TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Regulatory Analysis
LSA Document #23-776

I. Description of Rule

This rule amends 170 IAC 15 to comply and be consistent with IC 8-1-2-1.2 (as amended in 2019) pertaining to sub-billing by landlords and associations, to reorganize the rule for clarity, and to update other outdated provisions.

a. History and Background of the Rule – This proposed rule updates the Indiana Utility Regulatory Commission's ("Commission's") rules about water and wastewater sub-billing, a practice in which, for example, an apartment complex owner pays a utility's master bill for water and/or wastewater and then, in turn, sub-bills each tenant a pro-rata share.

The original impetus for these rule amendments stems from House Enrolled Act 1664-2019, which modified IC 8-1-2-1.2 and expanded the ability to sub-bill to condominium associations and homeowners associations, in addition to landlords. Moreover, the Commission's order in the IURC Cause No. 45144 highlighted the need for additional changes in the current rule for situations in which a landlord refused to provide sufficient data to allow a determination of whether a landlord complied with proper sub-billing practices.

In 2020, Commission staff drafted a "strawman" rule and sought feedback from the Indiana Apartment Association, a trade group of apartment owners; the Office of Utility Consumer Counselor; and legal counsel for major Indiana water and wastewater utilities. No stakeholder objected to the proposed revisions and so the Commission sought its initial exception to the then-existing rulemaking moratorium on September 3, 2020.

Before receiving approval as an exception to the rulemaking moratorium, the Commission staff considered making additional revisions to the draft proposed rule, and therefore undertook additional stakeholder outreach in 2022. The Commission posted the proposed revisions to its website on July 26, 2022. A notice requesting additional comments was also sent to the Indiana Apartment Association, third party sub-billing companies, the Indiana Bar Association with various attorneys representing landlords and utilities, and Accelerate Indiana Municipalities (AIM) on behalf of Indiana municipal governments. The Commission received written comments from four groups, AIM, the Indiana Apartment Association, the Utility Management and Conservation Association–a trade group of third-party sub-billing contractors–and a third-party sub-billing contractor company https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/rm-20-02-regarding-170-iac-15/rm-20-02-comments/.

In addition, based on stakeholder requests, the Commission staff convened a series of workshops where Commission staff met, virtually, with interested stakeholders to discuss provisions of the revised draft proposed rules and to take oral comments. The Commission staff first hosted a virtual workshop on October 25, 2022, and hosted a second follow-up meeting on November 22, 2022. Both were attended by various stakeholder groups and resulted in further refinements to the revised draft proposed rule. The Commission staff now understands that no party has continued objections to the rule.

b. Scope of the Rule – As detailed more fully below, the proposed amendments revise the sub-billing rules' definitions to be consistent with the amended enabling statute. They also generally reorganize the existing rule throughout to make the rule clearer to understand and apply, and to specify the compliant calculation methodologies for sub-bills, as well as the information that must be listed on the bill.

c. Statement of Need – The General Assembly passed House Enrolled Act 1664-2019, which modified IC 8-1-2-1.2 and added associations to the pre-existing ability of landlords to sub-bill water and wastewater service and revised the applicable laws with regard to sub-billing. This proposed rulemaking is intended to bring the pre-existing sub-billing rules into alignment with HEA 1664-2019 and the otherwise update outdated provisions of the rule. The original rules were promulgated by the Commission in 2010, after the General Assembly enacted IC 8-1-2-1.2 in 2008. Those original rules were promulgated with relatively little regulatory experience regarding sub-billing practices and without a substantial background of complaints from tenants. The proposed updates are based, in part, on the Commission's now more fulsome experience with current sub-billing practices and problems, based on a substantial number of complaints resolved over more than a decade of oversight.

d. Statutory Authority for the Proposed Rule – The statutory authority for this rulemaking falls under the Commission's general authority to implement rules, which requires the Commission to formulate rules necessary or appropriate to carry out its duties. See IC 8-1-1-3(g). The Commission's duties include making determinations regarding sub-billing practices under IC 8-1-2-1.2(n). This rulemaking proposes to revise existing rules in 170 IAC article 15, which were promulgated in 2010 under the same legal authority as here, and there were no objections to the Commission's authority at that time.

