

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

NOTE: Pursuant to P.L.113-1987, SECTION 1, the name of the public service commission of Indiana is changed to Indiana utility regulatory commission, effective July 1, 1987.

ARTICLE 1. GENERAL PROVISIONS

Rule 1. Practice and Procedure Before the Commission (Repealed)

(Repealed by Indiana Utility Regulatory Commission; filed Oct 30, 2000, 2:10 p.m.: 24 IR 666)

Rule 1.1. Practice and Procedure Before the Commission

170 IAC 1-1.1-1 Application and scope

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 1. This rule shall govern the practice and procedure in matters before the commission arising under the acts of the general assembly conferring powers upon the commission. This rule supersedes 170 IAC 1-1 in its entirety.

(1) Cases and all other matters arising under the jurisdiction of the Indiana utility regulatory commission initiated on or after November 29, 2000, shall be governed in totality by this rule (170 IAC 1-1.1).

(2) Any case or other matter arising under the jurisdiction of the Indiana utility regulatory commission initiated prior to November 29, 2000 (the effective date of this rule) shall be governed in totality by the former rules of practice and procedure found at 170 IAC 1-1.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-1; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; filed Feb 4, 2002, 1:00 p.m.: 25 IR 1875; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670)

170 IAC 1-1.1-2 Definitions

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-1-5; IC 8-1-1.1-2; IC 8-1-1.1-5.1; IC 8-1-2-1; IC 8-1-2-54; IC 8-1.5-1-10

Sec. 2. The following definitions apply throughout this rule:

- (1) "Commission" means the Indiana utility regulatory commission.
- (2) "Complainant" means any person or entity that initiates a formal complaint against a utility under IC 8-1-2-54 or any person or entity who formally requests the commission to initiate an investigation of a utility under Indiana law.
- (3) "Intervenor" means any person or entity, other than:
 - (A) a petitioner;
 - (B) a complainant;
 - (C) the utility consumer counselor; or
 - (D) a respondent;
 who is admitted as a participant in any proceeding conducted before the commission.
- (4) "Party" means any participant in a proceeding before the commission, including:
 - (A) a petitioner;
 - (B) a complainant;
 - (C) the utility consumer counselor;
 - (D) a respondent; or
 - (E) an intervenor.
- (5) "Petition" includes any written request for relief made by a party or parties with standing to seek relief before the commission.
- (6) "Petitioner" means any public or municipally-owned utility or other party that meets the standing requirements of IC 8-1-2-54 seeking relief from the commission.
- (7) "Pleading" means any:
 - (A) petition;

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

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

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

(9) "Respondent" means any person or entity:

(A) required to:

- (i) be named as a respondent by statute, rule, or order of the commission; or
- (ii) respond to any order of the commission; or

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

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

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

(12) "Utility consumer counselor" means the office established pursuant to IC 8-1-1.1-2.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-2; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670)

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 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, Indiana Government Center-South, Suite E306, 302 W. Washington St., Indianapolis, Indiana 46204.

(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.

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

(c) Unless otherwise provided by this rule, the petitioner or other party shall file with the secretary of the commission an original pleading and eight (8) copies, one (1) of which must be unbound and printed only on 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 thirteen (13) copies, one (1) of which must be unbound and printed only on one (1) side of the page, in proceedings assigned to a commissioner and administrative law judge. A presiding officer may require that a different number of copies be filed. Filings other than territorial maps, engineering drawings, or other visual aides must be made on eight and one-half (8½) by eleven (11) inch paper unless otherwise authorized by the presiding officer.

(d) All time periods within which to make filings with the commission are given in calendar days unless otherwise stated. In computing any period of time prescribed or allowed by this rule, by order of the commission or the presiding officer, or by any applicable statute that does not contain a provision regarding computation of time, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is:

- (1) a Saturday;
- (2) a Sunday;
- (3) a legal holiday as defined by state statute; or
- (4) a day that the office in which the act is to be done is closed during regular business hours.

(e) In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a 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 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 by check payable to the "Treasurer of the State of Indiana" and shall be 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*)

170 IAC 1-1.1-4 Confidential or privileged information

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

Affected: IC 5-14-3; IC 8-1-1-8; IC 8-1-2-29

Sec. 4. (a) If a party desires to file with or submit to the commission any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that the party believes is confidential in accordance with IC 8-1-2-29 and IC 5-14-3, the party shall apply for a finding by the commission, on or before the date (if any) 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 pursuant to 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) Subject to the rules of evidence and discovery, information determined not to be confidential shall be deemed automatically withdrawn.

(e) Information filed with or submitted to the commission prior to a finding by the commission that such information is confidential shall be available to the public pursuant to IC 8-1-2-29.

(f) Parties seeking protective orders to prevent or limit discovery of trade secret or other confidential research, development, or commercial information shall make a separate motion under Trial Rule 26(C).

(g) After a determination by the commission that any material is confidential, upon any subsequent filing of such material by a party, the party shall reference the cause number under which the confidentiality determination was made. (*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*)

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

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-34.5; IC 8-1-2-54

Sec. 5. (a) Any individual or entity may informally complain to the commission's consumer affairs division, with respect to any matter within the jurisdiction of the commission.

(b) An informal complaint is without prejudice to the right to file a formal petition under IC 8-1-2-54.

(c) An informal disposition rendered by the commission's consumer affairs division may be appealed by any party thereto under IC 8-1-2-34.5 upon written request for appeal filed with the commission within twenty (20) days after the informal disposition is rendered. Prior to issuing an order on the appeal, the commission shall afford the parties notice and an opportunity to be heard. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-5; filed Oct 30, 2000, 2:10 p.m.: 24 IR 656; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

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*)

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 sign and verify any pleadings or documents in accordance with section 8(d) of this rule [*170 IAC 1-1.1-8(d)*] and to 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 supreme court of Indiana in good standing.

(c) An attorney not admitted to practice before the supreme court of Indiana in good standing but admitted to practice before the Supreme Court of the United States, or the highest court of any other state or territory of the United States, in good standing, may appear at the discretion of the presiding officer before the commission upon filing a verified petition for limited admission to practice before the commission that meets the requirements of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys Rule 3, Section 2(a). Upon being granted limited admission to practice before the commission, an attorney must appear with cocounsel admitted to practice in Indiana. Pending approval of the petition, such an attorney may be permitted to appear, at the discretion of a presiding officer, at any hearing. Local counsel shall sign all briefs, papers, and pleadings in such cause and shall be jointly responsible therefor.

(d) Any withdrawal of appearance by an attorney on behalf of any party must comply with the Indiana Rules of Professional Conduct, be in writing, and be granted by leave of the presiding officer.

(e) Except for good cause shown, the presiding officer may not grant a request for withdrawal of appearance by an attorney unless the request has been 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*)

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; IC 35-44-2-1

Sec. 8. (a) An attorney eligible to practice before the commission shall sign all pleadings filed with the commission or as otherwise required by statute or as follows:

- (1) By the person, if an individual.
- (2) By a partner, if a partnership.

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

(b) Petitions and complaints may be amended or supplemented upon written or oral motion. Leave to amend a petition or complaint shall be freely granted upon failure of any other party to the proceeding to demonstrate undue prejudice. If the amended or supplemented petition or complaint seeks relief substantially different than that originally prayed for, the caption of the petition or complaint shall be revised to accurately describe the relief being sought and republication or renotification of any previously noticed hearing may be required by the commission.

(c) A party may amend his 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 may so amend it at any time within thirty (30) days after it is served. Otherwise a party may amend his 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 the time remaining for response to the original pleading or within twenty (20) days after service of the amended pleading, whichever period may be the longer, unless the presiding officer otherwise orders.

(d) The signature of the party, if an individual, or of a duly authorized representative, if the party is an entity, or of the attorney for the party constitutes a certificate that:

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

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

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

Signed _____
Date _____".

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

(f) Every pleading of a party represented by an attorney must be signed by at least one (1) attorney of record and the attorney's address, telephone number, fax number, and attorney number must be stated, except that 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*)

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 address, telephone number, and fax number.
 - (6) The name of the respondent as required.
 - (7) Specific prayers for the relief requested.
- (b) In any utility rate proceeding where the petitioner in its petition requests a specific test year and cutoff date, the commission

shall, within thirty (30) days following the initiation of such proceeding, 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. The commission may, on its own motion, by order, fix such test year and cutoff date at any time following the filing of any such petition. The commission, a commissioner, or a presiding officer shall confer with the petitioner and the office of the utility consumer counselor before issuing such an order.

(c) In any proceeding in which the petitioner is required by law to publish notice of the filing of the petition, such petitioner shall, following publication of such notice, certify to the commission that such publication has occurred, listing the names of the newspapers and the county or counties in which such notice was published. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-9; filed Oct 30, 2000, 2:10 p.m.: 24 IR 657; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

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 such 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 may be filed with the commission. Answers to complaints must be filed 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 such 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 statutes, rules, regulations, or 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:

- (A) a plain and concise statement of the facts which are deemed to necessitate or justify relief; and
- (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)

170 IAC 1-1.1-11 Petitions to intervene

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 11. (a) A petition to intervene may be filed by any person or entity alleging a substantial interest in the subject matter of the proceeding in which the person or entity requests leave to intervene.

(b) Petitions to intervene shall set out clearly and concisely facts showing the following:

- (1) The proposed intervenor's substantial interest in the subject matter of the proceeding.
- (2) The position of the proposed intervenor with respect to the matters involved in the proceeding.
- (3) Specific prayers for affirmative relief, if desired.
- (4) A prayer for leave to intervene and to be made a party to the proceeding.

