of rule.

This rule is intended to do the following: Save costs by moving to an electronic filing system, reduce regulatory burden and impact, and serve a public need by improving government processes.

B. Estimated number affected.

The Indiana Utility Regulatory Commission (“Commission”) estimates the following will be affected by the rule:

1. Individuals: Any individual that practices law or otherwise represents parties in matters that are before the Commission.
2. Businesses: Any law firm that represents parties in matters before the Commission, and any utility regulated by the Commission.

C. Policy or goal of rule.

The Commission changed to an upgraded electronic filing system (“EFS”) at the end of 2016, and certain procedural rules need to be updated to match the new system. The result is streamlined filing that saves resources associated with printing and delivery costs and that reduces Commission staff.

The Commission also used the opportunity to clarify its ex parte rules and add an exception that did not exist at the time the ex parte rules were originally drafted. The result is clarity regarding when Commission staff can be used as a resource for utilities, resulting in reduced attorney, accountant, and other professional service fees for regulated utilities.

1. Conduct the rule is designed to change.

This rule is intended to change the practice from paper filing to electronic filing. The ex parte section of the rule is intended to change the practice of limiting interaction with Commission resources when appropriate.

2. Harm resulting from the conduct above.

The rule (1) requires online filing and (2) clarifies ex parte exclusions. If there was not a rule change, some entities may choose to continue filing hard copies. For reasons explained in more detail below, this would result in use of resources associated with printing and delivery of hard copy filings, and additional Commission time to scan and upload the filings into the EFS. If the ex parte exclusions are not updated, regulated utilities may

rely more on costly professional services rather than using the expertise provided by Commission staff.

3. Involvement of the regulated entities in rule development.

Commission staff has involved regulated entities in the development not only of the rule but in the creation of the EFS behind the rule. Invitations for an initial meeting went to parties that had accounts in the current filing system, members of the Utility Section of the Indiana State Bar Association, and Commission staff affected by or working on the new EFS. Those participants were invited to join a listserv if they wanted to continue participation in the process. The listserv currently includes more than 50 participants.

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

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

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

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

4. Commission methodology.

Commission staff updated the procedural rules by considering the functionality of the new EFS and comments provided by internal and external participants.

Commission staff clarified the ex parte rules by including citations to specific Indiana code sections that were affected and added a section for

integrated resource planning that was not previously included.

II. Evaluation of Costs and Benefits.

The Proposed Rule resolves three general matters:

1. **Electronic Filing:** It provides procedures for filing electronically. The current rule contains procedures for hard copy filing. Regulated entities have been filing electronically for over two years in the new system and the Proposed Rule codifies the processes.
2. **Records Retention:** It allows for a large amount of records retention to be done electronically instead of through hard copy.
3. **Ex Parte Exception:** It more clearly enumerates ex parte exceptions and adds one exception.

Will the benefits likely exceed the costs? Yes.

A. Estimated primary and direct benefits.

Under Electronic Filing, the Proposed Rule benefits the Commission and regulated entities by requiring electronic filing. The Commission previously used a document retention system that did not have automated filing capabilities, was not supported by the Indiana Office of Technology ("IOT"), and no longer offered external customer support. The new system has automated filing capabilities and is supported by IOT and the Commission's vendor. This resulted in the elimination of the position of Commission information technology director, saving the Commission \$107,068 annually. External entities responded to Commission staff's request for financial impact comments. While entities did not provide hard numbers, all reported cost savings as a result of this rule. The Indiana Industrial Electric Consumers, Inc. ("INDIEC") stated, "[W]e believe the ability to electronically file documents provides net cost savings to INDIEC members based on the reduction of time and resources related to costs of printing, copying, and delivering paper documents to the Commission. Electronic filing will also streamline the review process of filed materials and reduce the need for, and related expense of, managing and protecting large volumes of paper documents."

Under Records Retention, because all files will now be in the EFS, records retention can be done using PDFs rather than hard copies. For hard copies, records are stored at the Commission, clips/staples/folders/etc. are removed by Commission staff, the records are delivered to the Indiana Archives and Records Administration ("IARA") to save as microfiche, the records are returned to the Commission, and Commission staff does a page by page comparison of the hard copy to the microfiche for quality control. Under the Proposed Rule, since all files will be in the EFS, hard copy records do not have to be stored or moved. In addition, the integrity of the files increases because hard copies do not have to be

scanned and double checked.

