Regulatory Analysis
LSA Document #24-376

I. Description of Rule Amendments

This rulemaking implements HEA 1623-2023 by including in a rule certain fees and penalties that may be assessed by the Indiana Utility Regulatory Commission ("IURC"). In total, this rulemaking includes three different fees or penalties over the three sections in this rulemaking. Each section is discussed separately below.

a. History and Background of the Rule –

1. Municipal Utility Fees –
The IURC is funded for the most part through the public utility fee account as prescribed by IC 8-1-6-2. Public utilities (such as investor-owned utilities), as defined by IC 8-1-6-3, pay a public utility fee that is deposited in the public utility fee account. Municipal utilities are not "public utilities" as defined, and so when a municipal utility has a case heard by the IURC, the IURC bills the municipal utility for the IURC's time and expenses actually incurred in the case, pursuant to IC 8-1-2-70. The fee is calculated based on the staff working on the case at each staff member's actual hourly wage and benefits rate for both the IURC and the Indiana Office of Utility Consumer Counselor (OUCC).

For cases brought by or against small municipal utilities, as defined under IC 8-1-61.5, the IURC has previously set a flat fee by general administrative order. The flat fee for a small municipal utility is $1,000 to the IURC, $2,000 for the Indiana Office of Consumer Counselor, plus actual fees incurred by the IURC for legal notices, etc. *See* https://www.in.gov/iurc/files/gao2009-3_0311091.pdf.

These fees are deposited in the public utility fee account. The fees do not change or increase the IURC's budgeted allotment and are not directly available to the IURC to spend.

No changes to this scheme nor increase in fees are being sought in this rulemaking.

Municipal utility fees collected the prior three years are as follows:

Year	No. of Cases	Total Fees Charged
2021	15	$47,082.26
2022	17	$65,485.78
2023	15	$38,373.23

This rule was developed through internal coordination and through solicitations and coordination with the Utility Law Section of the Indiana State Bar Association.

2. Penalties Pursuant to IC8-1-2-50 –
IC 8-1-2-50 was part of the original 1913 Acts that established what is now the IURC. The amount of the penalty ($50 up to $500) has not changed since 1913. While IC 8-1-2-50 has been cited in IURC cases and used as a reminder of the importance of providing any books, accounts, papers, or records that may be ordered by the IURC, to the best of the information we have, the IURC has not yet imposed a penalty on an entity under this section.

This rule was developed through internal coordination and through solicitations and coordination with the Utility Law Section of the Indiana State Bar Association.

3. Reporter Fees –
To comply with IC 8-1-2-65 that "all testimony shall be taken down by the stenographer appointed by the [IURC]," the IURC employs two full time court reporters. Under IC 8-1-3-8, the IURC is required to fix the reporter fees for a party to obtain hearing transcripts through a General Administrative Order. By statute, the cost of the transcript shall become the property of the reporter when paid. *See* IC 8-1-3-8.

The IURC most recently set the reporter fees on September 20, 2023, in General Administrative Order (GAO) 2023-06. https://www.in.gov/iurc/files/GAO-2023-06_ORDER_09-20-2023.pdf. The fees include a $4.00 per page charge for original transcriptions. The other fees are set out in the GAO.

b. Scope of the Rule –
Pursuant to IC 4-22-2-19.6, the rule changes incorporate descriptions regarding the circumstances in which municipal utility fees are assessed, descriptions regarding the circumstances under which penalties for failing to comply with an IURC order or subpoena issued pursuant to IC 8-1-2-50 may be assessed, and descriptions regarding the circumstances under which reporter fees are assessed.

c. Statement of Need –
This rulemaking is mandatory under IC 4-22-2-19.6, effective January 1, 2023, requiring that for each fee, fine, or civil penalty imposed by an agency that is not set as a specific amount in a state law, a rule must describe the circumstances for which the agency will assess a fee, fine, or civil penalty and set forth the amount of the fee, fine, or civil penalty. This rulemaking is intended to comply with that requirement and either set the amount of the fee or penalty or provide the factors that will be used in setting the penalty.

