



The State Agency Representing
Hoosier Utility Ratepayers

July 14, 2026

Beth Heline, General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 East
Indianapolis, IN 46204

VIA EMAIL: URCCComments@urc.in.gov

RE: OUCC Comments_LSA # 26-167

Greetings –

In response to the IURC's *Notice of First Public Comment Period* regarding IURC RM #26-03 / LSA #26-167, please accept the below comments and attached suggested edits on behalf of the Indiana Office of Utility Consumer Counselor. The proposed edits to the IURC's draft rule revisions are intended to tighten-up the IURC's rules around ex parte communications, the objective being to instill transparency and preserve the public's trust in adjudications and other regulatory proceedings before the IURC. Thank you for the opportunity to comment on this rulemaking. We appreciate your consideration of these recommendations.

The OUCC suggests defining an "ex parte communication" in 170 IAC 1-1.5-1 of the rule and then carving out any/all exceptions or exclusions further down in the Section. By doing so, if the rule doesn't explicitly identify an exclusion in the plain text of the rule, then the presumption would be that the communication is ex parte. This will serve to remove any ambiguity regarding whether communication is permissible or proscribed.

The OUCC suggests deleting the arbitrary time restriction under 170 IAC 1-1.5-2 (*i.e.* "30 days before the date of filing") around "pending proceedings" from the rule and clarifying in the definition of "ex parte communication" that an ex parte communication can potentially occur at any time. This will serve to eliminate any appearances of inappropriateness inherent in meeting with the utilities 31 days prior to the filing of a petition.

The OUCC suggests broadening the definition of "proceeding" in 170 IAC 1-1.5.1(d) to include not only formally docketed proceedings but also other administrative actions or adjudications before the commission that are not explicitly excluded as an ex parte communication elsewhere in the rule.

The OUCC suggests narrowing the very broad IRP exclusion in 170 IAC 1-1.5-1(d)(4) so that it excludes only public comments submitted pursuant to 170 IAC 4-7-2.2.

The OUCC suggests striking the informal investigations exception in 170 IAC 1-1.5-1(d)(5) entirely, as any benefits or efficiencies that this exclusion may provide to the IURC are outweighed by the risks and appearance of engaging in ex parte communication.

The OUCC suggests striking 170 IAC 1-1.5-2 entirely (re: pending proceedings) as its only purpose is to create an arbitrary outer time limit around ex parte communication.

The OUCC suggests taking out all of the “particular” proceeding language in 170 IAC 1-1.5-3 and 170 IAC 1-1.5-4 to improve readability and to avoid confusion as to the scope and applicability of the rule.

Finally, the OUCC suggests deleting the new “specific issue of fact or law to be decided” language in 170 IAC 1-1.5-3 to improve readability and to avoid confusion as to the scope and applicability of the rule.

The OUCC thanks you for taking the time to consider and to incorporate these suggestions. Please let me know if you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "Abby R. Gray". The signature is fluid and cursive, with the first name "Abby" and last name "Gray" clearly distinguishable.

Abby Gray, Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, IN 46204
(317) 232-4691

Cc: Steve Davies, General Counsel
Olivia Rivera, Director External Affairs

Rule 1.5. *Ex Parte* Contacts

SECTION 34. 170 IAC 1-1.5-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-1 Definitions

Authority: IC 8-1-1-3

Affected: IC 8-1-2; IC 8-1-32.5; 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) ~~“File a report” means written testimony filed by or oral testimony presented by, or both, a technical employee in a pending proceeding.~~

(c) “*Ex parte* communication” means any oral or written communication made at any time and relevant to the merits of a docketed proceeding or other proceeding not explicitly excluded per subsection (d), below, that was neither on the record nor on reasonable prior notice to all parties and that takes place between entities identified in Section 3(a)(1)-(6) and the commission or employees of the commission, including attorneys assigned to a proceeding as an administrative law judge.

~~(d)(ed)~~ “Formal public hearing” means a hearing contemplated by IC 8-1-2-61.5.

~~(e)(dd)~~ “Proceeding” means a formally docketed proceeding or other administrative action or adjudication before the commission. ~~The term and does not include non-docketed matters, including, but not limited to, 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), even if a public field hearing occurs.

(4) A document ~~or meeting~~ public comment related to integrated resource planning submitted pursuant to 170 IAC 4-7-2.2.

~~(5) An informal investigation including, but not limited to, investigations permitted by the following until a time the matter may become a proceeding:~~

~~(A) Information and answers submitted under IC 8-1-2-52.~~

~~(B) Examination of records under IC 8-1-2-53.~~

~~(C) Complaints against a public utility under IC 8-1-2-54.~~

~~(D) Investigations of public utilities under IC 8-1-2-58.~~

(5) Investigations and records related to damage to an underground pipeline under IC 8-1-26.

~~(6)~~**(67)** An investigation and disposition by the consumer affairs division of the commission under IC 8-1-2-34.5.

~~(7)~~**(78)** An application or notice of change form filed under IC 8-1-

32.5. ~~(8)~~**(89)** An application or notice of change form filed under IC 8-1-34.

~~(f)~~**(ee)** “Public field hearing” means a hearing conducted in a county in which the utility provides service for the purpose of allowing the utility’s customers and others with a substantial interest in the matter who are not parties to offer comments. It is not a formal public hearing contemplated by IC 8-1-2-61.5.

