

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION)
OF POSEY TOWNSHIP WATER)
CORPORATION, A NOT FOR PROFIT) CAUSE NO. 43875
CORPORATION, FOR AUTHORITY)
TO ISSUE LONG-TERM DEBT AND) APPROVED: DEC 07 2010
FOR APPROVAL OF A CHANGE IN)
RATES AND CHARGES)

BY THE COMMISSION:
Carolene Mays, Commissioner
David E. Veleta, Administrative Law Judge

On March 26, 2010, Posey Township Water Corporation ("Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition seeking authority to issue long-term debt and authority to increase its rates and charges.

On May 14, 2010, Petitioner prefiled its case in chief consisting of the testimony and exhibits of its witnesses Paul Voyles, Richard A. Burch, and Douglas L. Baldessari. On July 28, 2010, the Indiana Office of Consumer Counselor ("OUCC") prefiled its case in chief consisting of the testimony and exhibits of its witnesses Harold H. Riceman and Roger A. Pettijohn. On August 25, 2010, the Petitioner prefiled its rebuttal evidence. On September 27, 2010, the Petitioner prefiled its supplemental testimony and exhibits supporting a proposed settlement agreement. On October 22, 2010, the OUCC prefiled its settlement testimony and exhibits. On October 25, 2010, the Petitioner and the OUCC jointly filed their Stipulation and Settlement Agreement ("Settlement Agreement"), indicating that a settlement had been reached on all issues.

Pursuant to notice and as provided for in 170 I.A.C. § 1-1.1-15, an evidentiary hearing was held on November 5, 2010 at 1:30 p.m. in Judicial Courtroom 224 of the PNC Center at 101 West Washington Street, Indianapolis, Indiana. The Petitioner and the OUCC were present and participated. The testimony and exhibits of both Petitioner and OUCC were admitted into the record. No members of the general public appeared or sought to testify at the hearing.

Based upon the applicable law and the evidence presented herein, the Commission now finds as follows:

- 1. Notice and Jurisdiction. Due, legal, and timely notice of the hearing in this Cause was given and published by the Commission as required by law. Petitioner owns and operates a not-for-profit water utility and, as such, is subject to the jurisdiction of this Commission. Petitioner seeks to issue long-term debt and to increase its rates and charges. The Commission therefore has jurisdiction over the parties and the subject matter herein.

2. **Petitioner's Characteristics.** Petitioner is a not-for-profit water utility organized and existing under the laws of the State of Indiana. Petitioner owns and operates water wells, treatment facilities, transmission and distribution facilities, land, land rights, equipment, supplies, working capital, and other property used and useful for providing potable water service to approximately 1,200 customers in rural areas of Washington and Orange Counties, Indiana.

3. **Existing Rates, Test Year, and Relief Requested.** The Petitioner's current base rates and charges are those established by the Commission in 2006, in Cause No. 43005-U. Based on a test year of November 30, 2009, as adjusted for changes which are fixed, known, and measurable, and occurring within twelve (12) months, the Petitioner has proposed to change its base rates pursuant to Indiana Code § 8-1-2-125, in order to increase its *pro forma* revenues by approximately 21.36% in a Phase 1 increase and an additional Phase 2 increase of approximately 8.79%. The Phase 1 and Phase 2 charges will cover the cost of operations, maintenance, and all debt service, including the proposed new borrowing from the United States Department of Agriculture Rural Development Agency ("USDA-RDA"). In addition, the Petitioner's proposed Phase 2 charge would include a volumetric charge in the amount of \$1.46 per 1,000 gallons to cover the cost of the additional purchased water from the proposed second connection with Patoka Lake Regional Water District ("Patoka Lake"). Finally, Petitioner has sought the authority of this Commission pursuant to Indiana Code § 8-1-2-79 to issue long-term debt through USDA-RDA in an amount not to exceed \$1,750,000, for a period not to exceed 40 years, at an average interest rate not to exceed 2.75%.

