

ORIGINAL

*JB*  
*AM*  
*Feb*

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Notice of Proposed Rulemaking

IURC RM #12-06

LSA #12-442

The Indiana Utility Regulatory Commission (the "Commission"), pursuant to IC 8-1-1-3(g) and IC 8-1.5-3-8.3(k) hereby proposes to adopt the attached proposed rule which establishes procedures by which a municipality or users of the works whose property is located outside the corporate boundaries of the municipality may file a petition under IC 8-1.5-3-8.3 (d) and (e) to review and adjust, if necessary, the rates and charges imposed on users whose property is located outside the corporate boundaries of the municipality.

The Commission shall hear public comments on the attached proposed rule at a date and time to be determined, in Suite 220, of the National City Center, 101 W. Washington Street, Indianapolis, Indiana.

The Secretary of the Commission is hereby directed to maintain five (5) copies of the proposed rule continuously on file in the Commission Offices for public inspection, and forward copies of the attached proposed rule to the Indiana Legislative Services Agency for publication in the Indiana Register.

IT IS SO ORDERED.

ATTERHOLT, BENNETT, AND MAYS CONCUR; LANDIS AND ZIEGNER ABSENT:

APPROVED:

SEP 19 2012

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

*Brenda A. Howe*

Brenda A. Howe

Secretary to the Commission

**TITLE 170 INDIANA UTILITY REGULATORY COMMISSION**

**Proposed Rule  
LSA Document #12-442**

**DIGEST**

Adds 170 IAC 1-7 which establishes procedures by which a municipality or users of the works whose property is located outside the corporate boundaries of the municipality may file a petition regarding certain rates and charges. Effective 30 days after filing with the Publisher.

**170 IAC 1-7**

**SECTION 1. 170 IAC 1-7 IS ADDED TO READ AS FOLLOWS:**

**Rule 7. Commission Review of Municipal Utility Rates and Charges**

**170 IAC 1-7-1 Policy and scope**

**Authority: IC 8-1-1-3; IC 8-1.5-3-8.3**

**Affected: IC 8-1.5-3-8.3**

**Sec. 1. This rule is intended to establish procedures by which:**

**(1) a municipality; or**

**(2) users of the works whose property is located outside the corporate boundaries of the municipality;**  
**may file a petition under IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e) for the commission to review and adjust, if necessary, the rates and charges imposed on users whose property is located outside the corporate boundaries.**

*(Indiana Utility Regulatory Commission; 170 IAC 1-7-1)*

**170 IAC 1-7-2 Definitions**

**Authority: IC 8-1-1-3; IC 8-1.5-3-8.3**

**Affected: IC 8-1.5-3-8.3**

**Sec. 2. The definitions in IC 8-1.5-3-8.3 and in the following apply throughout this rule:**

**(1) "Commission" means the Indiana utility regulatory commission.**

**(2) "Commission division" means the technical division of the commission for the water and wastewater industry.**

**(3) "Conference" means the official regularly scheduled meeting of the commission at which orders and utility articles are presented for approval.**

**(4) "Customers" means the users of the works whose property is located outside the corporate boundaries of the municipality.**

**(5) "Filing date" means the date a filing under this rule is received and file stamped by the secretary of the commission.**

**(6) "Municipality" means a:**

**(A) city; or**

(b) town.

(7) “Ordinance” means the ordinance adopted by the municipality under IC 8-1.5-3-8.1 that imposes rates and charges on users of the works outside the corporate boundaries of the municipality that are greater than those imposed on users of the works whose property is located inside the corporate boundaries of the municipality.

(8) “OUCC” means the Indiana office of utility consumer counselor.

(9) “Petition” means a petition meeting the form and manner prescribed by the commission as defined in 170 IAC 1-7-4(c).

(10) “Working papers” means documents that were relied upon to support a party’s position. Working papers may be provided in paper or electronic format. Working papers must be:

(A) legible;

(B) paginated; and

(C) specifically identified.

*(Indiana Utility Regulatory Commission; 170 IAC 1-7-2)*

### **170 IAC 1-7-3 Time Frames and Procedures**

**Authority:** IC 8-1-1-3; IC 8-1.5-3-8.3

**Affected:** IC 8-1.5-3-8.1; IC 8-1.5-3-8.3

**Sec. 3. (a) Under this rule, one hundred twenty (120) days:**

(1) is the statutory amount of time for the commission to make its determination or the stay of the ordinance is automatically lifted; and

(2) commences as of the date a petition is filed.

(b) A petition filed under this rule must be filed within fourteen (14) days after the municipality has passed the ordinance setting different rates and charges for users within and outside the municipal boundaries.

