

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

Final Rulemaking

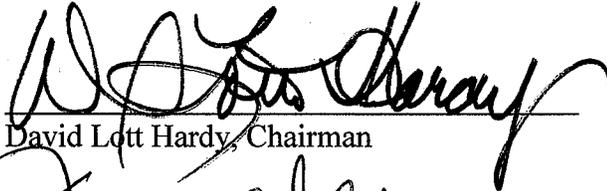
IURC RM #07-03

LSA #07-829(F)

Adding 170 IAC 1-6 to establish procedures for thirty-day administrative filings.

Upon prior publication of notice and a public hearing held on April 17, 2008, at 2:00 p.m., E.D.T. (local time) in Judicial Courtroom 222 of the National City Center, 101 W. Washington Street, Indianapolis, Indiana, as required by the provisions of I.C. 4-22-2-1, *et seq.*, the Indiana Utility Regulatory Commission, on June 11, 2008, at 2:00 p.m. E.D.T. in Judicial Courtroom 222, National City Center, Indianapolis, Indiana at which time a majority of members of said Commission were present, adopted the foregoing rule.

The Secretary is hereby directed to submit the aforesaid rule to the Attorney General and Governor of Indiana, for their approval of same, and thereafter to submit the aforesaid rule to the publisher, Indiana Register.



David Lott Hardy, Chairman



Jeffrey E. Golic, Commissioner



Larry S. Landis, Commissioner



Gregory D. Server, Commissioner



David E. Ziegner, Commissioner

ATTEST:



Brenda A. Howe, Secretary to the Commission

Date: JUN 11 2008

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Final Rule

LSA Document #07-829(F)

DIGEST

Adds 170 IAC 1-6 to establish procedures for 30-day administrative filings with the commission. Effective 30 days after filing with the Publisher.

170 IAC 1-6

SECTION 1. 170 IAC 1-6 IS ADDED TO READ AS FOLLOWS:

Rule 6. Thirty-Day Administrative Filing Procedures and Guidelines

170 IAC 1-6-1 Policy and scope

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

Affected: IC 8-1-1-5

Sec. 1. (a) This rule is intended to establish thirty (30) day administrative filing procedures for certain requests by a utility for changes in:

- (1) its rates;
- (2) its charges;
- (3) its rules;
- (4) its regulations; or
- (5) any combination of subdivisions (1) through (4);

that are outside the context of a general rate case and that are not subject to other commission rules establishing specific filing requirements for the subject matter of the filing.

(b) Under IC 8-1-1-5 and as defined in this rule, only noncontroversial filings may be approved under this rule.

(c) A period of thirty (30) days from the date the filing is received by the commission is the minimum amount of time in which approval of changes to rates and charges may occur under IC 8-1-2-42(a), unless the commission has approved an order prescribing a different time frame.

Additional time may be required for reasons including, but not limited to, the following:

- (1) Objections under section 7 of this rule.
- (2) Failure to follow the procedures as provided in this rule.
- (3) Failure to respond promptly to inquiries from:
 - (A) commission staff; or
 - (B) OUCC staff.

- (4) Complex filings.
- (5) Incomplete filings.

(d) The regulatory framework contained in this rule is intended to facilitate expedited consideration of administrative filings that do not require a hearing.

(e) To ensure that a utility's filing under this rule is consistent with the purpose of the

procedures in this rule, the commission division will:

- (1) review and evaluate the filing; and
- (2) recommend to the commission approval or denial;

subject to the provisions of section 8 of this rule. The commission will make the final determination regarding whether the filing is approved or disapproved. (*Indiana Utility Regulatory Commission; 170 IAC 1-6-1*)

170 IAC 1-6-2 Definitions

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

Affected: IC 8-1-2-54

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

- (1) "Commission" means the Indiana utility regulatory commission.
- (2) "Commission division" means the technical division of the commission for the industry to which the utility making the filing under this rule belongs.
- (3) "Conference" means the official regularly scheduled meeting of the commission at which orders and utility articles are presented for approval.
- (4) "Customer" means any:
 - (1) person;
 - (2) firm;
 - (3) corporation;
 - (4) municipality;
 - (5) government agency; or
 - (6) any other entity;that has agreed, orally or otherwise, to pay for service received from a utility.
- (5) "Filing date" means the date a filing under this rule is received and file stamped by the secretary of the commission.
- (6) "New rate" means a rate or charge for utility service not currently encompassed by the utility's tariffs.
- (7) "Noncontroversial filing" means any filing regarding which no person or entity has filed an objection as provided under section 7 of this rule.
- (8) "Nonrecurring charge" means a charge to a utility customer for costs incurred by the utility outside the context of month-to-month service, which shall include, but not be limited to, the following:
 - (A) Customer deposits.
 - (B) Customer checks returned to the utility due to insufficient funds.
 - (C) Connect fees.
 - (D) Reconnect fees.
 - (E) Tap fees.
- (9) "OUCC" means the Indiana office of utility consumer counselor.
- (10) "Rate" means base rates and charges incident to the provision of usual and customary utility service on a month-to-month basis.
- (11) "System development charge" or "SDC" means a one (1) time fee assessed to new customers of water or sewer utilities to help finance development of utility systems, mainly those dealing with facilities for production, treatment, or storage necessary to serve those new

customers. The term includes the following:

- (A) Impact fee.
- (B) Availability fee.
- (C) Capacity fee.