e. Fees, Fines, and Civil Penalties – This rulemaking does not add or increase any fees, fines, or civil penalties and so is not subject to the additional steps in IC 4-22-2-19.6.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule –

- The Commission anticipates receiving approval from the Office of Management and Budget and State Budget Agency within forty-five (45) days.
- Assume fourteen (14) days for the Commission to approve the proposed rule.
- Assume thirty (30) days for the public comment period and public hearing.
- Assume thirty (30) days for staff to review public comments and assemble the rule packet.
- Assume fourteen (14) days for the Commission to approve the final rule.
- The Attorney General has forty-five (45) days to review the packet.
- The Governor's office has up to thirty (30) days to review the packet.
- The rule is effective thirty (30) days from the date the Legislative Services Agency accepts the rule for filing.

Therefore, with added time for uncertainty, based on the facts and timeline above, the Commission anticipates the rule could be fully promulgated and effective before July 1, 2024.

b. Estimated Fiscal Impact on State and Local Government – Because of the additional specificity in the rule and the general reorganization of the rule based on experience administering complaints under the previous rule, Commission staff believes that the number of complaints filed with the Commission's Consumer Affairs Division will be reduced. Around 100 complaints are filed with the Commission each year regarding sub-billing. The Commission staff believes the number of complaints could be reduced by half. Such a reduction would save resources that can be devoted to other matters.

c. Sources of Expenditures or Revenues Affected by the Rule – This rule should have no impact on expenditures or revenues of the Commission. There may be a minimal impact on resources, if any, if additional requests are received for information in understanding how the new rule applies to association members. The Commission will likely expend minimal resources to update its "one-page" handout educating landlords and associations on best practices.

III. Impacted Parties

The Commission estimates the following will be affected by the rule:

This rule governs landlords and associations who sub-bill tenants in dwelling units. In Indiana, there are landlords renting approximately 794,621 dwelling units. Of those dwelling units, it is unknown how many currently include water and wastewater service in their rental rates and will not be affected by this rule versus how many engage in sub-billing. Indiana also has approximately 4,800 homeowners associations, and it is also unknown how many associations sub-bill their members, though IURC staff believes it is a small percentage. Background sources: http://www.incontext.indiana.edu/2011/nov-dec/article5.asp; https://www.wrtv.com/news/call-6-investigators/state-limited-in-enforcement-involving-homeowners-associations.

IV. Changes in Proposed Rule

The follow major changes are in the proposed rule:

1. The proposed rule generally reorganizes the existing rule throughout to make the rule clearer to understand and apply. The proposed rule adds a new "applicability" section (170 IAC 15-0.5-1), which clearly exempts from the rule a landlord that includes water and wastewater fees in the rent or lease payment and an association that includes the same services in its dues. This exemption coincides with the use of a "flat fee" under IC 8-1-2-1.2(k)(1). This new rule also exempts a landlord that sub-bills only one tenant, such as a single-family home, if the tenant is served by a water or sewer utility, but the landlord remains the customer of record and simply passes through the charges.
2. The proposed rule, in 170 IAC 15-1-1.5, adds a definition for a condominium association and