4. **Evidence of the Parties.**

A. **Petitioner's Case in Chief.** In its case in chief, Petitioner offered the testimony and exhibits of Paul Voyles, the President of its Board of Directors; Richard A. Burch, its primary outside professional engineer; and Douglas L. Baldessari, its financial advisor and certified public accountant. That direct case indicated the increase in rates Petitioner was seeking and the basis for such relief. Petitioner's witnesses testified that Petitioner's current rates were insufficient to meet its current operating needs, and would not cover the costs associated with proposed capital improvements.

Petitioner's witness Voyles indicated that the Petitioner, as a not-for-profit water utility, had through its Board of Directors considered the Petition, the capital improvements proposed, the need for the capital improvements, alternatives to the proposed capital improvements, the increase in rates, and had authorized the initiation of this case before the Commission. Mr. Voyles explained that the primary reason for the capital project is to allow the Petitioner to begin purchasing all of its water from Patoka Lake. According to Mr. Voyles, the Petitioner currently purchases about half of its water from Patoka Lake, and the remaining water, derived from a well field, is of poor quality and limited volume. Mr. Voyles also indicated that the Petitioner was seeking authority to borrow funds from the USDA-RDA in order to make various capital improvements. Finally, Mr. Voyles indicated that the revenue requirement presented by Petitioner's witness Baldessari and the capital improvements described by Petitioner's witness Burch were necessary in his opinion.

Petitioner's engineering witness Burch described the capital improvements that were to be constructed, providing as an exhibit his Preliminary Engineering Report ("PER"). Such

capital improvements would include constructing 12,000 feet of new 10” water main, constructing 8,600 feet of new 8” water main, reinforcement of existing lines, constructing a new 150,000 gallon water tank, constructing a new booster station, and upgrading an existing booster station.

Petitioner’s accounting witness Baldessari described in detail his review of Petitioner’s current books and records, appropriate adjustments to those books and records, and the resulting revenue requirement. Witness Baldessari, as a financial advisor and utility accountant, also described the potential borrowing from USDA-RDA. As Mr. Baldessari explained, Petitioner must increase its rates and charges in order to maintain its current system in a sound physical and financial condition, to cover its costs of debt, and to meet the needs and demands of its customers for the foreseeable future. Mr. Baldessari proposed that the increased revenue requirement be realized through a two phase rate increase. Phase 1 would commence upon receipt of all required authorizations from the Commission and continue through the end of the construction period, and Phase 1 would cover existing debt service, increased operating expenses and the debt service reserve requirement for the new debt. Phase 2 would commence upon completion of construction and hook up to Patoka Lake. As initially proposed, the Phase 2 increase would pick up debt service payments on the new debt, as well as a rate tracker that is designed to recover the cost of water purchased from Patoka Lake for the proposed second connection.

B. OUCC’s Case in Chief. The OUCC, through the prefiled exhibits and testimony of its engineering witness, Harold H. Riceman, and its accounting witness, Roger A. Pettijohn, described the discovery and review the OUCC conducted regarding Petitioner’s facilities, books and records, and Petitioner’s proposals in this case. While the OUCC’s witnesses accepted many of Petitioner’s proposals, engineering witness Pettijohn questioned the time period for Petitioner’s maintenance programs, as well as the need for Petitioner to maintain the operational status of the existing well field.

OUCC accounting witness Riceman proposed changes in Petitioner’s revenue requirement in order to accommodate the recommendations of the OUCC’s engineering witness, and also to cause additional changes in Petitioner’s revenue requirement relating to certain operating expenses which Mr. Riceman believed should be reduced or reclassified under another expense category. Mr. Riceman also believed that Petitioner should not implement a rate tracker to provide for the cost of water purchased from Patoka Lake. Instead, Mr. Riceman opined that expense should be included in Petitioner’s base rate. The result of the OUCC’s case in chief was to propose that Petitioner’s Phase 1 rate increase be 21.36% and its Phase 2 increase be 28.80%.

