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**STATE OF INDIANA**  
**INDIANA UTILITY REGULATORY COMMISSION**

Notice of Proposed Rulemaking

IURC RM #09-01  
LSA #09-790

The Indiana Utility Regulatory Commission (the "Commission"), pursuant to IC 8-1-1-3(g) and IC 8-1-2-2.1, hereby proposes to add 170 IAC 15 establishing sub-billing procedures for the provision of water or sewage disposal service to define terms not fully explained by statute; clarify what should be included in sub-bills, how sub-bills should be calculated, and what billing and sub-billing records should be maintained; and create a procedure to file complaints, receive information, and adjudicate complaints. The rule creates a framework in which the Commission can uniformly and consistently address complaints that allege that a landlord has violated the provisions of the statute and is therefore a "public utility." A secondary purpose is to provide direction to a landlord that has violated the provisions of the statute, regarding the steps that must be followed to be returned to exempt status upon a demonstration of compliance with the rule.

The Commission shall hear public comments on the attached proposed rule at a date and time to be determined, in Suite 220, of the National City Center, 101 W. Washington Street, Indianapolis, Indiana.

The Secretary of the Commission is hereby directed to maintain five (5) copies of the proposed rule continuously on file in the Commission Offices for public inspection, and forward copies of the attached proposed rule to the Indiana Legislative Services Agency for publication in the Indiana Register.

**IT IS SO ORDERED.**

**HARDY, ATTERHOLT, GOLC, LANDIS, AND ZIEGNER CONCUR:**

**APPROVED: NOV 12 2009**

**I hereby certify that the above is a true and correct copy of the Rule as approved.**

*Brenda A. Howe*  
**Brenda A. Howe**  
**Secretary to the Commission**

**TITLE 170 INDIANA UTILITY REGULATORY COMMISSION**

**Proposed Rule**

LSA Document #09-790

**DIGEST**

Adds 170 IAC 15 establishing sub-billing procedures for the provision of water or sewage disposal service. Effective 30 days after filing with the Publisher.

**170 IAC 15**

SECTION 1. 170 IAC 15 IS ADDED TO READ AS FOLLOWS:

**ARTICLE 15. Landlord Distributing Water or Sewage Disposal Service**

**Chapter 1. Definitions**

**170 IAC 15-1-1 Applicability**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 1. Where applicable, the definitions set forth in I.C. 8-1-2-1 and I.C. 8-1-2-1.2 shall be applied to this rule.

**170 IAC 15-1-2 "Dwelling unit"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 2. "Dwelling unit" means a room or rooms suitable for residential occupancy containing water or sewage disposal service plumbing, or a mobile home park lot or similar multi-user installation, excluding hotels, motels or other similar transient lodging.

**170 IAC 15-1-3 "Initial set-up fee"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 3. "Initial set-up fee" means the fee a landlord charges a tenant to establish a new account for a dwelling unit, not to exceed the landlord's actual administrative cost.

**170 IAC 15-1-4 "Insufficient funds fee"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 4. "Insufficient funds fee" means the fee a landlord charges a tenant to process insufficient funds of a payment, not to exceed any actual fee assessed to the landlord by a financial institution resulting from insufficient funds of an instrument received from tenant in payment of charges for water or sewage disposal service.

**170 IAC 15-1-5 "Landlord"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 5. "Landlord" means the owner of a dwelling unit which is rented or leased to an individual, or a person acting on a landlord's behalf.

**170 IAC 15-1-6 "Landlord's Usage"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 6. "Landlord's usage" means, for water, any water consumed by the landlord for personal use, business use, any water consumed in common areas, including but not limited to water used in a club house, laundry facility, bath house, community restroom, swimming pool, hot tub, irrigation sprinkler system, fire protection sprinkler system, or for grounds keeping, flushing the mains, or any other common purpose. This shall also include any water lost to water leaks in common areas. For sewage disposal service, "Landlord's usage" means any sewage disposal service resulting from the landlord for personal use, business use, any sewage disposal service resulting from common areas, including but not limited to a club house, laundry facility, bath house, swimming pool, hot tub, community restrooms, or any other common purpose.

**170 IAC 15-1-7 "Master-meter"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 7. "Master-meter" means the use of a meter device to measure, for billing purposes, the amount of water consumed by a landlord who distributes such water to tenants.

**170 IAC 15-1-8 "Sub-bill"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 8. "Sub-bill" means a landlord's request of payment from a tenant for the distribution of water or sewage disposal service, which service is provided to the landlord by a public utility or municipally owned utility. "Sub-billing" does not include instances in which a lease agreement clearly indicates that water and/or sewage disposal service is included in a lease payment that is assessed at regular intervals and does not vary throughout the lease period based on the amount of water and/or sewage disposal usage.