(c) A petition to intervene shall be filed not less than five (5) days prior to the date set for the initial public evidentiary hearing on the merits. A petition to intervene may be filed and granted thereafter at the discretion of the presiding officer, upon good cause shown.

(d) If a petition to intervene satisfies this section and shows the proposed intervenor has a substantial interest in the subject matter of the proceeding or any part thereof, and the proposed intervenor's participation will not unduly broaden the issues or result in unreasonable delay of the proceeding, the presiding officer may grant the prayer for leave to intervene, in whole or in part and, thereupon, the intervenor becomes a party to the proceeding with respect to the matters set out in the intervention petition.

(e) An intervenor is bound by all rulings and other matters of record prior to the time the intervenor is made a party and takes the case as the intervenor finds it as of the date of intervention.

(f) Petitions to intervene, when filed with the commission, shall show service thereof upon all parties to the proceeding, in conformity with section 13 of this rule.

(g) A party may object to a petition to intervene, and, absent objection thereto, may be deemed to have waived any objection to the granting of the petition. Any response shall be filed within seven (7) days after service of the petition to intervene and shall be served upon all other parties unless the presiding officer prescribes a different time. Any reply to the responses shall be filed within five (5) days after service of the response unless the presiding officer prescribes a different time. Responses or replies may be made orally at the time of hearing or prehearing conference if there exists insufficient time prior to the hearing or conference to make written response or reply according to the deadlines provided under this section. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-11; filed Oct 30, 2000, 2:10 p.m.: 24 IR 658; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

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 make additional parties, strike out improper parties, or substitute parties;
- (3) to dismiss a proceeding for want of jurisdiction, insufficiency of the petition, or order instituting the same or other sufficient cause;
- (4) for a continuance of a hearing or an extension of time for filing a pleading or for complying with an order; or
- (5) for other appropriate relief.

(b) Motions based on matter which 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 reduced to writing and 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 reduced to writing and 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 issues a final order in the cause or makes a determination upon an appeal of the presiding officer's ruling pursuant to 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*)

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 by United States mail.

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

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

(d) All pleadings, briefs, and other documents filed in proceedings pending before the commission shall be served on all parties in the proceeding on the same day the pleading, brief, or other document is filed with the commission, except as may be otherwise ordered by the commission. 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.

(e) In a proceeding where an attorney has filed a pleading or other document on behalf of a party or has entered an appearance under section 7 of this rule, any notice or other written communication required to be served on or furnished to the party shall be served upon or furnished to the attorney in the same manner as prescribed for the party. When any party has appeared by attorney, service on that attorney is service on the party and separate service on the party is not required.

(f) The date of service is the day the document served is:

(1) deposited in the United States mail; or

(2) delivered in person.

(g) Whenever a party has the right or is required to do some act or take some action within a prescribed period after service on the party of a pleading, notice, or other document by United States mail, that party has three (3) additional days to the prescribed period unless the presiding officer or this rule otherwise provide.

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

(i) A dated certificate of service must accompany and be attached to each pleading or other document filed with the commission when service is required and shall identify those served.

(j) Any interested person or entity who is not admitted to a proceeding as a party may still request to receive mailings of notices, docket entries, orders, and other documents relating to the proceeding mailed by the commission. Such requests may be granted at the discretion of a presiding officer, although any such interested nonparty will not be added to the service list maintained by the secretary of the commission for that proceeding. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-13; filed Oct 30, 2000, 2:10 p.m.: 24 IR 659; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

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*)

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 make possible the more effective use of hearing time in formal proceedings on the merits of a petition or a complaint, and to otherwise expedite the orderly conduct and disposition of those proceedings and to serve the public interest, the commission may require preliminary hearings, which includes prehearing conferences, among parties to the proceedings prior to the commencement of evidentiary hearings on the merits of the petition or complaint. A preliminary hearing 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 that a preliminary hearing be held, and direct 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 preliminary hearing in the proceeding, the preliminary hearing shall be held within forty-five (45) days following the date of filing of the petition.

(c) The following should be considered at the preliminary hearing:

- (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 attend the preliminary hearing unless excused by the presiding officer. They should be fully prepared to discuss all matters involved in the proceeding, both procedural and substantive, and 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) 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 preliminary hearing, 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.

(f) If the parties have previously reached agreement on any or all procedural matters to be considered at a preliminary hearing, the agreement may be reduced to writing and filed for approval in lieu of the preliminary hearing. Commission approval of such an agreement may not be in lieu of a preliminary hearing if a petition to intervene is filed at least five (5) days prior to the date originally set for the preliminary hearing.

(g) The presiding officer at any such preliminary hearing may dispose of any procedural matters during the course of the proceeding.

(h) The presiding officer is authorized, but not limited to, the following actions at the preliminary hearing:

(1) Participate in the discussions.

(2) Arrange for recording stipulations or agreements made at a preliminary hearing.

(3) Fix the date or dates for evidentiary or other hearings on the merits that may be required to dispose of the proceeding.

(4) Otherwise assist the parties to reach agreement that will expedite the proceeding and 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)

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 petitioner, applicant, complainant, respondent, or intervenor may request, in writing, discovery from any other party. Unless otherwise directed by the presiding officer, if the party against whom the discovery is directed does not satisfy such request within ten (10) days following receipt thereof or reach an agreement with the requesting party as to the nature, scope, and time for the requested discovery, the party seeking discovery may make written application to the commission for an order compelling discovery, specifically setting forth and detailing the discovery sought and the reasons why it is thought to be relevant to the issues. The commission 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 in the commission's order. 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 participate in the discussions and assist the parties in resolving discovery disputes. The presiding officer shall reduce to writing in the form of a docket entry any rulings made at the attorneys' conference.

(e) Upon a showing of good cause by the party seeking a protective order, the presiding officer may grant appropriate protective relief. Such appropriate relief may include the convening of an informal attorneys' conference to be conducted off the record of the proceedings for an in camera review of material sought in discovery. Requests for protective orders shall be governed by Rule 26(C) of the Indiana Rules of Trial Procedure. *(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)*

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*)

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 testimony, cross-examination, motions, or 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 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)-(h) [170 IAC 21(f)-(h)] of this rule [section 21(f) through 21(h) 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 [170 IAC 1-1.1-3] 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 prefilings of any testimony without the specific order of a presiding officer or the commission.

(h) Unless otherwise directed by the commission, prefiling testimony, when properly authenticated by the witness under oath or affirmation, may be offered as an exhibit. The written testimony shall be subject to the same rules of admissibility and cross-

examination of the sponsoring witness as if the testimony were being presented orally.

(i) Any party to a proceeding may move in writing for an extension of time in which to prefile testimony. The motion should be filed prior to the time set for the filing of the testimony unless a supporting affidavit establishes that the facts, which are the basis of the motion, did not then exist or were not then known to the moving party. For good cause shown, the presiding officer may reschedule a hearing to a later date, if necessary, and fix the extension of time in which to prefile such testimony in order to avoid undue delay and provide reasonable opportunity for all parties to properly prepare their cases. All parties shall be given an opportunity to object to any motion for extension of time.

(j) With the approval of the presiding officer, corrections or changes in the stenographic record may be made upon the written agreement of all parties of record filed with the commission within ten (10) days after parties have been notified that the stenographic record has been completely transcribed. Other corrections or changes may be made only upon order of the commission.

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

(l) Due legal notice of the initial evidentiary hearing on the merits, having been given and published as required by law, notice of further hearings or other matters agreed upon or ordered by the presiding officer at the hearing do not need to be published. It is the obligation of counsel and parties to a formally docketed cause to keep themselves informed of all actions taken in a proceeding before the commission.

(m) After being duly notified, a party who fails to be represented at a scheduled conference or hearing in any proceeding is deemed to have waived the opportunity to participate in such 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*)

170 IAC 1-1.1-19 Consolidation

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 19. Causes sharing common issues of fact or law may be consolidated at the discretion of a presiding officer. A consolidated cause shall continue to list the captions and cause numbers so consolidated. Where two (2) or more proceedings are consolidated for hearing, the presiding officer shall determine the order in which all the parties introduce evidence. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-19; filed Oct 30, 2000, 2:10 p.m.: 24 IR 663; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

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*)

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 admissibility of evidence.
- (2) Ruling on the qualifications of witnesses.
- (3) 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.

(4) 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.

(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 portion of the testimony in another commission proceeding, such portion shall be plainly designated in the stenographic record, and, if admitted, shall be deemed read in evidence as a part of the testimony in the pending proceeding.

(g) 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 plainly designated in the stenographic record and an exhibit number assigned thereto; and, if admitted, it shall be deemed introduced in evidence without physical production and marking for identification.

(h) With the approval of the presiding officer, verified pleadings or affidavits may be received in evidence as proof of the matters contained therein, provided the affiant or affiants are made available for cross-examination.

(i) The commission shall take administrative notice of any fact that must be judicially noticed by a court of Indiana.

(j) The commission may take administrative notice of relevant administrative rules, commission orders, or other documents previously filed with the commission.

(k) The commission may take administrative notice on its own motion or upon a party's motion.

(l) 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 judicial notice and the tenor of the matter notice. In the absence of prior notification, the request may be made after judicial notice has been taken.

(m) 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.

(n) An *[sic.]* 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*)

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*)

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 or approval by the commission or the presiding officer and at the times fixed therefor.

(b) An original and four (4) copies of all briefs shall be filed with the commission and a copy served by the submitting party upon all other parties to the proceeding, such service and proof thereof to be in accordance with section 13 of this rule [170 IAC 1-1-13]. (*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*)

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 for six (6) months that is not currently set for hearing and upon which action has not been taken by any party.