homeowner association, and the sub-billing rule now applies to those associations. This change directly adopts the statutory changes in IC 8-1-2-1.2.
3. In the proposed rule at 170 IAC 15-1-10, the definition of a tenant is simplified and clarified. Other definitions are added or redefined to refer to the definitions in IC 8-1-2-1.2.
4. A new section, 170 IAC 15-2-0.5, lists all the requirements for sub-billing in one place. The same section specifies that a sub-billing entity is required to timely remit payment to the water or sewer utility for charges that are then sub-billed to tenants or members. This modification addresses one aspect in the Commission's Order in IURC Cause No. 45144, which noted the current rule did speak to this issue. This section also requires a period of at least 17 days for a tenant or member to pay the sub-bill. This implements a commonsense tenants and member protection and reflects a similar provision applicable to water and sewer utilities in 170 IAC 6-1-13(B)(2) and 170 IAC 8.5-2-1(9).
5. Proposed changes in 170 IAC 15-2-2 provide examples of permissible estimates of usage for sub-billing and would allow a sub-billing entity to determine alternate estimation methods if they result in charges less than a permissible method and are otherwise fair and reasonable. These changes also would allow a landlord or association to use estimated methodologies even if sub-meters are installed.
6. As proposed, 170 IAC 15-2-3 adds requirements to be included on the sub-bill, including the amount of usage, the dates of the billing period, the name of the person and location of the unit being billed, and the fact that the due date for sub-bills is independent of the due date for other charges, like the lease payment. This addresses an issue brought forward by landlords where the landlords may seek to begin eviction proceedings for unpaid lease payments, but will still allow the full 17 days for the sub-bill to be paid per proposed 170 IAC 15-2-0.5(4). It also explicitly allows other charges on the same bill, as requested by landlords, so they do not have to issue a separate bill for utility service and other services.
7. As proposed, 170 IAC 15-2-4 would specify that sub-bills may be collected and enforced through any legally allowed method for the collection or enforcement of lease, rent or dues payments.
8. In the proposed rule 170 IAC 15-2-5 requires that landlords and associations correct billing errors within 90 days, once known, in one of the specified ways, and must adjust over-billing errors up to a maximum of one year.
9. Proposed 170 IAC 5-3-2 makes changes so this section correlates to other changes already made elsewhere in the proposed rules.
10. Finally, 170 IAC 15-3-3 allows the Commission to regulate a sub-billing entities' rates and charges, as with any other public utility, in the event the sub-billing entity fails to provide information necessary to ensure compliance with this rule or if it fails to comply with a previous determination. After additional stakeholder input that this section appeared to be a "one-way street," the proposed rule now allows the sub-billing entity to re-commence sub-billing once it comes into compliance with the sub-billing rules.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – The benefits to tenants and members are fair and accurate billing and clear complaint procedures. Additional benefits accrue to tenants and members in the form of a specified window in which to remit payment on sub-bills, and additional transparency on the bill as it should include the required information. The benefits to landlords and associations are a mechanism to recoup utility costs from tenants and members on a pass-through basis, and clear guidance on how to legally calculate sub-bills and how to issue compliant bills for water and wastewater services. Landlords and associations can also choose between use of sub-meters or reasonable estimates of usage on a pro-rata basis, which gives additional flexibility to the landlords and associations.

b. Estimate of Secondary or Indirect Benefits of the Rule - As a secondary benefit, clear requirements for sub-bills and the methods of calculation should result in less complaint calls directly to utilities, landlords, associations, as well as the Commission, saving those entities customer service time and money.

c. Estimate of Any Cost Savings to Regulated Industries – As compared to the current rule, this rule amendment should be easier to interpret and apply. The amendments more clearly itemize what must be included in a sub-bill and how to calculate the sub-bill. It also explicitly exempts entities that include utility fees in their rent or dues and so those entities will *not* need to comply with the rule. The specification of the proper sub-billing methodologies in the proposed regulations will save landlords and associations time in responding to complaints by clearly stating what methods the Commission will find compliant under the statute.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – The costs to the regulated entities, landlords and associations, are costs largely associated with IC 8-1-2-1.2, not the proposed administrative rule. The proposed rule implements the statute passed by the General Assembly and this analysis considers only costs

of the rule, not costs that exist because of the underlying statute.

