**TITLE 170 INDIANA UTILITY REGULATORY COMMISSION**

**STRAWMAN DRAFT PROPOSED RULE**

LSA Document #24-05

DIGEST

Amends 170 IAC 5-5-3 to set forth the factors that shall be considered as part of the advisory committee’s penalty schedule and recommended penalties. *Effective 30 days after filing with the publisher.*

**170 IAC 5-5-3**

SECTION 1. 170 IAC 5-5-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-3 Process for determining violations and penalties

Authority: IC 8-1-26-26

Affected: IC 4-22-2-19.6; IC 8-1-26

Sec. 3. (a) The pipeline safety division shall investigate alleged violations of IC 8-1-26.

(b) The pipeline safety division shall determine whether a violation of IC 8-1-26 occurred and by which person or entity. After making a determination of a violation, the pipeline safety division shall forward its findings of violations to the advisory committee.

(c) The pipeline safety division will provide the person or entity accused of violating IC 8-1-26 with notice and an opportunity to appear before the advisory committee to provide written evidence prior to the advisory committee making a recommendation on the summary damage report.

(d) A person or entity accused of violating IC 8-1-26 may send correspondence and written evidence regarding the pipeline safety division's finding of a violation to the advisory committee or appear at the public meeting in person to provide the written evidence.

(e) The advisory committee shall use a publicly available penalty schedule when determining recommended penalties. **The recommended penalties may include civil penalties up to $10,000. When developing its penalty schedule and making its penalty recommendations, the advisory committee:**

**(1) shall consider the factors found in IC 4-22-2-19.6(d);**

**(2) may consider the following aggravating factors:**

**(A) failure to complete training in a previous case;**

**(B) self-repair of the damaged facility;**

**(C) concealment of the damage;**

**(D) recklessness, which:**

**(i) means actions marked by lack of proper caution, careless of consequences, or irresponsibility;**

**(ii) also includes intentional disregard of the law.**

**(E) failure to report the damage to Indiana 811**

**(F) failure to report release of gas or hazardous liquid to Indiana 811 and local police and fire departments having jurisdiction (911);**

**(G) attempts to temporarily repair the damage or stop the flow of gas or hazardous liquid;**

**(H) physical injury;**

**(I) property damage of over $10,000;**

**(J) failure to pay previous civil penalties;**

**(K) level of culpability;**

**(L) amount of damage or threat caused by noncompliance; or**

**(M) other factors the advisory committee deems appropriate;**

**(3) may consider mitigating factors the advisory committee deems appropriate.**

(f) Upon receiving a recommendation from the advisory committee, the commission shall provide the person or entity accused of violating IC 8-1-26 with notice of the advisory committee's recommendation and provide the person or entity thirty (30) days to request a public hearing on the advisory committee's recommendation.

(g) A request for a public hearing before the commission must be filed and served following the procedures in 170 IAC 1-1.1.

(h) If a person or entity accused of violating IC 8-1-26 does not request a public hearing, the commission may act upon the advisory committee's recommendation.

(i) All hearings before the commission regarding violations of IC 8-1-26 are subject to the commission's rules of practice and procedure.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-3; filed May 25, 2011, 12:57 p.m.: 20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA; filed Sep 20, 2023, 4:06 p.m.: 20231018-IR170220359FRA, eff Jan 5, 2024).