C. Petitioner’s Rebuttal. In response to the positions taken by the OUCC, Petitioner offered the rebuttal testimony and exhibits of its accounting witness Baldessari and its engineering witness Burch. Mr. Burch’s testimony explained his disagreement with the OUCC’s conclusion that Petitioner should abandon its existing well field. Alternatively, Mr. Burch stated that, if the well field is abandoned and closed, there will be a cost of closure for each well, and that cost should be accounted for in the final rates. Mr. Burch accepted the OUCC’s other positions.

Witness Baldessari, while accepting nearly all accounting adjustments proposed by the OUCC, objected to the OUCC's position on including the cost of purchased water in the base rate structure, as opposed to a cost tracker. Witness Baldessari opined the cost tracker approach affected a precise pass through of the cost of purchased water, whereas including that cost in the rate structure results in the low volume users paying a disproportionate share of that cost. Mr. Baldessari's rebuttal evidence also incorporates a revised cost of the Petitioner's proposed purchased water rate from Patoka Lake, which results in a lower revenue request than Petitioner initially proposed, and agrees with the total revenue proposed by the OUCC. The result of Petitioner's rebuttal evidence is that the Petitioner, while changing its original request and accepting OUCC's position on Petitioner's total revenue requirement, would still propose a different method of structuring the proposed rates than that suggested by the OUCC's case in chief.

5. Settlement Agreement. On October 25, 2010, the Petitioner and the OUCC filed their Settlement Agreement.

The terms of the Settlement indicate that the Parties have resolved all disputed issues. The Settlement Agreement provides that the Petitioner should construct all capital improvements that its original Petition and direct case proposed. The Settlement Agreement also calls for authorization of this Petitioner to obtain long-term debt through USDA-RDA, up to the maximum terms that Petitioner has proposed for funding such capital improvements. The Settlement Agreement indicates that the Parties are in agreement as to appropriate funding of extensions and replacements, as well as of system maintenance and repair. The Settlement Agreement also provides that wages, salaries, and the resulting payroll taxes, as proposed by Petitioner, are in fact reasonable, fixed, known, measurable, recurring, and should be allowed as part of Petitioner's revenue requirement.

With respect to the closure of Petitioner's existing well field, the Parties agreed that Petitioner will close the wells, but that the rate should provide an annual amount that will allow the Petitioner to recover the cost of closure.

With respect to the method of providing for the cost of purchased water, the Parties agreed to include a volumetric charge that is in addition to the Phase 2 base rate, and the volumetric charge will provide for a dollar for dollar recovery of the cost of all purchased water on a per 1,000 gallons basis.

With respect to the proposed USDA-RDA financing, the Settlement Agreement indicates that the Parties are in agreement that the Petitioner should be authorized to enter into long term financing at its proposed maximum levels and that Petitioner should move forward with the USDA-RDA financing.

In addition to these specific terms of the Settlement Agreement, the Parties' supplemental testimony discusses each of these terms, explaining that the Parties through the negotiation process and exchange of additional information were able to reach a compromise resulting in agreement on these terms. Finally, the supplemental testimony indicates that the Parties have agreed to Petitioner's *pro forma* revenue requirements as set forth in attachments to the

settlement testimony of Petitioner’s witness, Mr. Baldessari. Such proposed revenue requirement reflects a two-phase increase to Petitioner’s current rate revenue and use of maximum terms for Petitioner’s USDA-RDA borrowing. The Settlement Agreement calls for an increase in Petitioner’s current rate revenue by 21.36% in Phase 1, and an increase subject to the actual terms of borrowing in Phase 2 of up to 8.79%. In addition, the Petitioner’s proposed Phase 2 charge would include a volumetric charge in the amount of \$1.46 per 1,000 gallons to cover the cost of all purchased water.

6. Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

As we review the reasonableness of the Settlement, it is appropriate to recognize that the Parties have provided information not only on Petitioner’s revenue requirement, but also on the adjustments on which the Parties agreed which create this revenue requirement. The Parties have also provided evidence on the capital improvements on which they agree, why they have compromised, and that such improvements should be funded through borrowed funds from USDA-RDA. The Parties also have explained how a two-phase rate increase should be implemented to meet Petitioner’s *pro forma* operating costs and anticipated debt costs.

The Settlement Agreement, supplemental and settlement testimony provide this Commission with detail as to the *pro forma* adjustments to Petitioner’s test year book results, which the Parties believe are reasonable and reflect ongoing expenses. In light of the evidence of record, we find the Settlement Agreement reasonable and in the public interest, and will adopt it as part of this Order.

Petitioner will be authorized to increase its rates in two phases; the first phase will allow an across-the-board increase in rate revenue by 21.36% to Petitioner’s existing rates and tariffs. The first phase rate increase should be implemented following the filing with and approval of new tariffs by Commission’s Sewer and Water Division, giving effect to the agreed rate increase. The second phase rate increase should be implemented after the Petitioner files with this Commission and with the OUCC a true-up filing which reflects the actual terms of its borrowing

from the USDA-RDA. As to the borrowing from the USDA-RDA, we find it reasonable to authorize Petitioner to borrow an amount not to exceed \$1,750,000, for a period of time not to exceed 40 years, and at an average interest rate not to exceed 2.75%.

Finally, the Parties have agreed that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (*Ind. Util. Reg. Comm'n*, March 19, 1997).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. The October 25, 2010 Settlement Agreement executed between Petitioner and the OUCC, a copy of which is attached hereto, shall be and hereby is approved as set forth in Finding Paragraph No. 6.

2. Petitioner is hereby authorized to implement a phased-in across-the-board rate increase, as discussed in Finding Paragraph No. 6, reflecting a Phase 1 increase of 21.36% and a Phase 2 increase to base rates not to exceed 8.79%. The Phase 2 increase shall be implemented only after the Petitioner files additional information in this Cause reflecting the actual terms of its borrowing. The Phase 2 increase includes a volumetric charge in the amount of \$1.46 per 1,000 gallons to cover the cost of all purchased water.

3. Petitioner is authorized to incur additional long-term indebtedness, not to exceed \$1,750,000, for a period not to exceed 40 years, at an average interest rate not to exceed 2.75%. Such long-term indebtedness is to be obtained from the United States Department of Agriculture Rural Development.

4. Petitioner shall file with the Water/Sewer Division of the Commission new schedules of rates and charges consistent with implementing our findings above.

5. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: DEC 07 2010

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


Brenda A. Howe,
Secretary to the Commission

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OCT 25 2010

INDIANA UTILITY
REGULATORY COMMISSION

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CAUSE NO. 43875

STIPULATION AND SETTLEMENT AGREEMENT

Posey Township Water Corporation (hereinafter "Petitioner") and the Indiana Office of Utility Consumer Counselor (hereinafter "OUCC" or "Public") have met through their respective representatives for purposes of discussing the prefiled evidence of record and the information gained through the discovery process. The Petitioner and the OUCC acknowledge that their respective prefiled testimony (Direct, Rebuttal and Settlement) reveal that the parties are in agreement as to various adjustments to Petitioner's test year operating revenue and expenses. Such agreement is demonstrated by the Petitioner's settlement Exhibits DLB-6 through DLB-9. However, the parties also acknowledge there were still disagreements relating to some of the issues in this case following the pre-filing of Petitioner's direct and rebuttal cases and the OUCC's direct case. Such issues specifically included the proper tariff treatment of Petitioner's purchased water expense and the closure of Petitioner's existing well field. The result of the discussions between the Petitioner and the OUCC as to the disputed issues is a resolution of all issues by way of the terms of this Stipulation and Settlement Agreement (hereinafter the "Settlement").

