

**Members**

Sen. James Merritt, Co-Chairperson  
Sen. Jean Leising  
Sen. Beverly Gard  
Sen. Dennis Kruse  
Sen. Scott Schneider  
Sen. James Tomes  
Sen. Carlin Yoder  
Sen. Lonnie Randolph  
Sen. Jean Breaux  
Sen. Richard Young  
Rep. Jack Lutz, Co-Chairperson  
Rep. Heath VanNatter  
Rep. Robert Behning  
Rep. David Frizzell  
Rep. Eric Koch  
Rep. Timothy Neese  
Rep. Edmond Soliday  
Rep. David Yarde  
Rep. Dan Stevenson  
Rep. Kreg Battles  
Rep. Ryan Dvorak  
Rep. Charles Moseley  
Rep. Matthew Pierce



## **REGULATORY FLEXIBILITY COMMITTEE**

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Authority: IC 8-1-2.5-9

### **MEETING MINUTES<sup>1</sup>**

**Meeting Date:** September 28, 2011  
**Meeting Time:** 10:00 A.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
House Chamber  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 2

**Members Present:** Sen. James Merritt, Co-Chairperson; Sen. Jean Leising; Sen. Beverly Gard; Sen. Dennis Kruse; Sen. James Tomes; Sen. Carlin Yoder; Sen. Lonnie Randolph; Sen. Jean Breaux; Rep. Jack Lutz, Co-Chairperson; Rep. Heath VanNatter; Rep. Robert Behning; Rep. David Frizzell; Rep. Eric Koch; Rep. Edmond Soliday; Rep. Dan Stevenson; Rep. Ryan Dvorak; Rep. Matthew Pierce.

**Members Absent:** Sen. Scott Schneider; Sen. Richard Young; Rep. Timothy Neese; Rep. David Yarde; Rep. Kreg Battles; Rep. Charles Moseley.

#### **I. Call to Order**

Representative Lutz served as chair and called the meeting to order at 10:06 a.m.

#### **II. Indiana Utility Regulatory Commission (IURC) Annual Report on the Communications Industry**

IURC Commissioner Larry Landis presented the IURC's 2011 communications report, focusing

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<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

on deregulation, broadband buildout, video franchising, services packing, and the federal Lifeline/Link-Up program. See Exhibit A. Commissioner Landis said that Indiana's communications industry is evolving into a market-driven environment, and that the role of the IURC's communications division focuses more on policy analysis and advocacy. He stated that all types of video service providers showed increases in price and number of channels offered. He also showed the typical savings achieved by purchasing bundled rather than individual services from video service providers. Commissioner Landis also spoke about Indiana's universal service fund, which was created in 2007 to provide cost recovery to telecommunication providers in high-cost service areas. He said that Indiana is in the process of creating its own lifeline assistance program to work with the federal Lifeline/Link-Up program to increase the rate of telephone subscriptions among low-income Hoosiers.

Representative Pierce asked if the Ball State University study on telecommunications deregulation that Commissioner Landis distributed had been subject to peer review. See Exhibit B. Commissioner Landis said he was unsure. Representative Pierce also asked why his cost of service telephone rates had increased following deregulation in 2006. Commissioner Landis said that basic rates previously had been artificially low relative to the actual cost of service. Representative Pierce and Commissioner Landis discussed the acquisition of Verizon's Fort Wayne service territory by Frontier Communications.

### **III. Examination of Video Service Franchise Fees (HEA 1131-2011)**

Representative Koch introduced the topics of study required by HEA 1131-2011: (1) The purposes for which local units use video service franchise fees; and (2) whether video service franchise fees have an anticompetitive effect on pricing and provision of video services.