Under the Ex Parte Exception, regulated entities benefit because they know when they can communicate directly with Commission staff. Conversely, when regulated entities know when they cannot communicate directly with Commission staff, it should reduce the number of ex parte communications and the related disclosure staff has to make in the case record. The Proposed Rule specifically enumerates the exceptions to ex parte and adds integrated resource plans that were not previously listed in the rule.

B. Estimated secondary or indirect benefits.

An indirect benefit to electronic filing is consistency with Indiana courts. The Indiana Court of Appeals and nearly all Indiana trial courts now require electronic filing.

Another indirect benefit to the EFS is a reduction in public record requests and real time ability to find case records. In the new EFS, external parties can access cases filings. The EFS has better search capabilities than the old document retention system.

C. Estimated compliance costs for regulated entities.

There are no estimated compliance costs for regulated entities. Of external entities responding to Commission staff's request for financial impact comments, only one entity reported direct costs. The Indiana Energy Association ("IEA") stated generally, "IEA does not anticipate significant added direct costs because of the rulemaking." However, IEA did not elaborate or provide examples of specific costs it anticipates, and therefore it is unclear if there are truly any added costs for compliance.

D. Estimated administrative expenses.

There are no estimated administrative expenses. Regarding Electronic Filing, such expenses are actually anticipated to be reduced. This includes costs for paper, printing, mailing, courier service, and any other expenses relating to hard copy filing.

With regard to the Ex Parte Exception, regulated entities' legal and accounting costs may be reduced. By knowing instances where ex parte does not apply, those entities may be able to seek assistance from Commission staff rather than hiring attorneys and accountants for help.

E. Estimated cost savings to regulated entities.

Of external entities responding to Commission staff's request for financial impact comments, none provided hard numbers, but all reported cost savings as a result of this rule. INDIEC stated, "[W]e believe the ability to electronically file documents provides net cost savings to INDIEC members based on the reduction of time and resources related to costs of printing, copying, and delivering paper

documents to the Commission. Electronic filing will also streamline the review process of filed materials and reduce the need for, and related expense of, managing and protecting large volumes of paper documents.”

F. Sources consulted and methodology used.

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

Staff held multiple workshops and solicited comments multiple times from members of the listserv. Responses for this cost benefit analysis were compiled by using Commission staff’s knowledge of staffing and workload, and culled from external entities that responded to Commission staff’s request for financial impact comments.

III. Examination of Alternatives.

A. Alternatives defined by statute.

This rule consistent with the specific statutory requirement and clearly within the Commission’s statutory discretion. The Commission is required by Ind. Code § 8-1-1-3 to formulate rules necessary or appropriate to carry out Ind. Code ch. 8-1-1, Utility Regulatory Commission, and perform its duties. Further, Ind. Code § 8-1-2-47 provides the Commission authority to adopt reasonable rules relative to investigations and proceedings.

B. The feasibility of market-oriented approaches.

The market could not eventually remedy the alleged harm the rule is intended to regulate, rather than direct controls. Market approaches can be useful if there is only a need to change a percentage of behavior. Here, the alleged harm that would occur if the rule is not changed is that some regulated entities may choose not to use the EFS, resulting in a hodge podge of hard and electronic copies, increased Commission staff time to file documents, and confusion. A market-oriented approach could not resolve that.

Regarding ex parte rules, better defining those rules helps regulated entities by helping clarify when it is appropriate for them to request help from knowledgeable Commission staff. Without this clarification, regulated entities may be limited to hiring costly experts to help with filings. Again, a market-oriented approach could not resolve that.

C. Measures to improve the availability of information, as an alternative to regulation.

Requiring regulated entities to file in the EFS is the measure to improve the availability of information. The alternative would be public record requests that would require a longer response time, may require additional follow up to clarify requests, and would require the person to disclose who they are and what information they want when the person may not wish to reveal such information.

D. Various enforcement methods.

There are no enforcement methods that can be used without the updates in the Proposed Rule. Only once the rule is in place will there be non-compliance “penalties” in the form of rejected filings, if such filings do not meet the procedural rule requirements.