(12) "Utility articles" means the summary of filings under this rule and the recommendations of the commission division, which are presented to the commission at conference.

(Indiana Utility Regulatory Commission; 170 IAC 1-6-2)

170 IAC 1-6-3 Allowable filings

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

Affected: IC 8-1

Sec. 3. The following types of filings are allowable under the procedures and guidelines of this rule:

- (1) Rates and charges for new services.
- (2) New rules and regulations of the utility.
- (3) Changes to rules and regulations of the utility.
- (4) Nonrecurring charges.
- (5) Changes to rates and charges so long as the change:
 - (A) is revenue neutral within a specific rate schedule; or
 - (B) results in an overall decrease in the revenues of the utility and is done on an across-the-board basis to all classes of customers.
- (6) A filing for which the commission has already approved or accepted the procedure for the change.
- (7) Any other filing as may be ordered by the commission to be filed under this rule.

(Indiana Utility Regulatory Commission; 170 IAC 1-6-3)

170 IAC 1-6-4 Prohibited filings

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

Affected: IC 8-1

Sec. 4. The following types of filings shall not be allowed under this rule:

- (1) Increases to any existing rates.
- (2) Rules and regulations of the utility that would:
 - (A) violate the commission's rules and regulations as found in this title; or
 - (B) have the effect of being more lenient to the utility than the commission's rules and regulations.
- (3) A general rate increase.
- (4) Class rate restructuring.
- (5) SDCs.
- (6) Approval of financing.
- (7) Any request that is inconsistent with a commission order dealing with the subject matter of the request.
- (8) Any filing for which the utility wants confidential treatment for all or part of the filing.

(9) Any:

- (A) rates;**
- (B) charges;**
- (C) rules;**
- (D) conditions of service; or**
- (E) change thereto,**

that the commission in its discretion determines should not be processed under this rule.

(Indiana Utility Regulatory Commission; 170 IAC 1-6-4)

170 IAC 1-6-5 Filing requirements

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

Affected: IC 8-1

Sec. 5. (a) Each filing under this rule shall include the following:

(1) A cover letter clearly stating:

- (A) that the filing is being made under this rule;**
- (B) the purpose of the filing;**
- (C) the need for what is being requested; and**
- (D) why the filing is an allowable request under section 3 of this rule.**

(2) Contact information for the utility regarding this filing, including the following for each person to be contacted:

- (A) The name of the person or persons to be contacted.**
- (B) Telephone number.**
- (C) Mailing address.**
- (D) Either:**
 - (i) an electronic mailing address; or**
 - (ii) a facsimile number.**

(3) Tariff sheet or sheets.

(4) All work papers supporting the filing, including revenue and cost projections, which must be clearly explained and include clear explanations of the following:

- (A) All assumptions used;**
- (B) Whether the data used is actual or estimated. It is presumed that actual data shall be used in all supporting calculations. If it is necessary to use estimated data, the utility shall state the following:**
 - (i) The reasons the estimated data is being used.**
 - (ii) How the estimated data was derived.**
 - (iii) Why the estimated data should be used.**
- (C) The source of the data.**
- (D) Models or methodologies employed.**

(5) A verified statement by the utility:

- (A) affirming that affected customers have been notified as required under section 6 of this rule;**
- (B) stating in detail the means used for notification; and**
- (C) including copies of any written means of notification.**

(b) A copy of the items listed in subsection (a) shall be provided to the OUCC on the filing

date.

(c) The items listed in subsections (a) and (b) may be provided in:

(1) electronic format to the commission and the OUCC:

(A) via electronic mail; or

(B) on a compact disk; or

(2) paper format with:

(A) three (3) copies provided to the commission; and

(B) one (1) copy provided to the OUCC.