**170 IAC 15-1-9 "Sub-meter"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 9. "Sub-meter" means the use of a meter device to measure the amount of water consumed within an individual dwelling unit for the purpose of sub-billing. "Sub-meter" also refers to the meter used to measure the amount of water provided to individual dwelling units.

**170 IAC 15-1-10 "Tenant"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 10. "Tenant" means any occupant of a dwelling unit that is provided water or sewage disposal service distributed by a landlord.

**170 IAC 15-1-11 "Total net charges for water service"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 11. "Total net charge for water service" means the charge the water utility imposes on the landlord for water service for a given billing period inclusive of applicable taxes but exclusive of late fees and other incidental or extraordinary fees and charges.

**170 IAC 15-1-12 "Total net charges for sewage disposal service"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 12. "Total net charge for sewage disposal service" means the charge the sewage disposal service utility imposes on the landlord for sewage disposal service for a given billing period inclusive of applicable taxes but exclusive of late fees and other incidental or extraordinary fees and charges.

**170 IAC 15-1-13 "Utility"**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 13. "Utility" means the public or municipally owned utility that provides water or sewage disposal service to the landlord for distribution to dwelling unit.

**Chapter 2. Sub-billing**

**170 IAC 15-2-1 Records**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 1. (a) The landlord shall retain all bills received from the utility and all sub-bills from the landlord to tenants for a period of not less than one (1) year, and shall make all such bills and sub-bills available for inspection by any tenant, or person who was a tenant during the billing period in question, during regular business hours.

(b) The landlord shall provide a copy of records under this section within three (3) business days of request by a tenant. The landlord may charge tenant a nominal fee to recover the cost of copying records.

**170 IAC 15-2-2 Charges**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 2. (a) A tenant's sub-bill shall be calculated in the following manner:

(1) For water:

(i) If the utility charges the landlord for usage measured by a master meter, upon receipt of a utility's water bill, the landlord shall divide the total net charges for water service, plus applicable tax, by the total amount of water master-metered to obtain an average cost per unit volume. The average water cost per unit volume shall then be multiplied by the estimated or actual unit volume consumed by each dwelling unit. In no event shall a landlord charge its tenants more than the total net charge for water service.

(ii) If the utility charges the landlord for usage that is not measured by a master meter, the landlord shall employ an appropriate method to determine what portion of the total net charge for water service should be attributed to each tenant. "An appropriate method" means a method that reasonably allocates to each tenant a portion of the total net charge for water service less the landlord's own use. Reasonable allocations may be based on a charge per dwelling unit, actual volume of water distributed to each tenant, or estimated volume of water distributed to each tenant. In no event shall the landlord charge its tenants in total more than the total net charge for water service.

(2) For sewage disposal service, the landlord shall employ an appropriate method to determine what portion of the total net charge for sewage disposal service should be attributed to each tenant.

(i) If the utility charges a flat sewage disposal service rate, "an appropriate method" means a method that reasonably allocates to each tenant a portion of the total net charge for sewage disposal service less the landlord's own use. Reasonable allocations may be based on a charge per dwelling unit, or a charge based on estimated sewer flow.

(ii) If the utility charges a sewage disposal service rate based on water usage, "an appropriate method" means a method that reasonably allocates to each tenant a portion of the total net charge for sewage disposal service less the landlord's own use. Reasonable allocations may use the same percentage for sewage disposal service as

calculated for water billing, using the actual volume of water distributed to each tenant, or estimated volume of water distributed to each tenant.

In no event shall the landlord charge its tenants in total more than the total net charge either for water or sewage disposal service.

(b) A landlord may not charge a tenant for any water or sewage disposal service reasonably attributed to the landlord's usage.

(c) In addition to the charges in subsection (a), a landlord may charge a tenant only the fees permitted by IC 8-1-2-1.2.

(d) A landlord satisfies the provisions in subsections (a), (b), and (c) and the provisions of IC 8-1-2-1.2 if the landlord charges a flat rental fee, assessed at regular intervals such as monthly or annually, that includes water and sewage disposal service, provided the following:

- (1) the lease clearly indicates that water and/or sewage disposal service are included in the lease; and
- (2) the rent amount does not vary throughout the lease period based on water or sewage disposal usage.

(e) Nothing herein should be construed to eliminate or diminish any contractual right a tenant may have with respect to the provision of water or sewage disposal service.

### **170 IAC 15-2-3 Standards of sub-billing**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 3. (a) The landlord shall render sub-bills to tenants with the same frequency that bills are rendered to the landlord by the utility. The landlord shall sub-bill tenants for the same period for which the landlord has been billed by the utility.

