

Indiana Utility Regulatory Commission Administrative Hearing Process and Commission Orders

**Scott R. Storms
Chief Administrative Law Judge**

April 18, 2006

How Things get Started

Petition Filed with the Commission

- The Commission conducts its regulatory review through docketed proceedings. Each Petition is assigned a unique cause number and file marked with the date of filing.
- An Administrative Law Judge, along with staff from the Commission's various technical divisions, is assigned to each docketed proceeding. In addition, it is not uncommon for a single Commissioner to be assigned to matters filed with the Commission.



Public Notice and Scheduling a Proceeding



Public Notice

- Commission Hearings are open to the public and the public must be notified of the proceeding
 - Notice ten (10) days prior to the date of the proceeding
 - Newspapers of general circulation, printed and published in the English language
 - Notice in the part of the state where the company is located and in the local community that will be impacted by the case.
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Types of Hearings Before the Commission

➤ Prehearing Conference

- Initial hearing in a case
- Commission issues a Prehearing Conference Order

➤ Evidentiary Hearing

- Parties present formal testimony to the Commission

➤ Field Hearing

- Additional hearing that is held in local community
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Types of Hearings Before the Commission

➤ Prehearing Conference

- Publicly noticed in newspapers of general circulation
- Open to the public
- Used to establish a procedural schedule
 - Dates to prefile testimony for the petitioner and other parties
 - Date scheduled for the Evidentiary Hearing
 - Rules of Discovery

Types of Hearings Before the Commission

➤ Evidentiary Hearing

- Publicly noticed, open to the general public
 - Prefiled testimony distributed in advance to all parties
 - Parties may intervene in the proceeding
 - Testimony presented by the parties under oath
 - Witnesses are subject to cross examination by the other parties to the proceeding
 - Formal record of the proceeding is created by the Commission
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Types of Hearings

➤ Public Field Hearing

- Opportunity for the general public to speak directly to the Commission
 - Publicly noticed and conducted in the community that is impacted by the case
 - Held in the evening at a local facility that can accommodate a large number of people.
 - Field Hearing is in Addition to the Prehearing Conference and Evidentiary Hearings
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Conduct of Hearings Before the Commission



Hearing Procedures

- Administrative Law Judge presides over all Hearings
 - Proceeding open to the public
 - Proceeding is placed “on the record” by a court reporter
 - Witnesses are subject to cross examination by other Parties
 - Witnesses may be asked clarifying questions by the Administrative Law Judge or the Commissioners
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Hearing Procedures

- Indiana Office of the Utility Consumer Counselor (“OUCC”)
 - The OUCC is the statutory representative of the public in all proceedings before the Commission
 - Represents the interests of the ratepayers in a proceeding
 - Prefiles testimony and participates in a case like all other parties to a proceeding

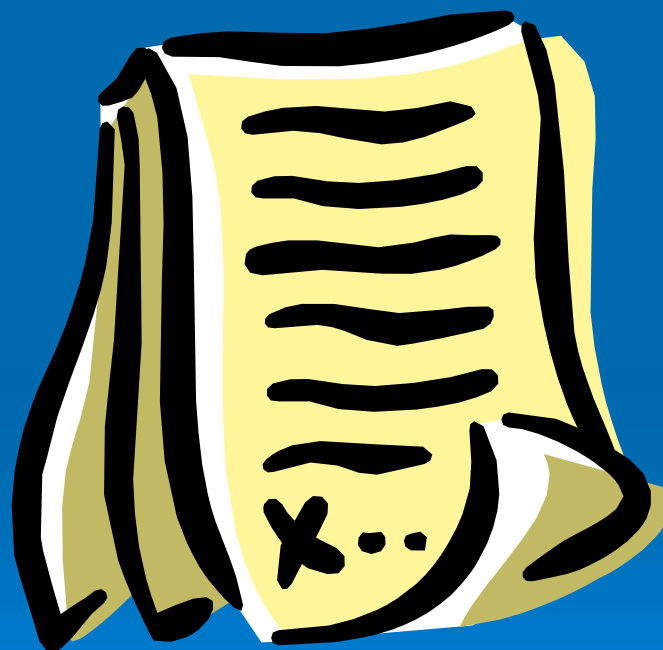
Prefiled Testimony

- Testimony of each witness is filed with the Commission in written “question and answer” form prior to the Evidentiary Hearing
- Copies of prefiled testimony are also provided to all parties to the proceeding
- Testimony is provided under oath and is made a part of the record of the proceeding