Under the "safe harbor" in IC 4-22-2-19.6(e)(2)(B), the IURC submitted the applicable fines, fees, and penalties to the State Budget Committee. The State Budget Committee included the IURC's fines, fees, and penalties on its agenda for April 19, 2024. The State Budget Committee had no substantive comments or concerns with the IURC fines, fees, and penalties. See the April 19, 2024, agenda, attached to this Regulatory Analysis.

In addition, the IURC sent a draft "strawman" proposed rule to stakeholders on June 13, 2024, and requested informal comments by July 15, 2024. The rulemaking was sent to and distributed by the Utility Law Section of the Indiana State Bar Association. The draft proposed rule was also posted to the IURC's website, here: https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/.

No objections to this proposed rulemaking were received, and the IURC received no comments or suggested changes from any stakeholder. The Office of the Utility Consumer Counselor affirmatively indicated, via email, that it had no comments on this rulemaking at this time.

d. Statutory Authority for the Proposed Rule –
1. Municipal Utility Fees –
IC 8-1-1-3; 8-1-2-70; 8-1-2-61.5; 4-22-2-19.6.

2. Penalties Pursuant to IC 8-1-2-50 –
IC 8-1-1-3; 8-1-2-50; 4-22-2-19.6.

3. Reporter Fees –
IC 8-1-1-3; 8-1-3-8; 8-1-2-65; 4-22-2-19.6.

e. Fees, Fines, and Civil Penalties –
This rulemaking does not add or increase any fee, fine or penalty. It is intended only to include the already existing applicable fees or penalties in a rulemaking to comply with 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 fourteen (21) days for the Legislative Services Agency (LSA) to publish the Notice of First Public Comment Period and Notice of Public Hearing in the Indiana Register.
- Assume thirty (30) days for the first public comment period and public hearing.
- Assume fourteen (14) days for staff to review the comments from the first public comment period.
- If needed, assume fourteen (21) days for the Legislative Services Agency (LSA) to publish the Notice of Second Public Comment Period and Notice of Public Hearing in the Indiana Register.
- If needed, assume thirty (30) days for the second public comment period and second public hearing.
- If needed, assume fourteen (14) days for staff to review the comments from the second public comment period.
- Assume fourteen (14) days for staff to 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 will be fully promulgated within 325 days, which would be effective before July 1st, 2025.

b. Estimated Fiscal Impact on State and Local Government –

This rulemaking does not impact the expenditures or revenues of State agencies or local government. The fees and penalties currently exist, and this rulemaking does not change those fees and penalties. The rulemaking is intended only to include the already existing applicable fees or penalties in a rulemaking to comply with IC 4-22-2-19.6.

c. Sources of Expenditures or Revenues Affected by the Rule –

This rulemaking will not impact expenditures or revenues of State agencies or local governments.

III. Impacted Parties

None of the fees or penalties reflected in this rule have changed. This rulemaking merely embeds these fees and penalties into rules pursuant to State statutory directive. Regardless, it is anticipated that placing these fees and penalties in 170 IAC 1-1.1 will increase administrative efficiencies for those to whom these fees or penalties are applicable by locating these specific fees and penalties in one location in the administrative rules. Those entities may include regulated utilities, law firms, municipalities or others.

Based on staff research, there are approximately 918 regulated utilities in Indiana serving the electric, natural gas, water, wastewater and telecommunications needs of Hoosiers. There are over fifteen thousand practicing lawyers in Indiana working in nearly six thousand firms and businesses. There are 567 municipalities in Indiana. And there are approximately 6.78 million persons residing in Indiana.

IV. Changes in Proposed Rule

The below list describes the changes to existing regulations in this rulemaking; however, this rulemaking does not represent any change from existing practice or any change to the fees and penalties. This rulemaking only incorporates those fees and penalties into a rule to comply with IC 4-22-2-19.6.

1. Municipal Utility Fees –

170 IAC 1-1.1-3.5 Remittances to the commission

- 170 IAC 1-1.1-3.5(a)(2)(A) adds a description of the calculation to be used in determining expense reimbursement for municipal utility cases heard by the IURC.
- 170 IAC 1-1.1-3.5(a)(2)(B) explains that a flat fee for small municipal utilities, as described in IC 8-1-2-61.5, shall be set by the commission by general administrative order.