John Ruckelshaus, former executive director of the Indiana Cable Telecommunications Association (ICTA), introduced Eric Tresh, who presented oral and written testimony to the Committee. See Exhibit B. Mr. Tresh stated that Indiana's video services tax and fee structure provides preferential tax treatment to direct broadcast satellite service providers over cable and telephone companies that provide video services. Mr. Tresh contended that Indiana's video service franchise fees are in conflict with federal tax policy. He stated that satellite companies use public rights of way and infrastructure to provide video service and should be treated comparably with cable companies. Mr. Tresh advocated changing Indiana's tax policy to provide video service consumers with a tax- and fee-neutral choice. He described tax-neutral policies in other states: 11 states impose a statewide tax on all video service providers, including satellite companies; some states impose equal state sales taxes on satellite and cable companies; and other states allow a credit for franchise fees paid. Mr. Tresh cited several federal court decisions holding video tax parity regimes constitutional.

Chairman Lutz asked if companies that provide telecommunications, video, and internet services pay taxes on the telecommunications and internet services. Mr. Tresh stated that franchise fees are not imposed on those services despite being deployed on the same infrastructure as video services. Representative Pierce asked for an explanation of fees based on use of rights of way. Mr. Tresh said that Virginia imposes a tax on cable and satellite services and an additional cost-based right-of-way fee on cable providers. Representative Koch asked if cable providers in Virginia pay more than satellite providers; Mr. Tresh answered that the fee is structured so they do not. Mr. Tresh told Representative Pierce that Virginia shares the cable and satellite tax revenue with local units of government. Representative Pierce and Mr. Tresh then discussed a study by the Heartland Institute that suggested that consumers choose satellite over cable because it is less expensive. Finally, Mr. Tresh explained to Senator Breaux Kentucky's model of allowing cable companies a credit for franchise fees paid.

Damon Stewart, vice president of state government affairs at DIRECTV, Inc., spoke about differences between satellite and cable companies that make payment of a franchise fee only by cable companies appropriate. He stated that the franchise fee is a form of rent paid by cable companies for the right to use public rights of way and utility poles. Mr. Stewart cited an Indiana Supreme Court case finding that right-of-way fees are valid compensation and not an impermissible tax as well as a federal case classifying franchise fees as rent. Finally, Mr. Stewart provided documentation filed with the Securities Exchange Commission by Comcast and Time Warner Cable listing cable franchise rights as assets.

Chairman Lutz and Senator Breaux asked if satellite companies use public rights of way; Mr. Stewart said they use the rights of way and pay for the use in the form of payments to the owners of fiber-optic placed in the rights of way. Representative Soliday asked Mr. Stewart if he was aware of any electric, gas, or telephone utility paying a franchise fee to a local unit of government; Mr. Stewart answered no. Mr. Stewart told Representative VanNatter that a franchise fee is a business expense passed on to consumers. Senator Merritt asked Mr. Stewart to state DIRECTV's position on the elimination of Indiana's franchise fee. Mr. Stewart said that eliminating the fee would result in the state subsidizing the cable industry. He told Chairman Lutz that fees typically go to local units rather than video service providers.

The Honorable Huck Lewis, Mayor of Lebanon, Indiana, spoke on behalf of the Indiana Association of Cities and Towns. He stated that the franchise fee paid by cable companies is a bargain for the use of municipal rights of way and compared the payment of the franchise fee by cable companies with payments in lieu of taxes (PILOTs) made by public utilities. Mayor Lewis said that the franchise fees are collected by the state, distributed to local units, and used to pay for maintenance of the rights of way. Representative Koch and Mayor Lewis again discussed the comparability of franchise fees and PILOTs.