(b) Prior to such dismissal, the commission shall notify all parties to the proceeding by United States mail of its intention to dismiss. 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*)

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*)

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*)

Rule 1.2. Motor Carrier Practice and Procedure Before the Commission (Transferred)

NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2) to the Department of State Revenue (45 IAC 16-1.5) by P.L.72-1988, SECTION 12, effective July 1, 1988.

Rule 1.5. Ex Parte Contacts

170 IAC 1-1.5-1 Definitions

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5; IC 8-1-2-42; IC 8-1-2-61.5; IC 8-1-34

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).

(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 8-1-34.

(e) "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*)

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*)

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*)

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 or a technical employee directed to file a report in a particular proceeding may not communicate regarding the particular proceeding with members of the commission, attorneys not assigned as settlement judges, or technical employees not assigned to file a report in that particular proceeding. (*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*)

170 IAC 1-1.5-5 Prior communications (Repealed)

Sec. 5. (*Repealed by Indiana Utility Regulatory Commission; filed Dec 3, 2007, 10:30 a.m.: 20080102-IR-170070379FRA*)

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)*

Rule 2. Construction and Filing of Schedules of Rates, Tolls and Charges by Public Utilities

170 IAC 1-2-1 Separate schedules for each location and service

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38

Sec. 1. Separate Schedules. Public utilities operating at more than one location must file separate schedules for each location.

Public utilities operating more than one service must file separate schedules for each service and each location, with the following P.S.C.I. designations:

- Electric light and power service P.S.C.I. No. E
- Gas service P.S.C.I. No. G
- Heating service P.S.C.I. No. H
- Street railway service P.S.C.I. No. SR
- Telephone and telegraph service P.S.C.I. No. T
- Water service P.S.C.I. No. W
- Warehouse and elevator service P.S.C.I. No. WH

Public utilities filing only one class of schedule should not use the above prefixes. *(Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities I; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1765; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

170 IAC 1-2-2 Complete schedules; formulas necessary

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38

Sec. 2. Must Include Formulas, etc. No schedule of rates, tolls and charges is complete, or complies with the law, unless it includes all rules, regulations and formulas that in anywise affect the rates, tolls or charges. (*Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 2; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1765; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-2-3 Form of schedules

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38

Sec. 3. Form of Schedule. All schedules must be in book, sheet or pamphlet form and, in size 8 1/2 by 11 inches (the size of this sheet of paper). Loose-leaf systems may be used so that changes may be made by inserting a single leaf. (*Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 3; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1765; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-2-4 Title page

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38

Sec. 4. Title Page Shall Show. The title page of each schedule shall show the following:

- (1) Name of issuing public utility or utilities and address.
- (2) Number of the Schedule. Every schedule must be consecutively numbered, starting with number one, and prefixed with P.S.C.I. Below this number, placed in the upper right-hand corner, shall appear, in smaller type, the P.S.C.I. number or numbers of schedules thereby cancelled.
- (3) The locality at which the schedule applies. In event the rates, tolls or charges apply between various points, a description of the territory, briefly stated, must be given.
- (4) Reference by name and P.S.C.I. number to any other schedule which may apply in connection with the schedule.
- (5) Date of issue and date effective.
- (6) On every schedule issued on less than statutory (30 days) notice with consent or by order of the Commission, there shall be notation that it is issued under special permission or order of the Public Service Commission of Indiana, No._____, Date_____.
- (7) Name, title and address of officer by whom schedule is issued.
- (8) See Number 2 below.

(*Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 4; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1766; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-2-5 Contents

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38

Sec. 5. Schedule Shall Contain. The schedule itself shall be arranged so as to show the following:

- (1) Index of contents, specifying page or item number, unless it contains so small a volume of matter that it plainly discloses its contents.
- (2) (If a joint schedule) Names of public utilities participating, alphabetically arranged. If the number of participating public utilities is not too great, their names may be shown on title page. The form and number of concurrence of participating public utilities must be shown.

- (3) Explanation of reference marks and technical abbreviations used in schedule.
- (4) Such explanatory statement, in clear and explicit terms, regarding the rates, tolls and charges as may be necessary to remove all doubt as to proper application.
- (5) Rules and regulations, and formulas, which govern the schedule, or in any way affect the rates.
- (6) An explicit statement of the rates, tolls or charges, in cents or in dollars and cents, per unit.

(Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 5; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1766; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)

170 IAC 1-2-6 Amendments and supplements

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

Affected: IC 8-1-2-42

Sec. 6. Amendments and Supplements. A change in, or addition to a schedule shall be known as an amendment. It shall be shown in a supplement to the schedule and shall refer to the page or pages, or item or items of the schedule, or of previous supplement, which it amends. *(Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 6; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1767; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

170 IAC 1-2-7 Change of ownership; common supplements and schedules

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

Affected: IC 8-1-2-42; IC 8-1-2-84

Sec. 7. Change of Ownership. In event of change of ownership, control, or change of name of a public utility, the public utility absorbed, taken over or purchased by another utility, shall unite with that other public utility in common supplements to the schedules on file, withdrawing or accepting and establishing such schedules and all effective supplements thereto. Such common supplements shall be executed jointly by officers of the old and new public utility and be numbered consecutively as supplements to the schedule (even if less than three pages) to which they are directed. Amendments to such schedules must thereafter be filed by the succeeding public utility in consecutively numbered supplements thereto until the schedules are reissued. New schedules reissuing or superseding these shall be numbered in the P.S.C.I. series of the new public utility. In case of abandonment of utility supplement must be filed withdrawing schedules. *(Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 7; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1767; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

170 IAC 1-2-8 Receivership; adoption notice

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

Affected: IC 8-1-2-42; IC 8-1-2-84

Sec. 8. In Event of Receivership. Similar adoption notice must be filed by a receiver when assuming possession and control of the property of a public utility. *(Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 8; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1767; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

170 IAC 1-2-9 Receipt of schedules; acknowledgment

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

Affected: IC 8-1-2-38

Sec. 9. Receipt of Schedules. If acknowledgment of receipt of schedule is desired, the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned when passed upon by the Commission. (*Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 9; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1768; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-2-10 Joint rates defined

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38; IC 8-1-2-41

Sec. 10. Definition of Joint Rates. Joint rates, tolls and charges or rates, tolls and charges in force for service or commodity furnished jointly by two or more public utilities. (*Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 10; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1768; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-2-11 Original filing of rates, tolls and charges

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38

Sec. 11. Original Filing. In those cases in which rates are being filed for the first time, the letter of transmittal must show that the rates, tolls and charges are not in excess of the rates, tolls and charges in force January 1, 1913, unless such increases have been approved by the Commission. (*Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 11; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1768; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-2-12 Address for schedules and related correspondence

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-2-38

Sec. 12. Address for Schedules. All schedules and correspondence relating thereto must be addressed to:

Bureau of Tariffs
PUBLIC SERVICE COMMISSION
OF INDIANA,
State House, Indianapolis, Indiana

(*Indiana Utility Regulatory Commission; No. 17687: Construction And Filing Of Schedules, Rates And Charges By Public Utilities 12; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1768; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

Rule 3. Advertising Expenditures by Public Utilities

170 IAC 1-3-1 Definitions

Authority: IC 8-1-1-3
Affected: IC 8-1-2-1

Sec. 1. Definitions. (A) Where applicable the definitions set forth in Ind. Ann. Stat., Section 54-105, (IC 8-1-2-1) shall be applied to these rules [170 IAC 1-3], and

(B) The word "advertising" shall mean:

(1) Printed and published material and descriptive literature and programs of a public utility used in newspapers, magazines, radio and television scripts, billboards and similar displays.

(2) Descriptive literature and sales aids of all kinds issued by a public utility for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, form letters and bill inserts.

(3) Prepared sales talks to the public.

(4) Other materials and procedures enumerated by rule of the commission which promote or provide information to the public about a public utility.

(C) The word "ratepayer" shall mean any person, firm or corporation, municipality or other political subdivision of the State receiving and paying for services delivered by a public utility. (*Indiana Utility Regulatory Commission; No. 34132: Advertising Expenditures by Utilities Rule 1; filed Dec 29, 1975, 1:35 pm: Rules and Regs. 1976, p. 391; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-3-2 Applicability of rules

Authority: IC 8-1-1-3

Affected: IC 8-1-1-3

Sec. 2. Application of Rules. These rules [170 IAC 1-3] shall apply to any public utility subject to the jurisdiction of the commission which is engaged in the conveyance of telegraph or telephone messages, or in the production, transmission, delivery or furnishing of heat, light, water or power, or in the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage, night soil and industrial waste. (*Indiana Utility Regulatory Commission; No. 34132: Advertising Expenditures by Utilities Rule 2; filed Dec 29, 1975, 1:35 pm: Rules and Regs. 1976, p. 391; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-3-3 Allowable expenditures; includable costs

Authority: IC 8-1-1-3

Affected: IC 8-1-2-4

Sec. 3. Advertising Allowed. (A) No advertising expenditure of a public utility shall be taken into consideration by the commission for the purposes of establishing rates unless such advertising will produce a material benefit for the ratepayers.

(B) Each such public utility should make every effort to minimize advertising expenses and costs.

