

October 15, 2008

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Indiana Utility Regulatory Commission
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[Via e-mail: epeters@urc.in.gov](mailto:epeters@urc.in.gov)

Re: Water Submetering/Sub-Billing Strawman Draft

Dear Ms. Peters:

These comments are submitted on behalf of the Indiana Apartment Association (“IAA”) and Speed Read Technology LLC (“SpeedRead”). The Indiana Apartment Association represents over 200,000 units across the State of Indiana and is primarily comprised of owners of multi-family units. The IAA’s membership also includes a few duplex owners in rural areas of the State. SpeedRead is a submetering company that uses automated meter reading technology for both residential and commercial markets to service water, gas, electricity consumption. By measuring true consumption rather than statistically estimating consumption, properties using SpeedRead’s services improve efficiency, accuracy, and economies for effective utility service management.

Apartment owners throughout the State of Indiana use a wide variety of practices in billing tenants for water service. Some of the practices include, but are not limited to:

- a. billing tenants for consumption through submetering & sub-billing;
- b. billing tenants by deducting common area usage from the owner’s water bill and dividing the remainder by the total square footage of rented space, then multiplying the per square foot charge by the square footage of each tenant’s premises;
- c. including water, sewage disposal, and trash services in the rent; or
- d. billing tenants by deducting common area usage from the owner’s water bill and dividing the remainder equally among tenants.

When the Indiana General Assembly enacted IC 8-1-2-1.2, IURC and OUCC representatives were involved in the process. The intent was to establish that, so long as a landlord acts within certain specified parameters, a landlord is not a public utility subject to regulation. Because the intent of the legislation was not to mandate that landlords must follow a one-size-fits-all approach for billing tenants for water service, it is important that this rulemaking

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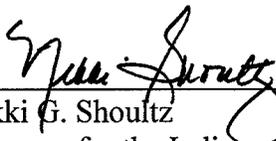
follow suit and allow a landlord latitude in billing tenants, so long as the landlord does not unreasonably profit through the provision of water service. With few exceptions, the billing practices of apartment owners are fair, reasonable, and are not a vehicle for profit. Because regulation adds an extra layer of cost that in many cases would economically devastate the apartment owner, it is unnecessary and imprudent to impose regulations on the entire Indiana rental community simply to remedy the actions of a few.

For this reason, we respectfully recommend that the Commission's rule provide instruction for handling tenant complaints rather than imposing new, burdensome, and expensive regulations on the vast majority of landlords in Indiana who act properly. We respectfully submit the attached alternative draft rule that provides the Consumer Affairs Division with a road map for analyzing complaints involving a landlord's provision of water service. This proposal does not impose new and burdensome billing obligations on the entire rental community, but does provide guidance so that a Consumer Affairs analyst can more easily determine whether a landlord has acted improperly. This proposal also attempts to remove duplication of the requirements already imposed by I.C. 8-1-2-1.2.

The IAA disagrees with the proposed changes to Section 6-6-3 offered on October 13, 2008 on behalf of Conservice Utility Management and Billing. Specifically, the IAA objects to these changes because they would mandate rigid formulas for bill calculations that are complex, difficult to apply, and that eliminate the flexibility that is vital for landlords who use varying methods for billing water service across the state.

Finally, we encourage the General Counsel's Office to convene another pre-rulemaking workshop so that we may answer questions and explain the rationale for specific aspects of the attached proposed rule. We believe a workshop would also allow all interested parties to exchange ideas with the goal of reaching agreement on language for the proposed rule. We appreciate the staff's consideration of our comments and look forward to continuing our dialogue.

Respectfully submitted,



Nikki G. Shoultz
Attorney for the Indiana Apartment Association

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INDIANA APARTMENT ASSOCIATION & SPEEDREAD TECHNOLOGY LLC
ALTERNATIVE RULEMAKING PROPOSAL – 10-15-08

Rule 6. Sub-billing

170 IAC 6-6-1 Definitions

Sec. 1. (a) Where applicable, the definitions set forth in I.C. 8-1-2-1 and 8-1-2-1.2 shall be applied to these rules.