Misty Hollis, a board member of Whitewater Community Television (WCTV), spoke on behalf of the following individuals representing Richmond, Indiana: Mayor Sarah "Sally" Hutton, City Clerk Karen Chasteen, WCTV Director Eric Marsh, City of Richmond Telecommunications Commissioner David Burns, and Erik Möllberg, chairman of the Indiana chapter of the Alliance for Community Media. She distributed a Citizen Impact Statement from the citizens of Richmond as well as written testimony from Mr. Marsh and Mr. Möllberg. See Exhibits E, F, and G. Ms. Hollis stated that video service deregulation had resulted in increased competition, loss of local control, and the closure of Public, Education, and Government (PEG) channels across the state. Ms. Chasteen stated that Richmond receives approximately \$450,000 each year in franchise fees, 40% of which is allocated to WCTV, with the remaining 60% deposited in the city general fund for right-of-way maintenance. Mr. Marsh told Representative VanNatter that WCTV receives approximately \$176,000 in franchise fees each year, which constitutes 80% of its budget. Representative Koch asked if other utilities pay for use of rights of way. Ms. Hollis responded that the municipal electric utility and the water utility both make PILOTs. Chairman Lutz asked what happens to franchise fees paid by consumers who live outside municipal corporate boundaries. Ms. Hollis said she believes those fees go to the county. Senator Gard reminded the Committee that some rural electric cooperatives provide fiber optic television and other services to members and that they pay a franchise fee to the appropriate municipality or the state. Representative Pierce commented on the difficulty of valuing the use of public rights of way, questioned whether the current franchise fee structure places cable companies at a competitive disadvantage, and stated that any fee structure must hold local units of government harmless.

Chairman Lutz recessed the Committee for lunch at 12:10 p.m.

The meeting reconvened at 1:45 p.m.

#### **IV. Examination of Water and Sewer Rates in Indiana**

IURC Commissioner Caroline Mays gave a presentation on outside-city water rates. See Exhibit H. She said that there is an increasing tendency for some municipalities to charge outside-city customers higher rates. She talked briefly about the existing statutes that address rate setting. She pointed out that there are 358 utilities that have opted out of the IURC's jurisdiction and that when utilities opt out of the IURC's jurisdiction, the local municipal governmental entity becomes the regulator. She stated that the utility commissions in New Jersey, West Virginia, New Hampshire, Texas, and Pennsylvania have jurisdictions in certain cases.

Representative Frizzell talked about HB 1072-2011, which allows the IURC to review certain water rates. He emphasized that rates should be reasonable and just. He encouraged the legislature to work with the IURC to come up with a solution.

Robert Batdorf, customer from Owensville Water, testified in support of HB 1072-2011 and provided written testimony. See Exhibits I and J. Mr Batdorf stated that the price differential between out-of-town and in-town customer rates increased from 50% to 100%. Representative Leising asked if there was a substantial connection charge for out-of-town customers. Mr Batdorf pointed out that the connection lines that service out-of-town customers also serve in-town customers. Representative Behning asked if the city's costs of installing the lines are recouped by fees charged. Mr Batdorf said that based on the city's budget, the fees are enough to cover the costs.

Ms. Leslie Mustard, customer from Owensville Water, also testified about the significant differences in rates charged to out-of-town customers versus in-town customers. Senator Kruse stated that Owensville could lose revenue if out-of-town rates are reduced. Ms. Mustard suggested that rates could be phased in over three years and equalized across customers so that the effect is revenue neutral.

Michael Gilley, president, Laundry and Tan Connection of Indiana, Inc provided written testimony. See Exhibit K. He said he operates nine stores in Marion County, one of which is in Speedway. He said that Speedway has never been required to do a cost-of-study survey to prove that there is a difference in cost to serve the out-of-town rate payer versus the in-town rate payer. He explained that he had spent nearly \$150,000 in litigation fees trying to fight the town of Speedway on the out-of-town rates. Representative Behning suggested that Mr. Gilley try to get connected to Indianapolis water. Mr Gilley said he had tried to get connected to Indianapolis water back in 2002.

Bill Heller, White River Citizens United, said his organization is a home-owner association representing approximately 1200 homes. See Exhibit L. He stated that his customers are served by a utility that has no IURC jurisdiction. He said approximately 82% of members live out of town.

John Griffin, White River Citizens United, gave a presentation about the discriminatory differences in rate structures. See Exhibit M. He highlighted some significant problems with the rates charged to out-of-town customers. He stated that there is no meaningful due process for objecting to the rates. He stated that public hearings are permitted, but they receive no answers from town council members. He suggested that customers should be provided with the ability to petition the IURC to review proposed rate increases.