2. Penalties Pursuant to IC 8-1-2-50 –

170 IAC 1-1.1-14.5 Production of Books, Accounts, Papers, or Records

- 170 IAC 1-1.1-14.5(a) instructs that the commission may require, by order or subpoena, the production of a public utility's books, accounts, papers, or records.
- 170 IAC 1-1.1-14.5(b) instructs that the Commission may assess penalties for failure to comply with a commission order or subpoena made pursuant to IC 8-1-2-50, and identifies the factors to be considered by the Commission in determining the penalty amount.

3. Reporter Fees –

170 IAC 1-1.1-25.5 Reporter Fees

- 170 IAC 1-1.1-25.5 instructs that reporter fees shall be set by the commission through the issuance of a general administrative order setting forth a schedule of reasonable reporter fees.

V. Benefit Analysis

There are likely benefits to be realized by locating fee and penalty information in a central rule. There are potential efficiencies to be realized by the general public, regulated community, businesses, agencies, law firms and anyone else looking for this specific information. Users of the rules may save time, and consequently money, in assessing and determining the fees and penalties that are associated with this rulemaking. Whereas previous attempts to locate this information would require searching the statutes, lawyers and their staff, municipalities, utility companies and other interested parties will have quick access to this information once the rule becomes effective. Savings in time and money should ultimately equate to an increase in profit margins for these same entities.

a. Estimate of Primary and Direct Benefits of the Rule –
A direct benefit of this rulemaking is increased profitability. Time saved by parties seeking to ascertain information regarding these fees or penalties should equate to an overall increase in profit margins, since less money will be spent on obtaining this information.

b. Estimate of Secondary or Indirect Benefits of the Rule –
An indirect benefit of this rulemaking is the corresponding productivity gains that may result. Time saved not looking for fees and penalties is time that can be spent elsewhere.

c. Estimate of Any Cost Savings to Regulated Industries –
Cost savings will result from the aforementioned direct and indirect benefits. Since it would be expected that entities such as regulated utilities and law offices will spend less time looking for this information and thus save time and money, one would expect that these savings would be reflected in the costs imposed on these entities' customers and clients. Said differently, less time spent looking should mean less time billed to a client or customer.

VI. Cost Analysis
There are no costs, tangible or intangible, being imposed as a result of the changes made in the proposed rule compared to existing requirements. These fees and penalties are unchanged by this rulemaking.

a. Estimate of Compliance Costs for Regulated Entities

Proposed 170 IAC 1-1.1-3.5	No additional compliance costs. Municipal utility fees continue to be based on time and expenses actually incurred in a case. Small municipal utility flat fee remains unchanged.
Proposed 170 IAC 1-1.1-14.5	No additional compliance costs as the possible civil penalty for failure to comply with an order or subpoena issued pursuant to IC 8-1-2-50 already exists in statute. This rulemaking provides the factors the IURC shall use in assessing the penalty.
Proposed 170 IAC 1-1.1-25.5	No additional compliance costs. Reporter fees are currently fixed by general administrative order pursuant to statute.

b. Estimate of Administrative Expenses Imposed by the Rules – This rule will not require any additional administrative expense not already present.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – This rule does not add or increase a fee, fine, or civil penalty.

d. If the implementation costs of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6) – This rule will not have implementation costs not already present.

VII. Sources of Information
The Commission staff primarily relied on its own analysis in determining the information presented herein.

a. Independent Verifications or Studies –
https://www.abalegalprofile.com/demographics.html
https://www.barassociationdirectory.com/in/
https://www.ibisworld.com/us/industry/indiana/law-firms/23176/
https://www2.census.gov/govs/cog/2007/in.pdf
https://datausa.io/profile/geo/indiana

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

VIII. Regulatory Analysis
As previously stated, this rulemaking will not impose additional costs on any regulated entity as the relevant fees and penalties are already in existence. There may be benefits to regulated entities and the public by including an easy reference to the relevant fees and penalties in the Indiana Administrative Code. 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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