(b) "Commission" means the Indiana utility regulatory commission.

(c) "Dwelling Unit" means a building or property, or portion thereof, used for residential occupancy, including but not limited to mobile home parks and single-family, two-family and multi-family dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes.

(d) "Initial Set-Up Fee" means the fee a landlord charges to establish a new account for a dwelling unit.

(e) "Insufficient Funds Fee" means the fee a landlord charges to process insufficient funds of a payment, including charges assessed to the landlord by a financial institution resulting from insufficient funds of an instrument received in payment of charges for water service.

(f) "Landlord" means the owner of a dwelling unit which is rented or leased to an individual, or an agent acting on the behalf of the owner.

(g) "Landlord's usage" means any water consumed by landlord for personal use or business use including any water consumed in common areas.

(h) "Master -meter" means the use of a meter device to measure the amount of water consumed by a landlord who distributes such water to tenants by meter device

(i) "Sub-bill" means a landlord's request of payment from a tenant for the distribution of water service, which service is provided to the landlord by a public utility or municipally owned utility.

(j) "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.

(k) "Tenant" means any occupant of a dwelling unit who agrees to pay for water service distributed by a landlord.

(l) "Utility" means the public or municipally owned utility that provides water service to landlord for distribution to dwelling unit.

170 IAC 6-6-2 Complaints

Sec. 2. Upon the receipt of a complaint that a landlord may be acting as a public utility in violation of I.C. 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 the following information:

- (1) For the dates in dispute, each bill rendered to the tenant for water service, including a statement indicating the period for which each bill was rendered
- (2) If an estimated bill, a clear and conspicuous coding or other indication identifying the bill as an estimated bill;
- (3) If a tenant's usage is not sub-metered:
 - (a) 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;

- (b) the dates and meter readings of the master meter at the beginning and end of the period for which each bill in dispute was rendered;
 - (c) the actual or estimated amount that is attributed to landlord's usage;
 - (d) an explanation of how the landlord calculated the charges to the tenant for water service.
- (4) If a 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 bill is rendered;
 - (5) The billing rate charged;
 - (6) The previous balance, if any;
 - (7) The amount of any initial set up fee charged;
 - (8) The amount of any administrative fee charged;
 - (9) The amount of any insufficient funds fee charged;
 - (10) The amount and description of any other fee charged;
 - (11) The date on which the bill is due;

170 IAC 6-6-3 Records

Sec. 3. The information described in 170 IAC 6-6-2(a)(1) through (11) shall be:

- (1) retained by a landlord or the landlord's agent for a period of at least one (1) year from the date a bill for water service is rendered to the tenant;
- (2) made available during reasonable hours for inspection without charge or copying for a nominal fee upon request by a tenant or a person who was a tenant during the billing period in question.

170 IAC 6-6-4 Charges

Sec. 4. (a) If the utility charges the landlord for usage measured by a master meter, upon receipt of utility's water bill, the landlord shall divide the total charges for water consumption including 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;

(b) If the landlord sub-meters a dwelling unit's consumption, the landlord shall charge the tenant for the actual unit volume consumed by the tenant's dwelling unit multiplied by the actual rate charged by the providing utility for the water service.

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

(c) In addition to the charges in sections (a) and (b), a landlord may charge a tenant only the costs delineated in I.C. 8-1-2-1.2(c) for the provision of water service.

(d) Landlords that sub-bill or sub-meter shall itemize charges for water service separately and distinctly from any other charges to tenants, including but not limited to rent charges.

170 IAC 7-6-5 Action on Complaints

Sec. 5. If after review of the information provided pursuant to 170 IAC 7-6-2, the commission 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 year, whichever is less, and adjust its billing practices prospectively.