Don Gatlin, White River Citizens United, also talked about some more discriminatory factors. He stated that utilities have morphed into revenue generators for municipalities. Senator Leising asked if utilities could decide to stop serving out-of-town customers. Mr. Gatlin stated that the issue of access as well as fairness needs to be addressed.

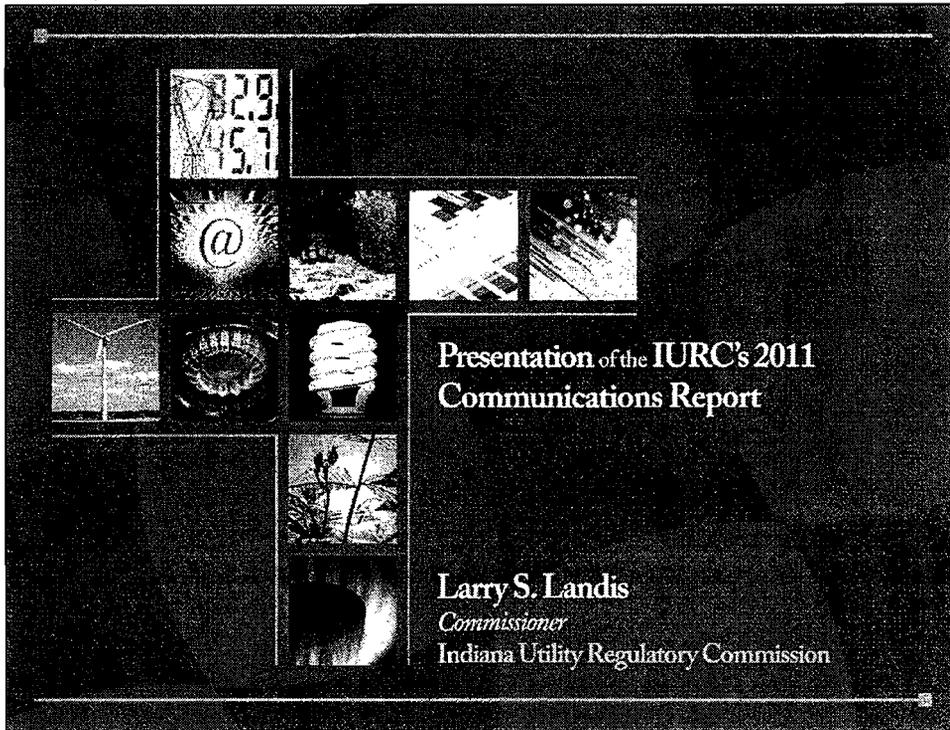
O.W. Krohn, Financial Manager, Town of Owensville, gave a presentation explaining the reasons for the difference in out-of-town and in-town rates. See Exhibit N. He explained that the out-of-town rate differential was agreed to at the time rural users requested service from the town. He said that there are significant cost-of-service differentials between in-town and out-of-town customers.

Nick Kile, Bargersville Attorney, shared a copy of the ordinance establishing water rates and charges for the use of services rendered by the Municipal Water Utility of the Town of Bargersville. See Exhibit O.

Alan DeBoy, President, Indiana American Water, gave a presentation on the case for an enhanced Distribution System Improvement Charge (DSIC) in Indiana. See Exhibit P. He said that utilities should be given the opportunity to recover costs every 6 months instead of every 12 months as in current statute. He stated that this would result in smaller incremental increases in rates for customers. He stated that a DSIC is not a tracker and that it provides water utilities an opportunity to more timely recover prudent investments made in replacing aging infrastructure. Representative Pierce asked Mr. DeBoy to convince him why a DSIC is not a tracker since it is a fast-track approach for utilities to recover costs. Mr. DeBoy stated that the cost recovery is specifically related to investments and infrastructure and not to variable costs. Mr. DeBoy also stated that the regulatory scrutiny in the case of a DSIC is no less rigorous than in a general rate case.