(C) As used in these rules, advertising expenditures shall include costs of advertising directly incurred by the public utility and those costs of advertising incurred by contribution to parent or affiliated companies. (*Indiana Utility Regulatory Commission; No. 34132: Advertising Expenditures by Utilities Rule 3; filed Dec 29, 1975, 1:35 pm: Rules and Regs. 1976, p. 391; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

170 IAC 1-3-4 Material benefit defined

Authority: IC 8-1-1-3

Affected: IC 8-1-2-4

Sec. 4. Material Benefit. Advertising expenditures which "produce a material benefit" are, without limitation because of enumeration:

(A) advertising limited exclusively to demonstration of means for ratepayers to eliminate energy waste;

(B) advertising conveying safety information in the direct use of energy or equipment using such energy;

(C) demonstration of methods by which ratepayers may reduce their costs and those of the serving public utility;

(D) advertising explaining the use, cost, applicability or availability of new or existing telecommunicating equipment and other public utility services where energy consumption would either be reduced or not materially increased;

(E) advertising means or desirability of decreasing consumption, particularly during shortage and peak periods;

(F) furnishing factual and objective data programs in educational institutions on the subject of energy or communications

technology;

(G) advertising concerning excavation near the location of underground transmission or distribution lines; and

(H) legal advertising required by statute or notices to ratepayers required by statute, rule or order of the commission.

(Indiana Utility Regulatory Commission; No. 34132: Advertising Expenditures by Utilities Rule 4; filed Dec 29, 1975, 1:35 pm: Rules and Regs. 1976, p. 392; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)

170 IAC 1-3-5 Material benefit; burden of proof

Authority: IC 8-1-1-3

Affected: IC 8-1-2-4

Sec. 5. Burden of Proof. The utility shall have the burden of proving that any advertising cost or expenditures proposed for inclusion in its operating expenses for rate making purposes within a given test year fall within the categories enumerated in Rule 4 [170 IAC 1-3-4] or where otherwise of material benefit to its ratepayers. *(Indiana Utility Regulatory Commission; No. 34132: Advertising Expenditures by Utilities Rule 5; filed Dec 29, 1975, 1:35 pm: Rules and Regs. 1976, p. 392; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

170 IAC 1-3-6 Declaration of compliance; hearing; notice

Authority: IC 8-1-1-3

Affected: IC 8-1-1-8; IC 8-1-2-4

Sec. 6. Declaration of Compliance. (A) Before initiating any advertising program or expenditure a public utility may request the commission to issue a declaration of compliance with the above advertising rules.

(B) The commission shall then hold a hearing on the sole issue as to whether the proposed program or expenditure complies with the above rules and issue a declaration in accordance with the evidence presented. Any such declaration shall be res judicata in subsequent rate-making proceedings.

(C) Publication of notice of said hearing shall be made in accordance with the provisions of IC 8-1-1-8. *(Indiana Utility Regulatory Commission; No. 34132: Advertising Expenditures by Utilities Rule 6; filed Dec 29, 1975, 1:35 pm: Rules and Regs. 1976, p. 392; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

170 IAC 1-3-7 Saving clause

Authority: IC 8-1-1-3

Affected: IC 8-1-1-8; IC 8-1-2-4

Sec. 7. Saving Clause. The adoption of these Rules and Regulations [170 IAC 1-3] shall in no way preclude the commission from altering or amending the same, in whole or in part, or from adopting rules or regulations containing other provisions whenever the commission shall deem it in the public interest to do so; and, further, these rules and regulations [170 IAC 1-3] shall in no way relieve any public utility from any of its duties under the laws of this State. *(Indiana Utility Regulatory Commission; No. 34132: Advertising Expenditures by Utilities Rule 7; filed Dec 29, 1975, 1:35 pm: Rules and Regs. 1976, p. 393; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

Rule 4. Mediation

170 IAC 1-4-1 "Mediation" defined

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 1. As used in this rule, "mediation" means an informal and nonadversarial process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties with the objective of helping the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-1; filed Sep 18, 1998, 11:43 a.m.: 22 IR 414; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-2 Agreement to mediate

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 2. Except as otherwise provided in section 4 of this rule, the parties to any proceeding pending before the commission may select any person to act as a mediator. The parties and the mediator shall agree upon an hourly rate or fee for the mediation. The parties shall determine the division of such costs. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-2; filed Sep 18, 1998, 11:43 a.m.: 22 IR 414; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-3 Immunity of mediator

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 3. A mediator appointed and acting under this rule shall have immunity in the same manner and to the same extent as a judge having jurisdiction in the state of Indiana. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-3; filed Sep 18, 1998, 11:43 a.m.: 22 IR 414; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-4 Mediator ineligibility

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 4. A mediator may not be selected to mediate a proceeding if the mediator:

- (1) has an interest in the outcome of the proceeding;
- (2) is related to any of the parties or attorneys in the proceeding; or
- (3) is employed by any of the parties or attorneys involved in the proceeding, or is a member or an employee of the commission.

(*Indiana Utility Regulatory Commission; 170 IAC 1-4-4; filed Sep 18, 1998, 11:43 a.m.: 22 IR 414; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-5 Duties of mediator

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 5. Within ten (10) days of his or her selection by the parties, a mediator for a proceeding under this rule shall do the following:

- (1) Inform the parties of the anticipated cost of mediation.
- (2) Advise the parties that the mediator does not represent either or both of the parties.
- (3) Define and describe the process of mediation to the parties.
- (4) Disclose the nature and extent of any relationship with the parties and any personal, financial, or other interest that may result in bias or a conflict of interest.
- (5) Advise each of the parties to consider independent legal advice.

(6) Disclose to the parties or their attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by both parties.

(7) Inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure.

(8) Inform the parties that they may introduce the written mediated agreement into evidence if the agreement is signed by all parties to the dispute.

(9) Advise the parties of the time, date, and location of the mediation at least ten (10) days in advance unless a shorter period is agreed to by the parties.

(10) Advise the parties of all persons whose presence at the mediation might facilitate settlement.

(Indiana Utility Regulatory Commission; 170 IAC 1-4-5; filed Sep 18, 1998, 11:43 a.m.: 22 IR 414; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-4-6 Individuals present at mediation

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 6. (a) The mediating parties and their attorneys must be present at any mediation session unless otherwise agreed. With the consent of all the mediating parties, nonparties to the dispute may also be present at a mediation session.

(b) All mediating parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the parties.

(c) Mediation sessions are not open to the public and shall be closed to all persons other than the parties of record, their legal representatives, and other invited persons. *(Indiana Utility Regulatory Commission; 170 IAC 1-4-6; filed Sep 18, 1998, 11:43 a.m.: 22 IR 414; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)*

170 IAC 1-4-7 Confidential statements; nonpublic records

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 7. (a) The attorney for each mediating party may submit to the mediator a confidential statement of the proceeding, not to exceed fifteen (15) pages, prior to a mediation conference. The statement submitted under this section shall include the following:

(1) The legal and factual contentions of the respective parties.

(2) The factors considered in arriving at the current settlement posture.

(3) The status of the settlement negotiations to date.

(b) A confidential statement under this section may be supplemented by other exhibits or evidence that shall be made available to the opposing party or the opposing party's counsel at least five (5) days prior to the mediation conference.

(c) A confidential statement shall, at all times, be held privileged and confidential from other parties unless a written agreement to the contrary is provided to the mediator.

(d) If the mediation process does not result in settlement, any submitted confidential statement of the case, exhibit, or evidence shall be returned to the submitting attorney or party. *(Indiana Utility Regulatory Commission; 170 IAC 1-4-7; filed Sep 18, 1998, 11:43 a.m.: 22 IR 415; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)*

170 IAC 1-4-8 Mediator meetings with parties

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 8. In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the case to one (1) or more parties or their representative. This evaluation may be expressed in the form of settlement ranges rather than exact amounts. The mediator may share revealed settlement authority with other parties or their representatives. *(Indiana Utility*

Regulatory Commission; 170 IAC 1-4-8; filed Sep 18, 1998, 11:43 a.m.: 22 IR 415; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-4-9 Termination of mediation

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 9. (a) The mediator shall terminate mediation whenever:

(1) the mediator believes that continuation of the process would harm or prejudice one (1) or more of the parties; or
(2) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely.

(b) At any time, any mediating party may withdraw from mediation. *(Indiana Utility Regulatory Commission; 170 IAC 1-4-9; filed Sep 18, 1998, 11:43 a.m.: 22 IR 415; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)*

170 IAC 1-4-10 Failure to reach agreement; requirements for agreement

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 10. (a) If the mediating parties do not reach any agreement as to any matter as a result of mediation, the mediator shall, with the consent of the parties, identify to the commission any pending motions or outstanding legal issues, discovery process, or other action by any party that, if resolved or completed, would facilitate the possibility of a settlement.

(b) If agreement is reached as a result of mediation, it shall be reduced to writing and signed by the parties. The parties to such an agreement shall then take the procedural steps they believe necessary to seek the commission's approval of the agreement.

(c) If the agreement becomes an order of the commission, in the event of any breach or failure to perform under the agreement, the commission, upon motion, may impose appropriate remedies as permitted by law. *(Indiana Utility Regulatory Commission; 170 IAC 1-4-10; filed Sep 18, 1998, 11:43 a.m.: 22 IR 415; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)*

170 IAC 1-4-11 Ability to mediate subsequent disputes

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 11. A person who has served as a mediator in a proceeding may act as a mediator in subsequent disputes between the parties. However, the mediator shall decline to act in any capacity, except as a mediator, unless the subsequent association is clearly distinct from the mediation issues. *(Indiana Utility Regulatory Commission; 170 IAC 1-4-11; filed Sep 18, 1998, 11:43 a.m.: 22 IR 415; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)*

170 IAC 1-4-12 Conflicts of interest

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 12. A mediator is required to use an effective system to identify potential conflicts of interest at the time of appointment as a mediator. *(Indiana Utility Regulatory Commission; 170 IAC 1-4-12; filed Sep 18, 1998, 11:43 a.m.: 22 IR 415; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)*

170 IAC 1-4-13 Rules of evidence do not apply

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 13. With the exception of privileged communications, the rules of evidence do not apply in mediation, but factual information should be supported by documentary evidence whenever possible. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-13; filed Sep 18, 1998, 11:43 a.m.: 22 IR 416; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-14 Limitation of discovery

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 14. By agreement of the parties, or as ordered by the commission, discovery may be deferred during mediation. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-14; filed Sep 18, 1998, 11:43 a.m.: 22 IR 416; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-15 Mediation regarded as settlement negotiation

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 15. (a) Mediation shall be regarded as a settlement negotiation.