The Petitioner and the OUCC (collectively the “Parties”) agree that the prefiled evidence of record; as supplemented by the testimony and exhibits of Petitioner’s and OUCC’s witnesses; supports the terms of this Settlement. The Parties acknowledge that the terms and conditions of this Settlement are a result of negotiations between the Parties relative to the position each had taken or would take in further proceedings in this Cause. In the interest of efficiency, saving the limited resources of the regulatory bodies involved, and recognizing the reasonableness of the overall results produced by this Settlement, the Parties herein stipulate and agree as follows:

1. **Short Term Capital Improvements.** The Petitioner’s evidence outlined various proposed capital improvements, all of which are related to constructing a second connection to Patoka Lake Regional Water District. The specific improvements are described in the direct testimony of Petitioner’s witness, Richard A. Burch and related Exhibit RAB-1. The Parties agree that all projects as described therein are reasonable and necessary and should be approved by the Commission.

2. **Extensions and Replacements.** The Petitioner has proposed a five-year Capital Improvement Plan, which is described in detail in Petitioner’s Accounting Report, Exhibit DLB-1, p. 14. The OUCC recommended that certain expenditures related to software maintenance and upgrades be allocated to the Petitioner’s revenue requirement allowance for Extensions and Replacements (E&R) and recovered over a period of five years, as opposed to allowing recovery as recurring annual operating expenses (see OUCC Direct Testimony, Schedule 7). The Petitioner agreed to the OUCC’s proposed treatment of those expenditures. The Parties agree that the revised Capital Improvement Plan, including this additional agreed allowance for E&R, is reasonable, necessary and will serve the public interest. The Parties therefore agree that

Petitioner's amended five-year Capital Improvement Plan should be approved as proposed in this Settlement.

3. **System Maintenance and Repair.** The Parties agree that Petitioner's revenue requirement should fund various facility maintenance and repair items. Petitioner's initial proposal is that which is set forth in Petitioner's Exhibit DLB-1. Following discussions between the Parties, they agreed to make certain revisions to the periodic maintenance schedule, as detailed in OUCC Schedule 6 attached to the direct testimony of OUCC witness Harold Riceman. However, in Settlement, the Parties agreed to add an additional \$500.00 per year to the periodic maintenance schedule in OUCC Schedule 6 to allow for the accumulation of funds necessary to accomplish the future closure of the Petitioner's existing well field. That change is described further in the Settlement Testimony of Petitioner's witness Douglas L. Baldessari.

4. **Adjustments to Annual Operating Expenses.** The Parties have agreed on various adjustments to Petitioner's annual operating expenses, as discussed in OUCC pre-filed Direct Testimony and further detailed in OUCC Schedules 1 and 6; as well as in the Settlement Testimony of Douglas L. Baldessari and Exhibit DLB-6 thereto.

5. **Revenue Requirement.** The resulting revenue requirement for this Petitioner is that set out on Petitioner's Exhibit DLB-6 prepared by Petitioner's witness Douglas L. Baldessari. The Parties agree that Petitioner should be authorized to increase its existing rates in two phases in order to fund Petitioner's agreed annual *pro forma* revenue requirement. Phase 1, designed to create total rate revenue of approximately \$554,871, represents an increase in current rates of 21.36%. The Parties agree that Petitioner's revised tariff, giving effect to the agreed Phase 1 rate increase, will be submitted to the Commission's Water/Sewer Division for approval immediately following the issuance of an order in this Cause approving the agreed Phase 1 rate increase, and

that the revised tariff will take effect at the start of the next billing cycle following approval by the Water/Sewer Division. Phase 2 is designed to create additional rate revenue on an annual basis to cover the costs associated with retiring the new long-term debt authorized herein, to be issued through Rural Development, along with funding the required reserves. If the maximum additional revenue as reflected in Petitioner's evidence is required to meet the terms of such borrowing, then the Parties acknowledge that Phase 2 will be an additional 8.79% increase over the Phase 1 increased rates. In addition, Phase 2 will include a volumetric adjustment in the amount of \$1.46 per gallon, which is designed to cover the additional cost of purchased water. Phase 2 rates would be implemented following the filing of true-up information with the Commission after the terms and conditions of the new Rural Development long-term debt become known.