Compliance with the rule and the statute are only required when a landlord or association voluntary choose to sub-bill. No entity has an obligation to sub-bill. Instead, the landlord or associations could (1) have all units metered individually by the utility so the utility bills the tenants or members directly; (2) include utility services in lease payments or dues to cover utility costs; or (3) assume all utility costs as a cost of doing business. These options would completely exempt landlords and associations from these proposed regulations and would avoid any compliance costs. With that in mind, cost estimates for the proposed rule are as follows:

Proposed 170 IAC 15-0.5-1	No additional compliance costs. The exemption for pass through billing for single family homes is a cost savings for those landlords.
Proposed 170 IAC 15-1	No additional costs based on the definitional changes.
Proposed 170 IAC 15-2-0.5	No additional cost is estimated based on the requirement to timely remit payment on the master bill and allow 17 days for payment of the sub-bill. Most if not all landlords and associations are already allowing for at least 17 days for the tenant or member to remit payment before pursuing collection as beginning collection actions takes more administrative time than 17 days to commence, and landlords and association are already timely paying the ultimate utility or else are facing collection actions and disconnection from that utility.
Proposed 170 IAC 15-2-2	The methodology for calculating sub-bills is largely unchanged from the current rules, but the language provides more specific examples. A landlord or association that modifies its methodology to use one of the new affirmatively authorized calculation methods may, by choice, incur a one-time cost to reconfigure is process or system for issuing the newly calculated bills. Otherwise, there is no additional cost.
Proposed, 170 IAC 15-2-3	The additional information that will be required on the sub-bill will impose a one-time cost to review current bills and the landlord and association, if needed, will incur costs to reconfigure its software system and other process to issue bills that include the compliant information. Landlords and associations are already issuing bills, so the additional costs are only to ensure required information is included and to include that information on all future bills. Many landlords and associations may already be including the type of information required. The Commission estimates this cost at an average of 3 hours of labor, which, at a generous estimate of $100 per hour combined labor and overhead rate, equates to $300 per landlord or association.
Proposed 170 IAC 15-2-4	No costs associated with allowing legal collection methods for unpaid bills.
Proposed 170 IAC 15-2-5	No estimated costs for the requirement that landlords correct billing errors, as landlords would already be required to correct errors under private causes of action.
Proposed 170 IAC 5-3-2	No estimated costs.
Proposed 170 IAC 15-3-3	No estimated costs with the Commission's ability to regulate an entity as a public utility if it fails to comply with sub-billing requirements. This regulation is only when a landlord fails or refused to provide necessary information for the Commission to determine compliance. If an entity failed to comply with IC 8-1-2-1.2, it could be found to be a public utility and so regulated regardless of the administrative rules in place. IC 8-1-2-1.2 is a "safe harbor" for compliant entities. The entity could come into compliance and then re-commence sub-billing.

b. Estimate of Administrative Expenses Imposed by the Rules – This rule presents minimal costs to landlords, association, tenants, or members from the costs to run their business as currently functioning. The estimated administrative expenses are estimated in the above table. Even without the proposed rules, sub-billing landlords and association would still need to decide what information to include on sub-bills, update the information from time to time, and determine the proper method to calculate those sub-bills under the statute. In that regard, the regulations assist the landlords and association in knowing what methods the Commission will find compliant under the statute. This "safe-harbor" effect permits a landlord and association to know up front the compliant methodologies instead of risking an adverse finding by the Commission.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – Not applicable.

VII. Sources of Information

The Commission staff relied on its analysis of IC 8-1-2-1.2 and through its experience in resolving customer complaints filed with its consumer affairs division.

a. Independent Verifications or Studies -None

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – The Commission staff relied on its own good faith estimates, based on its knowledge and experience, for costs and benefits.

VIII. Regulatory Analysis

The Commission staff believes the non-quantifiable protections to tenants and members as well as to the landlords and associations will exceed the costs. The total compliance cost for each sub-billing entity is approximately $300 to review its billing practices and make modifications, if needed. The number of sub-billing entities is unknown, but is believed to be a fraction of the overall number of landlords and associations. The benefits to tenants and member protection by having transparent bills calculated with a compliant and fair methodology is non-quantifiable but surely exceeds the reasonable cost to comply. And many landlords and associations are already compliant and will not need to modify their practices. Finally, as previously stated, no landlord or association is *required* to sub-bill for water and wastewater service. Sub-billing is a choice that the business enterprise makes, and the costs are only incurred if the entity chooses to sub-bill under the statute and rule. For these reasons, the Commission staff believes the benefits to this proposed rule outweigh its costs.

IX. Contact Information of Staff to Answer Substantive Questions

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