(b) Evidence of conduct or statements made in the course of mediation is not admissible. However, nothing in this rule requires the exclusion of evidence otherwise discoverable merely because it is presented in the course of the mediation process. This rule also does not require exclusion when the evidence is offered for another purpose, such as bias or prejudice of a witness or negating a contention of undue delay. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-15; filed Sep 18, 1998, 11:43 a.m.: 22 IR 416; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-16 Confidential and privileged nature of mediation

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 16. (a) A mediator shall not be subject to any process requiring disclosure of any matter discussed during the mediation. Matters discussed during mediation shall be considered confidential and privileged in nature.

(b) The confidentiality requirement of subsection (a) may not be waived by the parties.

(c) An objection to the obtaining of testimony or physical evidence from mediation may be made by any party or by the mediator. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-16; filed Sep 18, 1998, 11:43 a.m.: 22 IR 416; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-17 Conduct of mediator

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 17. Mediators shall comply with all relevant provisions of Rule 7 of the Indiana Supreme Court Rules for Alternative Dispute Resolution, effective March 1, 1997. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-17; filed Sep 18, 1998, 11:43 a.m.: 22 IR 416; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-4-18 Service

Authority: IC 4-21.5-3.5-1; IC 8-1-1-3
Affected: IC 8-1-1-5

Sec. 18. The parties shall comply with Trial Rule 5 of the Indiana Rules of Trial Procedure, effective January 1, 1970, and including amendments received through February 1, 1997, in serving papers and other pleadings on parties during the course of the mediation. (*Indiana Utility Regulatory Commission; 170 IAC 1-4-18; filed Sep 18, 1998, 11:43 a.m.: 22 IR 416; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

Rule 5. Minimum Standard Filing Requirements

170 IAC 1-5-1 Definitions

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1; IC 8-1-2-42

Sec. 1. (a) Where applicable, terms used in this rule shall have the meaning assigned to them in IC 8-1-2-1.

(b) Where applicable, terms used in this rule shall have the meaning assigned to them in the NARUC Uniform System of Accounts, incorporated by reference at 170 IAC 4-2-2, 170 IAC 5-2-2, 170 IAC 6-2-2, and 170 IAC 8-2-1.

(c) Where applicable, terms used in this rule shall have the meaning assigned to them in the FERC Uniform System of Accounts, incorporated by reference at 170 IAC 4-2-1.1 and 170 IAC 5-2-3.

(d) As used in this rule, "AFUDC" has the meaning as set forth in 170 IAC 4-6-1(b).

(e) As used in this rule, "case-in-chief" means the filing by a utility with the commission of the information required under section 6 of this rule.

(f) As used in this rule, "commission" means the Indiana utility regulatory commission.

(g) As used in this rule, "cutoff" or "cutoff date" means a specific date on which a value is determined for purposes of a proceeding under this rule.

(h) As used in this rule, "CWIP" has the meaning as set forth in 170 IAC 4-6-1(e).

(i) As used in this rule, "demand side management" or "DSM" has the meaning as set forth in 170 IAC 4-8-1(e).

(j) As used in this rule, "electing utility" means a utility that elects to file a case for a general rate change in accordance with this rule.

(k) As used in this rule, "FCC" means the Federal Communications Commission.

(l) As used in this rule, "FERC" means the Federal Energy Regulatory Commission.

(m) As used in this rule, "FERC Uniform System of Accounts" means the rules and regulations governing the classification of accounts applicable to a utility as adopted by the FERC and adopted by reference by the commission for Indiana utilities.

(n) As used in this rule, "major project" means a project that is estimated to cost more than one percent (1%) of a utility's proposed rate base under section 9(1) of this rule.

(o) As used in this rule, "NARUC Uniform System of Accounts" means the rules and regulations governing the classification of accounts applicable to a utility as developed by the National Association of Regulatory Utility Commissioners and adopted by reference by the commission for Indiana utilities.

(p) As used in this rule, "parent corporation" means a corporation that owns or controls more than fifty percent (50%) of the voting stock of an electing utility.

(q) As used in this rule, "post-filing date" means the date two (2) weeks following the date a utility files its case-in-chief in accordance with this rule. (*Indiana Utility Regulatory Commission; 170 IAC 1-5-1; filed Oct 28, 1998, 3:38 p.m.: 22 IR 719; errata filed Nov 22, 1999, 3:32 p.m.: 23 IR 812; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-5-2 Purpose and applicability

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 2. (a) This rule is designed to assist the commission in performing a thorough and expeditious review of an application by an electing utility for a general rate change. The rule is intended to be used to provide support for the electing utility's rate application and to provide supplemental information to facilitate the review of the rate application as filed. The rule is intended as a means to reduce or avoid disputes. The following shall apply to proceedings under this rule notwithstanding any other provisions

of this rule:

(1) This rule shall not limit any rights of the commission or any party to a proceeding to obtain further information from a utility through the discovery process or otherwise.

(2) The submission of information under this rule shall not constitute a waiver of any objection by the commission or any party, including the electing utility, to the admission of the information into the record of any proceeding.

(3) This rule shall not limit a utility's right in a proceeding to supplement the information it files pursuant to this rule, or to seek the admission of supplemental information into the record of a proceeding, as the utility deems appropriate.

(4) This rule shall not be construed to require the production of any information that is subject to or protected by any applicable privilege, or to require the disclosure of any information that is found by the commission to be confidential under section 3 of this rule.

(b) This rule shall apply at the option of the electing utility. A utility exercising its option to file its case in accordance with this rule shall file a notice of its intent to do so at the time it files its application for a general rate change.

(c) A commission finding that the information filed or made available by a utility meets all of the requirements of this rule that are not waived shall constitute a finding as follows:

(1) That the test year proposed by the utility in its application for a general rate case is reasonably representative of the electing utility's ongoing operations.

(2) That the cutoff dates reflected in the information filed by an electing utility shall be the cutoff dates used in a proceeding hereunder.

(3) That the accounting methodology reflected in the information filed by an electing utility conforms with the guidelines set forth in section 5 of this rule.

(4) That, commencing as of the date an electing utility's case-in-chief is deemed in compliance under section 4(d) of this rule, ten (10) months is a reasonable amount of time to complete a proceeding. Accordingly, the presiding administrative law judge and commissioner, if any, assigned to a case will establish procedural dates, including specific dates for the filing of testimony, the holding of a settlement conference, the holding of hearings, the filing of posthearing briefs and proposed orders, and the issuance of a commission order, which will allow completion of the case within ten (10) months from the filing of the electing utility's case-in-chief. In addition, the prehearing conference order should provide that any petition for reconsideration or rehearing not granted within sixty (60) days of filing will be deemed denied. The commission will allow the presiding administrative law judge and commissioner, upon consideration of the comments and circumstances of the parties, the discretion to equitably divide the time allotted to the various procedural steps based upon all relevant factors. However, in general, approximately three (3) months should be allotted for the preparation and issuance of an order after the submission of the final proposed order. The presiding administrative law judge and presiding commissioner, if any, are authorized to extend the procedural schedule to twelve (12) months for good cause shown. Extensions beyond twelve (12) months will only be allowed in extraordinary circumstances upon the concurrence of a majority of the commissioners.

(d) A commission finding that the information filed or made available by a utility meets the requirements of this rule that are not waived shall be a finding as to the completeness of the information for purposes of this rule, and not a finding as to the accuracy or reasonableness of such information.

(e) This rule shall be available for use by all utilities subject to the jurisdiction of the commission; provided, however, that the commission may waive the requirements of this rule, in whole or in part, under section 4(e) of this rule. (*Indiana Utility Regulatory Commission; 170 IAC 1-5-2; filed Oct 28, 1998, 3:38 p.m.: 22 IR 720; errata filed Nov 22, 1999, 3:32 p.m.: 23 IR 812; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-5-3 Confidential or privileged information

Authority: IC 8-1-1-3

Affected: IC 5-14-3; IC 8-1-1-8; IC 8-1-2-29; IC 8-1-2-42

Sec. 3. (a) If an electing utility believes that any information covered by this rule is confidential in accordance with IC 8-1-2-29 and IC 5-14-3, the utility shall apply for a finding by the commission, on or before the date such information is required to be filed hereunder, that such information is confidential. Written applications 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 officer, following an application by the utility 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 information.
- (4) Find that information found not to be confidential should be filed in accordance with this rule unless the utility chooses to cease being an electing utility.
- (5) Find whether the case can be completed in accordance with this rule despite the amount or type of information found to be confidential.

(b) The application required by subsection (a) shall be accompanied by the sworn statement or testimony of a utility representative that describes the nature of the confidential information, the reasons why the information should be treated as confidential information pursuant to IC 8-1-2-29 and IC 5-14-3, and the efforts the utility 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 the confidentiality of information submitted pursuant to 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 pursuant to IC 8-1-1-8.