E. Performance standards rather than design standards.

The Proposed Rule can be considered more of a performance standard than a design standard. The procedures are performance standards to result in the desired outcome of a comprehensive online record in docketed proceedings.

F. Different requirements for different sized regulated entities.

It is not feasible or necessary to have different requirements for different sized regulated entities. Essentially, the Proposed Rule will now require regulated entities to have an internet connection. Affected entities include law firms, attorneys, government entities, and regulated utilities. All or the majority of these entities already have an internet connection. For the exceedingly few that may not, internet access is free at any local library.

G. Establish a baseline.

Without the new EFS, and the resulting Proposed Rule to implement its use, the Commission would still be using the old document system. There would be no software updates or external or IOT support. The Commission would have to reinstate an information technology director at a cost of \$107,068 annually.

Further, record retention would still be done with hard copies, resulting in state resources of employee time, storage, and delivery costs for the records to go to/from the Commission to be microfiched. There would also be more opportunity for errors to the records since quality control would be done comparing the hard copy instead of creating microfiche from PDFs.

H. Different compliance dates.

I. Redundancy.

Per IC 4-22-2-19.5 the proposed rule does not duplicate standards already found in state or federal law.

IV. Administrative Rules Oversight Committee Analysis, IC 4-22-2-28(i)

A. Steps to minimize expenses to regulated entities required to comply with the rule.

As noted above, affected entities were asked for input on minimizing expenses.

B. Justification of any requirement or cost that is imposed on a regulated entity under the rule.

As noted in Paragraph II(C) above, there is no cost imposed on a regulated entity under the rule.

C. Annual economic impact on of a rule on all small businesses after the rule is fully implemented.

None.

D. Review of alternative methods of achieving the purpose of the rule that are less costly or intrusive or would otherwise minimize the economic impact of the rule on small businesses.

Unnecessary, as there is no economic impact of the rule on small businesses.

E. Consideration of any other law to conduct an analysis of the cost, economic impact, or fiscal impact of a rule.

This statement considers all required fiscal analysis pursuant to IC 4-22.

V. Total Estimated Impact.

As noted above, data in this analysis came from Commission staff's experience along with feedback from affected entities.

The total estimated impact is **NOT** greater than \$500,000 on all regulated persons. The total estimated impact is a net savings of at least \$107,068.

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

FISCAL IMPACT ANALYSIS

LSA Document #19-378

I. Estimated Fiscal Impact on State and Local Government.

The estimated fiscal impact is a cost savings of at least \$107,068 annually.

II. Anticipated Effective Date of the Rule.

- The Notice of Intent will be filed on the same date this Fiscal Impact Analysis is submitted to the Office of Management and Budget. The Indiana Utility Regulatory Commission (Commission) should receive the Office of Management and Budget's fiscal impact statement *within* forty-five (45) days of submission. IC 4-22-2-28(d).
- The Proposed Rule will be filed at least twenty-eight (28) days after publication of the Notice of Intent. IC 4-22-2-23.
- The total cost of the rule is less than five hundred thousand dollars (\$500,000). Therefore, the public hearing can take place twenty-one (21) days after the Proposed Rule is published. IC 4-22-2-28(c) and IC 4-22-2-24.
- Assume three (3) weeks for the public comment period, beginning at least one (1) week prior when the Notice of Public Hearing is published.
- Assume thirty (30) days for staff to review public comments and assemble the rule packet.
- Assume at least one (1) week to circulate the rule for the Commission's weekly Conference to approve the Final Rule.
- The Attorney General has forty-five (45) days to review the packet. IC 4-22-2-32(g).
- The Governor's office has up to thirty (30) days to review the packet. IC 4-22-2-34(b).
- The rule is effective thirty (30) days from the date the Legislative Services Agency accepts the rule for filing. IC 4-22-2-36.

Therefore, based on the facts and timeline above, the Commission anticipates the rule to be fully promulgated and effective on or around January 31, 2020, which is 205 days (6.7 months) from the publication of the Notice of Intent, estimated to occur on or around July 10, 2019.

III. Revenue.

A. Sources of revenue affected by the rule.

The following sources of revenue are potentially affected by this rule:
None.

B. Estimated change in government revenues or expenditures.

1. The following state or local government revenues are estimated to increase or decrease as a result of implementation of this rule:
None.