6. **Long-Term Debt Authorization.** The Parties have agreed that all projects included in Petitioner's direct case should be funded. Therefore, the Parties agree that the Petitioner should be authorized to borrow from Rural Development long-term debt based upon maximum terms, including principal of up to \$1,750,000, for a loan period of up to 40 years, at an average annual interest rate of up to 2.75% to fund the agreed capital projects. The Parties further agree that upon confirmation by Rural Development of the exact terms of such loan, Petitioner should late-file in this Cause information as to such terms and provide an exhibit which trues-up the impact on Petitioner's revenue requirement as of the closing of the Rural Development loan. The Parties have agreed that the Petitioner's rates should be increased in two phases. The proposed Phase 1 rate increase is designed to cover the Petitioner's construction period costs associated with its planned second connection to the Patoka Lake Regional Water District. The further rate increase agreed upon for Phase 2 would commence upon completion of

construction, when Petitioner begins purchasing additional water to be delivered through the newly constructed second connection. The final Phase 2 rate is designed to cover all operating expenses, the ongoing purchased water costs, as well as principal, interest, and reserve requirements on all of Petitioner's long term debt.

7. **Request for Prompt Approval by the Commission.** The Parties to this Settlement jointly request prompt approval of this Settlement by way of a final order of the Commission. In keeping with this request, the Parties agree to promptly provide the Commission with an Agreed Proposed Order approving the terms of this Settlement.

8. **Sufficiency of the Evidence.** The Parties stipulate and agree that the Petitioner's case-in-chief, the OUCC's case-in-chief, the Petitioner's rebuttal case, and the settlement testimony and exhibits filed herein by the Parties constitute substantial evidence sufficient to support this Settlement and provide an adequate evidentiary basis upon which the Commission may make findings of fact and conclusions of law necessary for an order adopting and approving this Settlement.

9. **Settlement Effect, Scope, and Approval.** The Parties acknowledge and agree as follows:

(a) This Settlement is conditioned upon and subject to its acceptance and approval by the Commission in its entirety without change or condition that is unacceptable to any party. Each term of the Settlement is in consideration and support of each and every other term.

(b) This Settlement is the result of compromise by the Parties within the settlement process. Neither the making of this Settlement nor any of the

individual provisions or stipulations herein shall constitute an admission or waiver by any Party in any other proceeding; nor shall they constitute an admission or waiver in this proceeding if the Settlement is not accepted by the Commission. Neither Party intends the Settlement to establish precedent with respect to any of the negotiated terms. Both Parties agree this Settlement shall not be used as precedent against the other in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms.

(c) The communications and discussions among the Parties, along with the materials produced and exchanged during the negotiation of this Settlement, relate to offers of settlement and compromise, and as such, all are privileged and confidential. Such information and material cannot be used in this or any other proceeding without agreement of the Parties.

(d) The undersigned represent and agree that they are fully authorized to execute this Settlement on behalf of their designated clients, who will thereafter be bound by this Settlement.

(e) The Parties hereto will either support; or not oppose on rehearing, reconsideration, and/or appeal; an IURC order accepting and approving this Settlement in accordance with its terms.

Accepted and agreed this 22nd day of October 2010.

**POSEY TOWNSHIP
WATER CORPORATION**

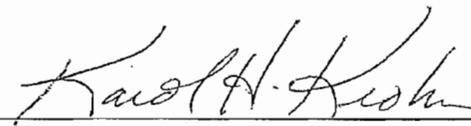
By: _____



David M. Umpleby

**INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR**

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