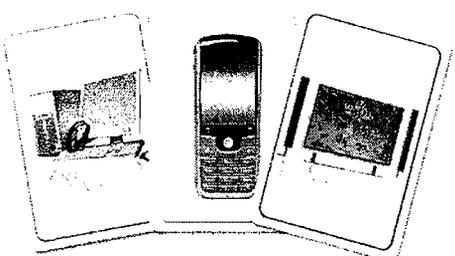
#### **V. Other Business and Adjournment**

There being no further business to discuss, Chairman Lutz adjourned the meeting at 3:45 p.m.



## Topics for Discussion

1. Communications Landscape
2. Deregulation
3. Broadband Buildout
4. Video Franchising
5. Services Packaging
6. Lifeline / Link-Up



IURC 2

The slide titled "Topics for Discussion" lists six key areas for discussion. To the right of the list is a small graphic of a grid of images, similar to the one on the report cover. Below the list is an illustration of three electronic devices: a laptop, a mobile phone, and a tablet. The slide is numbered "IURC 2" in the bottom right corner.

## Communications Landscape

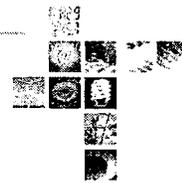


- The past five years have experienced as much change in the telecommunications industry as at any time since the breakup of AT&T in 1984.
  - Telecommunications Act of 1996
  - House Enrolled Act 1279 (HEA 1279)
- Traditional regulatory data is of diminishing value in evaluating performance.
- Indiana is evolving into a market-driven environment, which must be evaluated using new, appropriate metrics.

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IURC 3

## Deregulation



- The Communications Division has eliminated or streamlined many regulations and procedures since 2006.
- It retains jurisdiction over areas where competition alone may not provide solutions.
- Its role increasingly is to provide a framework for policy analysis and advocacy.

[Pages 112-113]

IURC 4

## Broadband Buildout



- In rural areas of Indiana and in other states with a sizeable rural population, the challenge to 100% buildout is cost.
  - 67 wireline companies provide broadband in about 62% of the census blocks in Indiana, covering just more than 84% of the state's geography.
  - 26 wireless companies provide wireless broadband in approximately 95% of the state's geography.

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IURC - 5

## Areas with Fiber-to-the-Home



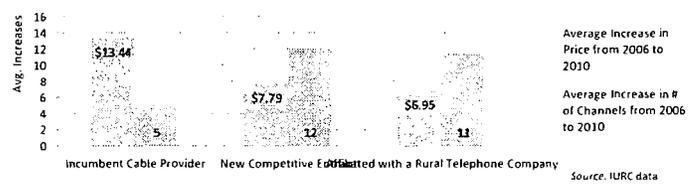
Source: High Performance Government Network

[Page 130]

IURC - 6

## Video Service Offerings

*Price and Channel Trends by Type of Provider*



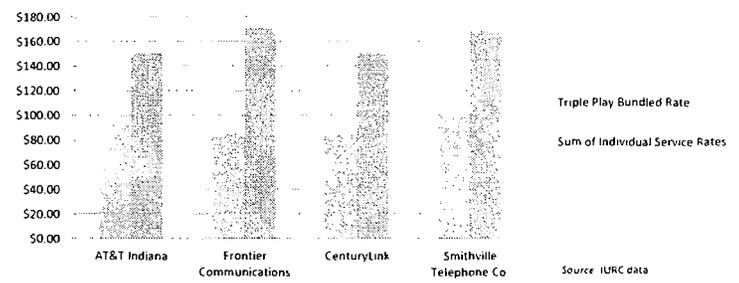
- All showed increases
- Competitive entrants only increased by half as much while adding more channels
- Serial monopoly by content providers is a major challenge

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IURC 7

## Services Packaging

*Comparison of Bundled Rates to Sum of Individual Service Rates*

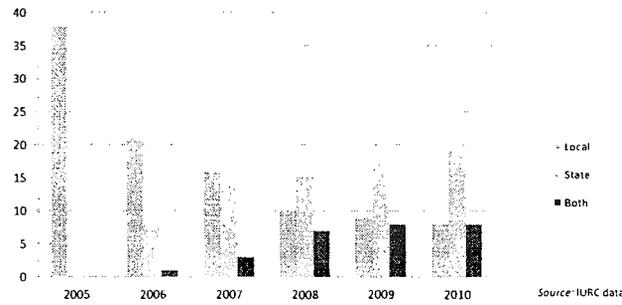


[Page 127]