(b) The landlord sub-bills tenant, separately from rent.

(c) Sub-bills that are rendered to the tenant shall show at least the following information:

- (1) The sub-billing date;
- (2) The sub-billing rate charged;
- (3) The previous balance, if any;
- (4) The amount of the sub-bill;
- (5) Amount of an initial set up fee, if due;
- (6) A reasonable administrative fee, if any, not to exceed the statutory limit;
- (7) Amount of any insufficient funds fee, if due;
- (8) The date on which the sub-bill is due;
- (9) If an estimated sub-bill, a clear and conspicuous coding or other indication identifying the sub-bill as an estimated sub-bill;
- (10) An explanation, which can be readily understood, of all codes and/or symbols shown on the sub-bill;
- (11) The name and telephone number of a person for tenants to contact about sub-billing matters;
- (12) The following statement, "If you believe you are being charged in violation of IC 8-1-2-1.2, you have a right to file a complaint with the Indiana Utility Regulatory Commission at (800) 851-4268 or [www.in.gov/iurc](http://www.in.gov/iurc)."
- (13) In addition, water sub-bills shall include the following:
  - (i) If tenant's usage is sub-metered, the dates and meter readings of tenant's sub-meter at the beginning and end of the period for which the sub-bill is rendered; and
  - (ii) The name and telephone number of a person for tenants to contact about water service matters.
- (14) In addition, sewage disposal service sub-bills shall include the following:
  - (i) The beginning and end dates of the period for which the sub-bill is rendered; and
  - (ii) The name and telephone number of a person for tenants to contact about sewage disposal service matters.

### **170 IAC 15-2-4 Notice**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 4. A landlord shall provide written notice to tenants pursuant to the disclosure requirements in IC 8-1-2-1.2(b)(3).

## Chapter 3. Complaints

### 170 IAC 15-3-1 Filing a complaint

Authority: IC 8-1-1-3, IC 8-1-2-34.5

Affected: IC 8-1-2-1.2

Sec. 1. A tenant may file a complaint against the landlord with the commission's consumer affairs division pursuant to IC 8-1-2-34.5 for violations of this rule by following the commission's informal complaint procedures found at 170 IAC 1-1.1-5.

### 170 IAC 15-3-2 Information required to investigate a complaint

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec.2. Upon the receipt of a complaint that a landlord may be acting as a public utility in violation of IC 8-1-2-1.2, the commission shall require the complainant to provide the factual basis for the complaint and the commission shall require the landlord or the landlord's agent to provide the complainant and the commission with sufficient information to investigate the complaint, including, but not limited to, the following information:

- (a) For the dates in dispute, each sub-bill rendered to the tenant for water or sewage disposal service, including a statement indicating the period for which each sub-bill was rendered;
- (b) If an estimated sub-bill, a clear and conspicuous coding or other indication identifying the sub-bill as an estimated sub-bill
- (c) If a tenant's water usage is not sub-metered:
  - (1) a verified statement by the landlord which contains the amount due the utility by the landlord for all amounts consumed at the property for the dates in dispute;
  - (2) the dates and meter readings of the master meter at the beginning and end of the period for which each sub-bill in dispute was rendered;
  - (3) the actual or estimated amount that is attributed to landlord's usage;
  - (4) an explanation of how the landlord calculated the charges to the tenant for water service.
- (d) If a tenant's water usage is sub-metered, the dates and meter readings of tenant's sub-meter at the beginning and end of the period for which the bill is rendered;
- (e) For sewage disposal service:
  - (1) A verified statement by the landlord which contains the amount due the utility by the landlord for all amounts collected at the property for the dates in dispute;
  - (2) The beginning and end dates of the period for which each sub-bill in dispute was rendered;
  - (3) The actual or estimated amount that is attributed to landlord's usage;
  - (4) An explanation of how the landlord calculated the charges to the tenant for sewage disposal service.
- (f) The sub-billing rate charged;
- (g) The previous balance, if any;
- (h) The amount of any initial set up fee charged;
- (i) The amount of any administrative fee charged;
- (j) The amount of any insufficient funds fee charged;
- (k) The amount and description of any other fee charged; and
- (l) The date on which the sub-bill is due;

### 170 IAC 15-3-3 Action on complaint

Authority: IC 8-1-1-3

Affected: IC 8-1-2-1.2

Sec. 3. If after review of the information provided under this rule, the commission's consumer affairs division determines that the landlord has failed to comply with the requirements of I.C. 8-1-2-1.2 or this rule, the commission shall require the landlord to refund any overcharges to the known date of error or for a period of one (1) year, whichever is less, and adjust its sub-billing practices prospectively.