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**TITLE 170 INDIANA UTILITY REGULATORY  
COMMISSION**

LSA Document #99-257(F)

**DIGEST**

Adds 170 IAC 1-1.1 to establish rules concerning matters of practice and procedure before the commission. Repeals 170 IAC 1-1. Effective 30 days after filing with the secretary of state.

**170 IAC 1-1  
170 IAC 1-1.1**

SECTION 1. 170 IAC 1-1.1 IS ADDED TO READ AS FOLLOWS:

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

**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)*

#### **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*)

#### **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*)

#### **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 8-1-2-34.5; IC 8-1-2-54; IC 8-1-1.1-5.1

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*)

**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*)

**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*)

**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*)

#### 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*)

#### **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*)

#### **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)*

#### **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*)

#### 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*)

#### 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*)

#### 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)*

#### 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*)

#### **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*)

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

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

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

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

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

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

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

#### **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)**

**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)**

**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*)

#### 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 8-1-1.1-5; 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*)

#### **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 1-1.1-13]. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-23; filed Oct 30, 2000, 2:10 p.m.: 24 IR 665*)

#### **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*)

#### **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. Further proceedings in the cause shall be governed according to the commission's determination of the appeal.

(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*)

#### **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*)

SECTION 2. 170 IAC 1-1 IS REPEALED.

*LSA Document #99-257(F)*

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