~~(g)~~**(ff)** “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; filed Sep 29, 2009, 3:49 p.m.: 20091028-IR-170090212FRA; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA; readopted filed Apr 15, 2020, 12:02 p.m.: 20200513-IR-170200084RFA; filed Jun 10, 2020, 7:38 a.m.: 20200708-IR-170190378FRA)

SECTION 35. 170 IAC 1-1.5-2 IS AMENDED TO READ AS FOLLOWS **REPEALED**:

~~170 IAC 1-1.5-2 Pending proceeding~~

~~Authority: IC 8-1-1-3~~

~~Affected: IC 8-1~~

~~Sec. 2. For purposes of this rule, a proceeding is considered pending from thirty (30) days before the date of filing until to the date the commission issues a final order in the proceeding and until:~~

- ~~(1) petitions for rehearing or reconsideration and appeals to a court of appellate jurisdiction have been determined or decided;~~
- ~~(2) 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; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA; readopted filed Apr 15, 2020, 12:02 p.m.: 20200513-IR-170200084RFA; filed Jun 10, 2020, 7:38 a.m.: 20200708-IR-170190378FRA)

SECTION 36. 170 IAC 1-1.5-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-3 ~~Violations~~ Prohibited Communications

Authority: IC 8-1-1-3

Affected: IC 8-1

Sec. 3. (a) Unless required for the disposition of *ex parte* matters specifically authorized by statute, rule, or order of the commission, members of the commission and its employees, unless exempt in 3(c) 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 an **a specific issue of fact or law to be decided** in a proceeding while the proceeding is pending engage in *ex parte* communications with:

(1) a party to the proceeding;

(2) a party's employee, attorney, or representative;

(3) an entity known to act on behalf of a party;

(4) a 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 pre-adjudicative stage;

(5) an attorney assigned as counsel to a member of commission staff designated as testimonial staff in ~~a particular~~ the proceeding; or

(6) a technical employee ~~directed to file a report~~ **designated as testimonial staff** 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 an **issue of fact or law to be decided** in a proceeding while the proceeding is pending engage in *ex parte* communications with:

(1) a member of the commission;

(2) an attorney assigned to a particular proceeding not explicitly excluded per under

Section 1(d)(1)-(8) as an administrative law judge; or

(3) a technical employee assigned to advise the commission in a particular proceeding not explicitly excluded per under Section 1(d)(1)-(8); without notice and opportunity for all parties to participate in the communication.

(c) For the purposes of this rule, the director and staff of the commission's consumer affairs division are not parties in docketed proceedings and may be communicated with at any time, including after a consumer affairs division decision or referral is docketed before the commission, by members and employees of the commission and by those listed in subsection (a).

(d) This section does not prohibit a person from communicating *ex parte* with a member or employee of the commission with respect to undisputed administrative or procedural matters in connection with a proceeding.

~~(e) Only to the extent not otherwise inconsistent with this rule, a person may make educational or informational communications that are not intended to persuade or advocate a position on an issue of fact or law to be decided 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; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA; readopted filed Apr 15, 2020, 12:02 p.m.: 20200513-IR-170200084RFA; filed Jun 10, 2020, 7:38 a.m.: 20200708-IR-170190378FRA)

SECTION 37. 170 IAC 1-1.5-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-4 Communication within the commission

Authority: IC 8-1-1-3

Affected: IC 8-1

Sec. 4. (a) Except as provided in subsection (b), members of the commission, its attorneys, and technical employees may communicate with one another regarding a particular proceeding pending before the commission.

(b) An attorney assigned as counsel to a member of commission staff who is designated as testimonial staff in a proceeding, ~~a technical employee directed to file a report assigned as testimonial staff in a particular proceeding~~, or a member of commission staff who is designated as testimonial staff may not communicate regarding the particular proceeding with members of the commission, attorneys not assigned as counsel to a member of commission staff who is designated as testimonial staff, or technical employees ~~not assigned~~

~~to file a report assigned to advise the commission in that particular proceeding, or designated as testimonial staff.~~ Members of the consumer affairs division as defined by 170 IAC 16-1-2 are not testimonial or technical staff.

(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; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA; readopted filed Apr 15, 2020, 12:02 p.m.: 20200513-IR-170200084RFA; filed Jun 10, 2020, 7:38 a.m.: 20200708-IR-170190378FRA)

SECTION 38. 170 IAC 1-1.5-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-6 Disclosure

Authority: IC 8-1-1-3

Affected: IC 8-1

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) written communications received;

(B) written responses to the communication; and

(C) a memorandum stating:

(i) the substance of oral communications received;

(ii) oral responses made; and

(iii) the identity of a person from whom an *ex parte* communication was received; and

(2) advise the parties that the items in subdivision (1) have been tendered to the record. The presiding officer shall admit into the record items tendered under this section.

(b) A 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 a proceeding in which a communication has been disclosed in accordance with subsection (a), the commission **or presiding officers** may ~~determine whether~~ **require** additional action ~~is if~~ necessary 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; readopted filed Jul 29, 2014, 8:39 a.m.: 20140827-IR-170140181RFA; readopted filed Apr 15, 2020, 12:02 p.m.: 20200513-IR-170200084RFA; filed Jun 10, 2020, 7:38 a.m.: 20200708-IR-170190378FRA)