(c) Within ten (10) days after a petition is filed under this rule, the municipality must file its case in support of the rate differential, which may include:

(1) testimony;

(2) revenue requirements;

(3) cost of service studies;

(4) related workpapers; and

(5) other documentation or analysis relied upon when approving the ordinance; that supports the rates and charges imposed on the customers and that would assist the utility in meeting its burden of proof as required by IC 8-1.5-3-8.3.

(d) Filings to the commission under this rule shall also be served the same day upon the following:

(1) The OUCC.

(2) The municipality.

(3) A party to the proceeding.

(e) Within forty (40) days of the date the municipality has filed its case in support of the rate differential with the commission, the following may file its response, including working papers, with the commission:

- (1) The OUCC.
- (2) A party to the proceeding.

(f) Within fifteen (15) days after the response is filed with the commission, the municipality may file its rebuttal.

(g) To the extent appropriate and pursuant to the statutory time limitation, the commission procedures in 170 IAC 1-1.1 shall be used for proceedings under this rule. (Indiana Utility Regulatory Commission; 170 IAC 1-7-3)

**170 IAC 1-7-4 Petitions and Notice Requirements**  
Authority: IC 8-1-1-3; IC 8-1.5-3-8.3  
Affected: IC 8-1.5-3-8.3

Sec. 4. (a) At the time that the municipality files its petition, it shall provide notice to the customers by providing the following information:

- (1) The municipality has filed a petition under this rule.
- (2) The date the petition was filed.
- (3) How the customer can obtain a copy of the petition.
- (4) The deadline by which the customer may respond to the petition as set forth in Sec. 3(e) of this rule.
- (5) A statement that the customer may also contact the OUCC concerning a complaint.
- (6) Contact information for the OUCC.

(b) Notice to customers under this section must be sent by US Mail on the date the petition is filed.

(c) Petitions shall be submitted in substantial compliance with the following forms:  
(1) Form A Sample Customers' Petition.

*Form A Sample Customers' Petition*

STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION

PETITION FOR COMMISSION REVIEW )  
AND ADJUSTMENT, IF NECESSARY, )  
OF RATE AND CHARGE DIFFERENCE ) CAUSE NO.  
BETWEEN PROPERTY WITHIN AND )  
PROPERTY OUTSIDE THE CORPORATE )  
BOUNDARIES OF \_\_\_\_\_ )

(MUNICIPALITY) )

Pursuant to IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e), Petitioners, \_\_\_\_\_, users of the works whose property is located outside the corporate boundaries of \_\_\_\_\_ (Municipality) (“Customers”) by counsel, respectfully petition the Indiana Utility Regulatory Commission (“Commission”) to review and adjust, if necessary, the rates and charges imposed on property outside the corporate boundaries of \_\_\_\_\_ (Municipality). In support of its Petition, Petitioners state:

1. On \_\_\_\_\_ (date), \_\_\_\_\_ (Municipality) adopted an ordinance under IC 8-1.5-3-8.1 which imposed rates and charges on users of the works for service to property located outside the corporate boundaries of \_\_\_\_\_ (Municipality) that exceed the rates and charges imposed on users of the works for service to property located within the municipality’s corporate boundaries by more than fifteen percent (15%). Attached as “Exhibit A” is a copy of the ordinance.
2. Under IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e), either or both the municipality, or the lesser of ten percent (10%) of all or twenty-five (25) of the users of the works whose property is located outside the corporate boundaries of the municipality may petition the Commission to review the percentage difference between the rates and charges in order to determine whether the difference is nondiscriminatory, reasonable, and just.
3. In accordance with IC 8-1.5-3-8.3(d)(2) or IC 8-1.5-3-8.3(e)(2) This petition is brought by and on behalf of \_\_\_\_\_ percent (\_\_\_\_ %) of all or \_\_\_\_\_ # of the users of the works whose property is located outside the corporate boundaries of \_\_\_\_\_ (Municipality).
4. The percentage difference between the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and to property located within the corporate boundaries is \_\_\_\_\_.
5. The rate differential between the property located outside and inside corporate boundaries is discriminatory, unreasonable or unjust because \_\_\_\_\_.
6. To the extent the petitioner seeks specific relief, indicate how the rates and charges in the ordinance should be adjusted: \_\_\_\_\_.
7. Other facts or information petitioner believes to be relevant for the commission to consider: \_\_\_\_\_.

8. Petitioners consider IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e), and (identify any other statutes determined to be relevant) to be applicable to the relief requested by this Petition.

9. \_\_\_\_\_ is counsel of record for Petitioners in this matter and is duly authorized to accept service of papers in this cause on behalf of Petitioners.