2. The following state or local government expenditures are estimated to increase or decrease as a result of implementation of this rule:
The Commission's expenditures are expected to decrease by at least **\$107,068** annually as a result of implementation of this rule.

Previously, the Commission had (1) a document center administrator, (2) a system support specialist, and (3) an information technology director. The majority of the duties of the information technology director were to keep the electronic document system running, as it was old technology and the original vendor no longer offered software support. The two major duties of the document center administrator were to scan and upload hard copy filings to the system and organize hard copies according to the retention schedules set by the Indiana Archives and Records Administration (IARA). The Commission has since started using an electronic filing system (EFS).

Once the EFS was in place, the Commission restructured duties, and the information technology department director position was eliminated, as the majority of job duties were related to the eliminated electronic document system. Remaining duties were transitioned to system support staff. The Commission has maintenance support for the EFS through an ongoing vendor relationship, and the system support staff is trained in troubleshooting the system. Eliminating the director position saves the Commission \$107,068 annually in salary plus benefits.

The document center administrator transitioned to a system support specialist because the previous job duties mostly consisted of scanning and uploading hard copies and of record retention processes. In the EFS, there is little need for scanning and uploading, and there is sufficient existing administrative support for this work.

The Commission follows the records retention process for formal cases by providing records to the IARA. The IARA returns the hard copies to the Commission along with a microfiche. Commission staff must compare the hard copies to the microfiche to ensure the records match before destroying the hard copy records. The review takes a long time and requires physical storage space, in addition to the lost time and mileage costs of delivering the hard copy records to IARA and the cost to return the documents to the Commission. Also, prior to sending the documents to the IARA, Commission staff removes all bindings (paperclips, staples, etc.) and removes all duplicates. Finally, there is the cost to the IARA staff of scanning the hard copies to microfiche. The current process is used because under the prior electronic document system, only PDF documents could be filed and exhibits were not filed. In the EFS, most types of documents can be filed and there is a process for filing exhibits. In

addition, the rule will now require using the EFS; there was no requirement in the old rule. The entire formal case will be in the EFS, so Commission staff can send records to the IARA as PDFs rather than hard copies. This eliminates the personnel costs to prepare, scan, and review the documents, and eliminates the delivery and storage costs for the hard copies.

The costs above include the costs necessary to enforce the rule, specifically the following:

No cost to state or local government to enforce the rule. IURC staff already required parties to follow filing and procedure rules. While the content of some rules changed, enforcement duties are not anticipated to increase.

C. Related citations.

The costs or revenues above are related to the following provisions of the rule: 170 IAC 1-1.1-3(a) that requires parties to file through the EFS.

IV. Appropriations, Distributions, or Other Expenditures of Revenue Affected by the Rule.

D. Appropriations.

The following appropriations are potentially affected by this rule:
None.

E. Distributions.

The following distributions are potentially affected by this rule:
None.

F. Expenditures or revenue.

The following expenditures or revenue are potentially affected by this rule:
As discussed in detail in section III(A)(2), above, the State of Indiana will save at least \$107,068 annually as a result of implementation of this rule.

G. Related citations.

The costs or revenues above are related to the following provisions of the rule:
The saved revenues are mostly related to the implementation of 170 IAC 1-1.1-3, which requires electronic filing unless technical problems prevent it.

V. Administrative Impact to State and Local Governments.

The administrative impact to the State of Indiana is explained in detail in section III(A)(2), above.

H. Related citations.

The costs or revenues above are related to the following provisions of the rule:
The saved revenues are mostly related to the implementation of 170 IAC 1-1.1-3, which requires electronic filing unless technical problems prevent it.

VI. Unfunded Mandate.

The Commission determined that the proposed rule does not create an unfunded mandate on a state agency or political subdivision. Parties, including state agencies, are already voluntarily using the EFS rather than filing hard copies. The Office of Utility Consumer Counselor (OUCC) provided financial impact comments stating:

The OUCC has used electronic service of documents extensively for many years, so there weren't significant new savings from reduced expenses for copying, mailing, or courier services. The OUCC is based in a different tower of the same office building in which the IURC is located, so it does not take significant personnel hours to hand-deliver documents for filing with the IURC. However, the OUCC administrative staff has certainly benefitted from added convenience, reduced stress, and some timing savings from the IURC's launching of its electronic filing system.