(d) Subject to the rules of evidence and discovery, information determined not to be confidential shall be deemed automatically withdrawn.

(e) Information filed with the commission prior to a finding by the commission that such information is confidential shall be available to the public pursuant to IC 8-1-2-29.

(f) The failure by a utility to file information required by this rule while an application under subsection (a) is awaiting action by the commission shall not be a basis for a finding by the commission that the utility is not in compliance with the terms of this rule. (*Indiana Utility Regulatory Commission; 170 IAC 1-5-3; filed Oct 28, 1998, 3:38 p.m.: 22 IR 721; errata filed Nov 22, 1999, 3:32 p.m.: 23 IR 812; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-5-4 Filing and responses; waiver

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 4. (a) The information required to be filed or made available by an electing utility shall be filed or made available on the date set forth in this rule unless such requirement is modified or waived in accordance with this rule.

(b) On the date information is filed or made available under this rule by an electing utility, such information shall be available for review by the commission's director of utilities, or his or her designees. Within thirty (30) days thereafter, the director of utilities may file with the commission and serve on all parties to a proceeding a notice that such information does not comply with the requirements of this rule. The notice shall state that the filing is a deficient filing and shall state the requirements necessary to cure any and all deficiencies. The commission shall determine if the alleged deficiencies are deficiencies under this rule and shall order the utility to cure such deficiencies within ten (10) business days of any such determination.

(c) Within twenty (20) days of the date any information is filed or made available by an electing utility, any party to a proceeding may file with the commission a notice that such information does not comply with this rule. The notice shall identify the alleged deficiencies and the requirements necessary to cure the alleged deficiencies. The commission shall determine if the alleged deficiencies are deficiencies under this rule and shall order the utility to cure such deficiencies within ten (10) business days of any such determination.

(d) If a notice of deficiency is not filed pursuant to subsection (b) or (c), the filing of the information shall be deemed in compliance with this rule.

(e) At any time prior to the date information is required to be filed or made available hereunder, an electing utility may request a waiver of compliance with any or all of the requirements of this rule by submitting a written request for a waiver to the director of utilities and serving a copy of such request on all parties to a proceeding.

(f) The granting of a waiver hereunder shall not preclude a party from seeking the information that was the subject of the waiver through discovery or otherwise. (*Indiana Utility Regulatory Commission; 170 IAC 1-5-4; filed Oct 28, 1998, 3:38 p.m.: 22 IR 721; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

170 IAC 1-5-5 Accounting methodology and guidelines for cutoffs

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 5. All information filed by an electing utility under this rule shall conform to the following accounting guidelines:

- (1) The test year shall be historical for a twelve (12) month period, the end of which may not be more than one hundred eighty (180) days prior to the filing of the utility's case-in-chief.
- (2) Accounting data shall be adjusted for changes that:
 - (A) are fixed, known, and measurable for ratemaking purposes; and
 - (B) will occur within twelve (12) months following the end of the test year.
- (3) The general rate base cutoff shall reflect the following:
 - (A) Used and useful property at the end of the test year.
 - (B) The cost of plant, to the extent not offset by growth in the depreciation reserve, may be updated to the date of the hearing on the utility's case-in-chief.
- (4) The cutoff for a major project shall be based on the latest information available at the time of the final hearing in a proceeding hereunder, so long as the following tests are met:
 - (A) The major project is specifically identified in the utility's application for a general rate change.
 - (B) An estimate of the investment to be made by the utility in a major project is included in utility's case-in-chief.
 - (C) The amount included in the utility's rate base with respect to the major project does not exceed the amount of the estimate referred to in clause (B).
 - (D) A monthly investment update is filed with the commission and served on all parties following the filing of a utility's case-in-chief.
 - (E) The major project is declared by the electing utility to be used and useful ten (10) business days before the final hearing.
- (5) A utility's capital structure may be based on the latest information available at the time of the final hearing.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-5; filed Oct 28, 1998, 3:38 p.m.: 22 IR 722; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-6 Filing of case-in-chief

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 6. An electing utility shall submit the following basic accounting exhibits with its case-in-chief under the sponsorship of a witness or witnesses submitting prefiled, direct testimony in support of the utility's request for relief:

- (1) Comparative balance sheets and income statements for the test year and for the twelve (12) month period preceding the test year.
- (2) Revenue requirement calculation.
- (3) Net operating income on a jurisdictional basis:
 - (A) as set forth in the utility's operating financial statements; and
 - (B) as adjusted for ratemaking purposes under present and proposed rates.
- (4) Jurisdictional rate base:
 - (A) as set forth in the utility's operating financial statements; and
 - (B) as adjusted for ratemaking purposes.
- (5) Capital structure and cost of capital, including supporting schedules.
- (6) Gross revenue conversion factor.
- (7) Effective income tax rate for the utility.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-6; filed Oct 28, 1998, 3:38 p.m.: 22 IR 722; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-7 Working papers and data; general information

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 7. On or before the post-filing date, an electing utility shall submit to the commission staff, the office of utility consumer counselor, and any other party to the proceeding that has filed a written request for such information, the following information:

- (1) A map of the utility's service territory.
- (2) A chart of accounts that details the types of charges incurred in specific subaccounts as well as a description of the utility's account numbering and coding format.
- (3) A listing of standard monthly journal entries.
- (4) All annual reports to shareowners and quarterly reports to shareowners of the utility and its parent corporation, if any, for the last two (2) years and the year subsequent to the test year.
- (5) All reports of the utility and its parent corporation, if any, filed with the Securities and Exchange Commission for the test year, the year preceding the test year, and the year following the test year, as available.
- (6) The results of the latest FERC staff audit of the utility for compliance with the FERC Uniform System of Accounts.
- (7) A current listing of the directors and officers of the utility.
- (8) The utility's operating and construction budgets for the test year, and the year following the test year and, as available, a statement of the budgeting assumptions included in those budgets.
- (9) A detailed description of the utility's financial budgeting and forecasting processes.
- (10) For an electric utility, the current system interconnection or operating agreement governing system power operations between affiliates.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-7; filed Oct 28, 1998, 3:38 p.m.: 22 IR 722; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-8 Working papers and data; revenues, expenses, and taxes

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 8. On or before the post-filing date, an electing utility shall submit to the commission staff, the office of utility consumer counselor, and any other party to the proceeding that has filed a written request for such information, the following information:

- (1) Income statements as follows:
 - (A) An unadjusted income statement for the test year.
 - (B) An income statement for the test year under the utility's present rates after adjustments for ratemaking purposes to revenues, expenses, and taxes.
 - (C) An income statement for the test year under the rates being proposed by the electing utility. Expenses reflected in this income statement shall be summarized by the following classifications:
 - (i) Operating expenses by category.
 - (ii) Depreciation.
 - (iii) Taxes other than income.
 - (iv) Operating income before income taxes.
 - (v) Current federal income taxes.
 - (vi) Current state income taxes.
 - (vii) Deferred income taxes.
 - (viii) Income tax credits.
 - (ix) Other charges and credits.
 - (x) Net utility operating income.
- (2) All supporting working papers for each pro forma adjustment listed in subdivision (1), including the following:
 - (A) Actual test year expenses.
 - (B) Adjustments to test year levels.

- (C) A description of adjustment methodology.
- (3) The following actual and budgeted information by month for the test year that shall be identified by rate class, if available, or if not available by rate class, the utility shall provide the data in as much detail as reasonably possible:
 - (A) Operating revenues.
 - (B) Sales or deliveries.
 - (C) Number of customers.
 - (D) Other operating revenues by classification.
- (4) Monthly sales for the test period and monthly unbilled revenues for the test period if recorded.
- (5) Pro forma revenues, sales, or deliveries, and numbers of customers for the test year, including detailed calculations supporting adjustments, if any, for annualization.
- (6) Pro forma revenue adjustment and support therefor relating to the proposed change in any of the following charges:
 - (A) Insufficient funds check charge.
 - (B) Reconnect charge.
 - (C) Disconnect charge.
 - (D) Records charge.
 - (E) Collection charge.
 - (F) Meter testing charge.
 - (G) Meter reading charge.
 - (H) Meter tampering charge.
 - (I) Connection or tap fee.
- (7) The utility's written policies and procedures, if any, related to the write-off of any customer accounts as uncollectible.
- (8) The utility's actual operating expenses by function, account, and subaccount for the test year.
- (9) A schedule detailing purchases for resale of gas, electricity, and water, including costs and volumes purchased during the test year.
- (10) For an electric utility, the following monthly information for the test period, with respect to each electric generating unit that the utility owns or co-owns:
 - (A) Quantities in tons, barrels, or cubic feet of coal, oil, and gas burned.
 - (B) The total heat content in British thermal units for each fuel as burned.
 - (C) The total cost of each fuel burned in dollars.
 - (D) The total cost in cents per million British thermal units of each fuel as consumed.
 - (E) MWH net output.
 - (F) Capacity factor.
- (11) For an electric utility, the following information related to electric generating facility maintenance by station:
 - (A) Actual and budgeted maintenance costs during the test year.
 - (B) Budgeted maintenance schedule for test year and any future period or periods as available.
- (12) For an electric utility, all costs of net purchased and exchanged power by supplier for the test year.
- (13) The number of employees by month for the test year, categorized by a bargaining unit and exempt, and nonexempt employees.
- (14) If the utility has one (1) or more collective bargaining units, the collective bargaining unit agreements in effect during the test year, and any such agreements that will be in effect during the twelve (12) months following the test year.
- (15) Actual payroll dollars charged to construction, operation, and maintenance expense and other accounts for the test year.
- (16) The following information regarding payroll increases by employee category during the test year:
 - (A) The date, percentage increase, and annual amount of each payroll increase.
 - (B) The dates and annual amounts of merit increases granted during the test year.
- (17) A description of the utility's other employee compensation programs paid or granted by the utility during the test year, including, but not limited to, the following:
 - (A) Performance bonuses.
 - (B) Incentive payments.
 - (C) Stock and stock options.
- (18) A list of the categories of benefits provided by the utility to employees, the associated cost of each such category, and the amount charged to operation and maintenance expense during the test year with respect to each.