(d) A filing submitted under this rule shall be addressed to the "Secretary of the Commission", who shall distribute the filing to the appropriate commission division. (*Indiana Utility Regulatory Commission; 170 IAC 1-6-5*)

170 IAC 1-6-6 Notice requirements

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

Affected: IC 8-1

Sec. 6. (a) A utility that intends to make a filing under this rule shall provide notice prior to the filing date by:

(1) posting the notice described in subsection (b):

(A) in a public place at the utility's local customer service office or offices, to the extent the utility has such offices; and

(B) in an obvious place on the utility's website, which at a minimum is a link on the Indiana homepage of the utility's website, if the utility has a website; and

(2) publishing the notice described in subsection (b) in at least one (1) newspaper of general circulation that has a circulation encompassing the highest number of the utility's customers affected by the filing.

(b) At a minimum, the notice shall contain the following information:

(1) A brief but accurate description of the filing, including the following:

(A) The nature of the filing.

(B) Which customers may be affected.

(C) How those customers may be affected.

(2) The expected filing date.

(3) The date by which approval of the filing is expected.

(4) The contact information, to which an objection should be made, for both the:

(A) secretary of the commission; and

(B) OUCC.

(c) If a utility filing under this rule is already required to provide notice pursuant to a commission order, the notice requirements may be combined into one (1) notice; however, the notice at a minimum shall contain the information required in subsection (b).

(d) Commission staff shall post the filing to the commission's electronic gateway as soon as possible on or after the filing date. (*Indiana Utility Regulatory Commission; 170 IAC 1-6-6*)

170 IAC 1-6-7 Objections

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

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

Sec. 7. (a) If any person or entity has an objection to a filing made under this rule, the objection shall be submitted to the secretary of the commission.

(b) The objection must be as follows:

(1) In writing in:

(A) paper; or

(B) electronic format.

(2) Based on a statement that at least one (1) of the following applies to the filing:

(A) It is a violation of:

(i) applicable law;

(ii) a prior commission order; or

(iii) a commission rule.

(B) Information in the filing is inaccurate.

(C) The filing is:

(i) incomplete; or

(ii) prohibited under section 4 of this rule.

(c) The commission division shall promptly notify the utility, via electronic mail or facsimile, of any objections it receives. Within ten (10) calendar days following notification by the commission division, the utility may submit one (1) or more of the following:

(1) A response to the objection.

(2) Clarification of the filing.

(3) Additional information.

(4) An amendment to the filing.

(5) A withdrawal of its filing.

A filing may be withdrawn at any time before it is presented to the commission for approval under section 8 of this rule.

(d) If the objection is resolved to the satisfaction of the:

(1) objector;

(2) utility;

(3) OUCC; and

(4) commission division;

the filing may continue through the recommendation and approval process in section 8 of this rule. Otherwise, if the filing has not been previously withdrawn by the utility, the filing, under IC 8-1-1-5, shall not be presented to the commission for consideration upon an objection that complies with this section.

(e) If an objection that complies with this section is not received by the commission at least three (3) business days before the filing is approved, the objection may still be:

(1) a basis for an investigation by the commission;

(2) used as part of a complaint that complies with:

(A) IC 8-1-2-54; or

(B) IC 8-1-2-34.5(b); and

(3) considered by the commission in accordance with the commission's procedural rules and evidentiary standards in subsequent related filings by the utility.

(f) Nothing in this rule shall restrict:

(1) a person's or entity's rights regarding, or access to, the complaint processes and

- procedures of the commission; or
- (2) the commission's investigatory authority.

(Indiana Utility Regulatory Commission; 170 IAC 1-6-7)

170 IAC 1-6-8 Commission approval

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

Affected: IC 8-1

Sec. 8. (a) The commission division shall review the filings for its respective utility industry and promptly inform the utility of any:

- (1) missing information;**
- (2) incomplete information; or**
- (3) additional information;**

it requires to complete review of the filing.

(b) Upon completing its review, the commission division shall recommend the filing for approval or denial by the commission. If the commission division recommends the filing be denied, it shall notify the utility of its decision in writing via electronic mail or facsimile at least five (5) calendar days prior to submitting its recommendations to the commission. The utility may withdraw its filing at any time prior to the submission of the commission division's recommendations to the commission.

(c) If the utility has not previously withdrawn the filing, the commission division shall submit:

- (1) a description of the filing; and**
- (2) the commission division's recommendation;**

to the utility articles for consideration at the next conference, which shall be at least thirty (30) days after the filing date unless the commission has approved an order prescribing a different time frame.

(d) A utility may do the following:

- (1) Withdraw its filing at any time without approval of the commission.**
- (2) Resubmit a filing that has previously been:**
 - (A) withdrawn by the utility; or**
 - (B) denied by the commission.**

(Indiana Utility Regulatory Commission; 170 IAC 1-6-8)

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

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

Affected: IC 8-1

Sec. 9. (a) The ex parte rules of the commission in 170 IAC 1-1.5 do not apply to communications made in association with a filing under this rule.

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

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

(Indiana Utility Regulatory Commission; 170 IAC 1-6-9)