**WHEREFORE** Petitioners respectfully request the Commission to review the percentage difference between the respective rates and charges and determine whether the difference is discriminatory, unreasonable and unjust, and if necessary, adjust the rates and charges imposed on Petitioners, and for all other just and reasonable relief.

Respectfully submitted,

\_\_\_\_\_  
Attorney for Petitioners

**Verification**

I, \_\_\_\_\_, affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

Signed \_\_\_\_\_ (Representative of the Ratepayers/Petitioners)

**Attorney Contact Information**

**(2) Form B Sample Municipality's Petition.**

*Form B Sample Municipality's Petition*

**STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION**

**PETITION FOR COMMISSION REVIEW )  
AND ADJUSTMENT, IF NECESSARY, )  
OF RATE AND CHARGE DIFFERENCE )  
BETWEEN PROPERTY WITHIN AND ) CAUSE NO.  
PROPERTY OUTSIDE THE CORPORATE )  
BOUNDARIES OF \_\_\_\_\_ )  
(MUNICIPALITY) )**

Pursuant to IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e), Petitioner, \_\_\_\_\_,  
(Municipality), by counsel, respectfully petitions the Indiana Utility Regulatory  
Commission ("Commission") to review and adjust, if necessary, the rates and charges  
imposed on property outside the corporate boundaries of \_\_\_\_\_  
(Municipality). In support of its Petition, Petitioner states:

1. On \_\_\_\_\_ (date), \_\_\_\_\_ (Municipality) adopted an ordinance  
under IC 8-1.5-3-8.1 which imposed rates and charges on users of the works for  
service to property located outside the corporate boundaries of \_\_\_\_\_  
(Municipality) that exceed the rates and charges imposed on users of the works for  
service to property located within the municipality's corporate boundaries by more  
than fifteen percent (15%). Attached as "Exhibit A" is a copy of the ordinance.
2. Under IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e), either or both the municipality, or the  
lesser of ten percent (10%) of all or twenty-five (25) of the users of the works whose  
property is located outside the corporate boundaries of the municipality may  
petition the Commission to review the percentage difference between the rates and  
charges in order to determine whether the difference is nondiscriminatory,  
reasonable, and just.
3. In accordance with IC 8-1.5-3-8.3(d)(1) or IC 8-1.5-3-8.3(e)(1) this petition is  
brought by and on behalf of \_\_\_\_\_ (Municipality).
4. The percentage difference between the rates and charges imposed on users of the  
works for service to property located outside the corporate boundaries of the  
municipality and to property located within the corporate boundaries  
is \_\_\_\_\_.

5. The rate differential between the property located outside and inside the corporate boundaries is nondiscriminatory, reasonable and just because \_\_\_\_\_.
6. Other facts or information petitioner believes is relevant for the commission to consider: \_\_\_\_\_.
7. Petitioner considers IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e), and (identify any other statutes determined to be relevant) to be applicable to the relief requested by this Petition.
8. \_\_\_\_\_ is counsel of record for Petitioner in this matter and is duly authorized to accept service of papers in this cause on behalf of Petitioner.

**WHEREFORE** Petitioner respectfully requests the Commission to review the percentage difference between the respective rates and charges and determine whether the difference is discriminatory, unreasonable and unjust, and if necessary, adjust the rates and charges imposed on the users of the works whose property is located outside the corporate boundaries of the municipality, and for all other just and reasonable relief.

Respectfully submitted,

\_\_\_\_\_  
Attorney for Petitioner

**Verification**

I, \_\_\_\_\_, affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

Signed \_\_\_\_\_ (Representative of the Municipality)

**Attorney Contact Information**

*(Indiana Utility Regulatory Commission; 170 IAC 1-7-4)*

**170 IAC 1-7-5 Commission Determination and Order**

**Authority: IC 8-1-1-3; IC 8-1.5-3-8.3**

**Affected: IC 8-1.5-3-8; IC 8-1.5-3-8.3**

**Sec. 5. If the commission disapproves the municipality's petition and determines that the percentage difference between the rates and charges imposed on customers outside the corporate boundaries and those imposed on users of the works inside the corporate boundaries is not just, reasonable, and non-discriminatory under IC 8-1.5-3-8.3, it may:**

- (1) establish nondiscriminatory, reasonable and just rates and charges for the customers outside the corporate boundaries in accordance with IC 8-1.5-3-8.3(h) and IC 8-1.5-3-8.3(i);**
- (2) order the municipal legislative body to adopt an ordinance imposing the nondiscriminatory, reasonable, and just rates and charges; and**
- (3) if necessary, establish an additional procedural timetable for the establishment of just and reasonable rates.**

*(Indiana Utility Regulatory Commission; 170 IAC 1-7-5)*