- (19) The utility's pension expense for the test year and an identification of any unfunded amounts.
- (20) The latest pension actuarial study used by the utility for determining pension accrual.
- (21) The latest actuarial study for other postretirement employee benefits.
- (22) Schedules of net charges by affiliated companies for services rendered during the test year, including the following:
 - (A) An explanation of the nature of services provided.
 - (B) An explanation of the basis of charges.
 - (C) If the charges are allocated, an explanation of the allocation methodology used.
- (23) The monthly amounts of injury and damage:
 - (A) claims paid by the utility; and
 - (B) expense accrued;for the test year.
- (24) Test period data applicable to each DSM program of the utility, including a description of the DSM program conducted, costs related to the program, and the accounting treatment of such costs. The information required by this subdivision shall be provided with reference to the applicable commission orders, if any, regarding each DSM program.
- (25) Expenditures associated with outside, consulting, or legal services incurred by the utility during the test year, and amounting to more than ten thousand dollars (\$10,000) to an individual payee.
- (26) A schedule of all charitable and civic contributions by the utility recorded to utility operations during the test year.
- (27) A schedule of all research and development expenditures incurred by the utility during the test period.
- (28) A schedule of trade, social, and service organization memberships paid during the test year and charged to utility operations.
- (29) A schedule of estimated rate case expenses, including supporting detail, for outside services to be rendered and the expected costs of those services.
- (30) A schedule of expenditures by the utility for advertising during the test year, and representative samples of such advertising by major media category, including, but not limited to, television, radio, and newspaper. The schedule required by this subdivision shall identify expenditures by the following subject matters:
 - (A) Public health and safety.
 - (B) Conservation of energy.
 - (C) Explanation of rates, billing practices, and other administrative matters.
 - (D) Other advertising programs.
- (31) A description of the utility's methodology for capitalizing construction overheads during the test year.
- (32) A description of the allocation methodology of multi-utility common expenses that are allocated to the utility in the rate proceeding covered by this rule.
- (33) A schedule of amounts of taxes other than income taxes paid during the test period for the following categories:
 - (A) Social Security.
 - (B) Unemployment.
 - (C) Public utility fee.
 - (D) Property.
 - (E) Revenue related.
 - (F) Other.
- (34) A schedule of book value and taxing authority assessed value for the determination of real and personal property tax for the test year and, to the extent reasonably available, the latest information subsequent to the test year.
- (35) A schedule of deferred tax balances of the utility at the beginning and end of the test year, respectively, and net provisions and paybacks during the test year.
- (36) Computations showing the deferred income taxes of the utility derived by using accelerated tax depreciation. Separate computations shall be provided for state and federal income taxes.
- (37) A reconciliation of any difference between the deferred tax balance, as shown as a reduction to rate base or as cost-free capital, and the deferred tax balance of the utility as shown on the balance sheet.
- (38) A schedule showing the breakdown of accumulated investment tax credits of the utility, including a description of the methodology used to write off the unamortized balances.
- (39) Supporting working papers for the development of the state and federal composite income tax rate used by the utility during the test year to defer income tax expense.

(40) The calculation of the interest deduction used by the utility to compute income taxes.
(Indiana Utility Regulatory Commission; 170 IAC 1-5-8; filed Oct 28, 1998, 3:38 p.m.: 22 IR 723; errata filed Nov 22, 1999, 3:32 p.m.: 23 IR 812; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-9 Working papers and data; rate base and general information

Authority: IC 8-1-1-3

Affected: IC 8-1-2-6.6; IC 8-1-2-42

Sec. 9. On or before the cutoff date, an electing utility shall submit to the commission staff, the office of utility consumer counselor, and any other party to the proceeding that has filed a written request for such information, the following information:

(1) A summary schedule showing the utility's proposed rate base. Such schedule shall show beginning balances per the utility's books and proposed pro forma adjustments.

(2) The following data for each regulatory asset for which the utility seeks rate base treatment:

(A) Beginning test period balance.

(B) End of test period balance.

(C) Proposed balance to be included in rates.

(D) Where applicable, any commission order, accounting pronouncement, or other authorization establishing such asset.

(3) A schedule showing the fair value of the utility's proposed rate base.

(4) If a utility proposes to add investment in qualified pollution control properties as defined in IC 8-1-2-6.6 to the value of its electric property, a filing that complies with the requirements of 170 IAC 4-6.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-9; filed Oct 28, 1998, 3:38 p.m.: 22 IR 725; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-10 Working papers and data; rate base, utility plant in service

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 10. On or before the cutoff date, an electing utility shall submit to the commission staff, the office of utility consumer counselor, and any other party to the proceeding that has filed a written request for such information, the following information:

(1) Any valuation study performed by or for the utility that serves as the basis for the utility's proposed fair value of its utility plant in service, and any supporting working papers.

(2) A schedule showing end of test period balances for a utility's plant in service and accumulated depreciation on a functional basis.

(3) The utility's construction budget for the test period and, as available, for the period that ends with the cutoff used to determine the plant in service rate base proposed by the utility.

(4) An annual summary of actual net plant additions to a utility's plant in service used to determine the plant in service rate base proposed by the utility, showing plant additions, retirements, and other changes to plant in service for the test year and, as available, for each month subsequent to the test year ending with the cutoff date.

(5) A schedule of pro forma utility additions subsequent to the test year ending with the proposed cutoff date, including the following:

(A) Estimated in service date or dates.

(B) Actual costs per books at the end of the test period.

(C) Estimated cost of utility additions based on costs as defined by the applicable NARUC or FERC Uniform System of Accounts.

(D) Pro forma retirements, cost to retire, or net proceeds received from the sale of property related to the proposed addition to rate base.

(E) For those utility additions that have received CWIP ratemaking treatment, the utility shall show AFUDC as a separate component of cost and include an explanation of the allocation of AFUDC to retail customers receiving service from the utility in Indiana.

(6) A narrative statement of the criteria used to select projects included in the utility's proposed pro forma additions to end of test period plant in service.

(7) A narrative statement of all policies and procedures used to account for the capitalization of AFUDC.

(8) A copy of all commission orders that precertify projects added to end of test period plant in service.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-10; filed Oct 28, 1998, 3:38 p.m.: 22 IR 725; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-11 Working papers and data; rate base, depreciation

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 11. On or before the post-filing date, an electing utility shall submit to the commission staff, the office of utility consumer counselor, and any other party to the proceeding that has filed a written request for such information, the following information:

(1) The cause number and order date of the commission's rate order authorizing the utility's current depreciation rates.

(2) A description of each adjustment proposed by the utility to its book accumulated provision for depreciation and depreciation expense for the test year.

(3) If a utility is seeking a change in its depreciation accrual rates other than a change under 170 IAC 7-5-1, concerning depreciation rates for small local exchange carriers, the utility shall also submit the following information:

(A) The depreciation study performed by or for the utility that serves as the basis for the requested change in depreciation accrual rates.

(B) A copy of any dismantlement or demolition studies performed by or for the utility, the results of which are incorporated into the requested change in depreciation accrual rates.

(C) Supporting working papers for the documents required in clauses (A) and (B).

(Indiana Utility Regulatory Commission; 170 IAC 1-5-11; filed Oct 28, 1998, 3:38 p.m.: 22 IR 725; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-12 Working papers and data; rate base, working capital

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 12. On or before the post-filing date, an electing utility shall submit to the commission staff, the office of utility consumer counselor, and any other party to the proceeding that has filed a written request for such information, the following information:

(1) If the utility is requesting an allowance for cash working capital, a copy of all studies, including working papers, supporting the request.

(2) For an electric utility, a complete description of the fuel inventory level policies used for planning purposes by the utility and copies of all analyses completed within the last three (3) years by or for the utility establishing the optimal fuel inventory level for each generating station.

(3) For an electric utility, when determining the pro forma fuel inventory level to be used for regulatory purposes based on a daily burn concept, the utility shall provide the following information for each generating unit and/or plant:

(A) Tons of fuel consumed for the test period or applicable adjusted period.

(B) The daily burn in tons or gallons.

(C) The pro forma optimal number of days' supply required for each plant or unit.

(D) The pro forma inventory of tons or gallons burned by generating unit or plant.

(E) The fuel cost per ton or gallon.

(F) The per books fuel inventory.

(4) For an electric utility, any request for an adjustment to the utility's proposed fuel inventory level intended to meet normal operations must include a narrative discussion of the factors considered in determining that an adjustment is warranted, as well as a detailed exhibit demonstrating the development of the proposed adjustment.

(5) For a gas utility, the leased and contract storage balances at the beginning of the first month and end of each month of the

test period with the average of thirteen (13) monthly balances shown separately. If any of the balances are not representative of the utility's current operating plan, the utility shall include an explanation of the relevant circumstances.

(6) For a gas utility, a complete description of the gas storage and supply policies used for planning purposes by the utility and copies of all analyses conducted by or for the utility establishing the optimal storage and supply level for the utility's system.