Internal Review Prior to Hearing

- Prior to the Evidentiary Hearing the assigned technical staff prepares a Staff Report and provides a copy to the Administrative Law Judge and all Commissioners.
 - Outlines the issues and testimony in the case;
 - Contains staff recommendations;
 - May contain questions that could be asked during the hearing.
 - The assigned ALJ, Staff and Commissioner may meet prior to the hearing to discuss issues.
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Commission Orders



Commission Decisions

Due process guides all proceedings

- Commission's decision must be made based only on the facts presented on the record
- Commissioners and Judges may not speak to any of the parties regarding the case without all parties being present
- Any letters or other correspondence sent to the Commission in a proceeding must be disclosed on the record.

Commission Orders

- Pursuant to state law
 - Written disposition of case
 - Specific to the facts of the case
 - Commission 'speaks only through its orders'
 - Relies upon and establishes precedent
 - Signals to enable predictability
 - Order is basis for appeal
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Development and Internal Review of Commission Orders

- Following the Evidentiary Hearing the parties may submit Proposed Orders and responses to Proposed Orders to the Commission.
 - The Administrative Law Judge and the Commission's technical staff then act in a team setting to advise the Commission on legal and technical matters on cases to which they have been assigned and to work collaboratively to draft an order for internal review by the Commissioners.
 - All discussions or draft orders prepared prior to the issuance of a Final Order are protected from disclosure as advisory/deliberative under the Indiana Public Records Act (IC 5-14-3-4) and are excepted from public disclosure.
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Internal Commission Review of Orders

- Once an Order has been prepared and reviewed by the assigned Commissioner it is “circulated” internally for review by the Commissioners prior to the Commission’s Conference.
 - Further modifications to the Order can be made based on feedback from the remaining Commissioners.
 - Pursuant to IC 8-1-1-5(f), with appropriate public notice, the Commission may meet in Executive Session to review Orders on cases that have been fully briefed.
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Commission Conference

- Commission meets weekly in a formal Conference to vote on Orders
 - Conference is publicly noticed, open to the public and on the record
 - A majority of the Commissioners (3 of 5) must be present to conduct business
 - An Order that receives votes from a majority of the Commissioners is passed and approved by the Commission
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Appeal of Commission Orders



- Final Orders of the Commission may be appealed to the Indiana Court of Appeals and then to the Indiana Supreme Court

Legal Effect of Commission Orders

- Orders of the Indiana Utility Regulatory Commission are deemed presumptively valid and in force until found otherwise on appeal. United Rural Elec. Membership Corp. v. Indiana Mich. Power Co., 648 N.E.2d 1194 (Ind. App. 1995).
 - Pursuant to IC 8-1-2-109, A public utility that **violates** this chapter, or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.
 - Under IC 8-1-2-112, Every day of non-compliance constitutes a separate and distinct violation.
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Civil Penalty Authority in Indiana

➤ **Limited authority for Assessment of Civil Penalties combined with a cumbersome process:**

- **IC 8-1-2-115**

Any forfeiture or penalty provided in this chapter shall be recovered and suit therein shall be brought in the name of the state of Indiana in the circuit or superior court where the public utility has its principal place of business. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the general counsel.

Civil Penalty Authority in Indiana

- IC 8-1-2-115 does not provide for Civil Penalties, only a determination that violations constitute a class B infraction which provides for penalties of **\$1,000.00 (one thousand dollars)** per violation.

Ultimate State Enforcement Authority

- Any certificate of territorial authority may, after notice of hearing and a hearing, be revoked by the Commission, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate service within the area or areas determined and defined in such certificate of territorial authority.

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