(7) The materials and supplies balances at the beginning of the first month and end of each month of the test period with the average of thirteen (13) monthly balances shown separately. If any of the balances are not representative of the utility's current operating plan, the utility shall include an explanation of the relevant circumstances.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-12; filed Oct 28, 1998, 3:38 p.m.: 22 IR 726; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-13 Working papers and data; rate of return and capital structure

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 13. On or before the post-filing date, an electing utility shall submit to the commission staff, the office of utility consumer counselor, and any other party to the proceeding that has filed a written request for such information, the following information:

(1) Capitalization and capitalization ratios at the end of the test year and at the end of the year beginning twelve (12) months prior to the test year, respectively, including the following information:

(A) Year-end interest coverage ratios for the test year and the year ended twelve (12) months prior to the end of the test year, as well as a pro forma interest coverage under the rates proposed by the utility.

(B) Year-end preferred stock dividend coverage ratios for the test year and the year ended twelve (12) months prior to the end of the test year.

(C) The supporting calculations for the information described in clauses (A) and (B).

(2) The following financial data relating to the utility as of the end of the most recent five (5) fiscal years:

(A) Annual price earnings ratio.

(B) Earnings-book value ratio on a per share basis, using average book value.

(C) Annual dividend yield.

(D) Annual earnings per share in dollars.

(E) Annual dividends per share in dollars.

(F) A book value per share yearly.

(G) Average annual market price per share calculated using monthly high and low share market prices.

(H) Pretax interest coverage ratio.

(I) Posttax interest coverage ratio.

(J) Market price-book value ratio average.

(K) The supporting calculations for the information described in this subdivision.

(3) The utility's capital structure and weighted average cost of capital as of the test year end and as of the latest date reasonably available prior to the post-filing date, respectively, including the following information:

(A) Common equity.

(B) Long term debt, including that maturing within one (1) year.

(C) Other debt, with specificity.

(D) Preferred or preference stock.

(E) Customer deposits.

(F) Sources of cost free capital, including pre-1971 investment tax credit, deferred taxes for ratemaking, and FAS 106 nonexternally funded liabilities.

(G) Post-1970 investment tax credit and other components as appropriate.

(4) The provisions, if any, of the utility's and its parent company's articles of incorporation or similar document and indentures, or other loan documents that describe coverage requirements, limits on proportions of types of capital outstanding, and restrictions on dividend payouts.

(5) The latest prospectus for the utility or its parent company, or both.

(6) A schedule of preferred stock outstanding by series, including current maturities, for the end of the test year and the latest

date reasonably available.

(7) A schedule of long term debt outstanding by series, including current maturities, for the end of the test year and the latest date reasonably available.

(8) A schedule of the following information for the utility as of the end of the test year and as of the latest date reasonably available prior to the post-filing date, respectively:

(A) A computation of the embedded cost rate of long term debt, including the amount maturing within twelve (12) months.

(B) Computation of the embedded cost rates of other debt.

(C) Computation of the embedded cost rates of preferred or preference stock, including amounts maturing within twelve (12) months.

(9) Schedules required by this subdivision should contain all relevant information, including, but not limited to, the following:

(A) Date of issue.

(B) Maturity date.

(C) Dollar amount.

(D) Coupon or dividend rate.

(E) Net proceeds, including discounts and premiums.

(F) Annual interest or dividend paid and balance of principal.

(G) The calculations in this section.

(10) The following information regarding the utility's plans regarding debt, common stock, and preferred stock during the year following the test year end:

(A) Issues that are to be retired or refinanced.

(B) The manner in which the planned refinancing will proceed, that is, sinking fund or refinancing.

(C) The source of the capital to be used to implement the planned refinancing.

(D) The estimated cost rate of new capital, the estimated overall cost of each refinancing operation, and any cost-benefit analyses performed relating to each planned refinancing.

(11) All reports in the utility's possession by rating agencies on the utility and its parent company for the test year, and thereafter up to the post-filing date.

(12) Average monthly balance of short term debt for the test year and the most recently available twelve (12) month period, and the utility's current cost for short term debt.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-13; filed Oct 28, 1998, 3:38 p.m.: 22 IR 726; errata filed Nov 22, 1999, 3:32 p.m.: 23 IR 812; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-14 Working papers and data; other

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 14. On or before the post-filing date, an electing utility shall provide reasonable access to the following information upon the written request of the director of utilities or any party to the proceeding:

(1) Monthly unaudited financial reports for the utility for the test year and for each month subsequent to the test year through the date of the final hearing in the proceeding.

(2) The utility's latest FERC or FCC rate case filing, if any, and latest rate order issued by the FERC or FCC, if any, regarding wholesale or interstate rate changes.

(3) The minutes of the board of director's meetings held during the test year and for the year following the test year.

(4) Internal audit reports prepared during the test year.

(5) Contracts regarding:

(A) gas supply;

(B) gas storage;

(C) purchased electric, water, and coal; and

(D) transportation and rail contracts.

(6) Accounting information documenting monthly charges applicable to the proposed post-test year utility additions and related

retirement projects.

(Indiana Utility Regulatory Commission; 170 IAC 1-5-14; filed Oct 28, 1998, 3:38 p.m.: 22 IR 727; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)

170 IAC 1-5-15 Determination of revenue requirements by customer class

Authority: IC 8-1-1-3

Affected: IC 5-14-3-4; IC 8-1-2-29; IC 8-1-2-61.5

Sec. 15. (a) On or before the post-filing date, an electing utility shall submit a jurisdictional separation study, if applicable, and a class cost of service study to the commission staff.

(b) For an electing utility that is an electric utility or a gas utility, the class cost of service study shall include the following information:

- (1) Allocation of rate base by rate class.
- (2) Pro forma sales revenues at present rates by rate class.
- (3) Allocation of other operating revenues (or miscellaneous revenue or other income) by rate class.
- (4) Allocation of pro forma operating expenses by rate class.
- (5) Rate of return by rate class at present rates.
- (6) Revenues at equal rates of return by rate class at present rates.
- (7) Subsidy or excess at present rates by rate class.
- (8) Revenues at equal rates of return by rate class at proposed rates.
- (9) The proposed dollar and percent subsidy or excess reduction by rate class.
- (10) Revenues at proposed rates by rate class.

(c) For an electing utility that is a water utility, the class cost of service study shall follow the guidelines established in the American Water Works Association Manual, Fourth Edition.

(d) The requirements of this section shall not apply to an electing utility that is described in IC 8-1-2-61.5 or to any electing utility that is seeking an equal percentage change to its basic rates and charges for all customer classes.

(e) Information submitted pursuant to this section shall be provided to the commission staff on three and one-half (3.5) inch or five and one-fourth (5.25) inch diskettes, or any other medium agreed to by the commission. The information shall include all formulas used in completing the jurisdictional study and the class cost of service study, which shall be confidential and protected from disclosure to the public pursuant to IC 5-14-3-4 and IC 8-1-2-29.

(f) If impossible or impractical for an electing utility to provide information in the form described in subsection (e), the electing utility shall make available to the commission staff during normal business hours, on the electing utility's premises, a computer and all software used to create and store the information.

(g) The electing utility shall provide the information submitted to the commission staff pursuant to this section, in the form described in subsection (e), to any other party to the proceeding if the other party and the electing utility enter into a mutually acceptable confidentiality agreement covering the information.

(h) If any party receiving information pursuant to subsection (g) wishes to propose data and methodologies for use in the electing utility's jurisdictional separation study or cost of service study, the party shall provide such information to the commission staff in the form described in subsection (e). The party shall also provide the information to any other party to the proceeding that enters into a mutually acceptable confidentiality agreement covering the information among the party, the electing utility, and the recipient of the information. *(Indiana Utility Regulatory Commission; 170 IAC 1-5-15; filed Oct 28, 1998, 3:38 p.m.: 22 IR 728; errata filed Nov 22, 1999, 3:32 p.m.: 23 IR 812; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315)*

170 IAC 1-5-16 Rate design and tariff filing requirements

Authority: IC 8-1-1-3

Affected: IC 8-1-2-42

Sec. 16. (a) On or before the post-filing date, an electing utility that proposes to modify the underlying structure of its rates shall submit direct written testimony detailing the reason for the proposed rate structure, and indicating the methods used in

developing the proposed rate structure.

(b) On or before the post-filing date, an electing utility shall submit to the commission staff the billing determinants and derived rates used to produce the requested revenue requirement for each proposed charge in a rate schedule or rate group.

(c) On or before the post-filing date, an electing utility proposing to change its nonrecurring charges shall submit direct testimony detailing and justifying the proposed charges. The electing utility shall supply cost justification for the establishment of or a change to the following nonrecurring charges:

- (1) Insufficient funds check charge.
- (2) Reconnect charge.
- (3) Disconnect charge.
- (4) Recharge (establish or change account).
- (5) Collection charge.
- (6) Testing charge.
- (7) Meter reading charge.
- (8) Meter tampering charge.
- (9) Connection or tap fee.

(d) On or before the post-filing date, an electing utility that proposes to modify its terms and conditions of service, rules and regulations, rates and charges, or other tariff provisions shall submit a complete set of tariffs with the commission staff, with additions to the prior tariff shown in bold type, underlined, or italicized, and deletions from the prior tariff.

(e) On or before the post-filing date, an electing utility shall submit bill comparisons to the commission staff showing monetary and percentage changes for a typical residential bill that would result from a requested change in rates and charges. (*Indiana Utility Regulatory Commission; 170 IAC 1-5-16; filed Oct 28, 1998, 3:38 p.m.: 22 IR 728; readopted filed Nov 23, 2004, 2:30 p.m.: 28 IR 1315*)

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