IURC 8

## Video Franchises

Number of Video Franchises by Year



[Page 124]

IURC 14

## Video Franchising

5.1 million incremental broadband connections  
(226,000 in Indiana) attributable to statewide video franchising

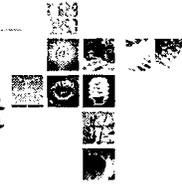
### Additional Broadband Connections Attributable to Statewide Cable Franchising

State	Total Attributable	% of Total New Subscribers
1) Vermont	86,493	5.88%
2) Rhode Island	176,634	5.32%
3) South Carolina	158,608	2.49%
4) Indiana	226,719	2.47%
5) Virginia	327,981	2.42%
6) California	1,489,551	2.41%
21) Tennessee	50,385	1.82%
22) Louisiana	25,730	1.66%
<b>Total</b>	<b>5,147,425</b>	

Source: Telecommunication Deregulation: A Policy Progress Report, September 2011, Digital Policy Institute, Ball State University.

IURC 10

## Completing Broadband Buildout



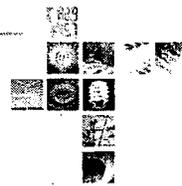
Ways to complete the process:

1. Broaden the business case
2. Create new partnerships
3. Subsidize buildout

[Page 128]

FURC 11

## Universal Service



- Universal Service vs. “universal service” (service for all)
- “Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

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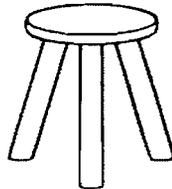
Source Section 254(b)(3) of TA-96

FURC 12

## Universal Service



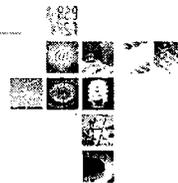
“Three Legged Stool”



*Earned Revenue / Intercarrier Compensation / Universal Service*

IURC 13

## Universal Service Fund

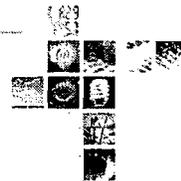


- Indiana’s state universal service fund was created in 2007.
  - It provides cost recovery in high-cost areas so that companies may continue to offer services at rates that are “just, reasonable, and affordable.”
- Without this support, telecommunications companies that serve these areas could decide they can’t afford to modernize their networks or provide services of the same quality as is available in urban areas.

[Pages 118-119]

IURC 14

## Lifeline/Link-Up



- Lifeline/Link-Up is a federal program designed to increase the rate of telephone subscribership among low-income citizens.
  - Lifeline = Monthly discount toward the cost of maintaining telephone service
  - Link-Up = a one-time discount toward the costs of setting up service.
  - Indiana is in the process of creating an Indiana-based program (ILAP), as directed by HEA 1279 to work with the federal program.

[Pages 120-121]

# Telecommunication Deregulation: A Policy Progress Report

DIGITAL POLICY INSTITUTE



## ABOUT THE INSTITUTE

The Digital Policy Institute is responsible for research and education on issues relevant to digital media. Started in 2004 under a Provost Initiative Grant, the DPI is involved in hosting symposia, workshops, and roundtables on current, highly relevant issues in the industry of digital media. By addressing the issues behind intellectual property, the DPI will raise the level of awareness on this campus (and, by extension, nationally) about what constitutes intellectual property theft, rationalizations about it, and models for protecting digital rights.

For more information, contact the Digital Policy Institute at [policy@bsu.edu](mailto:policy@bsu.edu).

1. At the time, four states amended their state utility regulations to allow for statewide franchising: Hawaii, Vermont, Alaska, and Rhode Island. See Lassman, Kent (2005). "Franchising in the Local Communications Market: A primer and Discussion of Three Questions." Progress on Point, Release 12. 9 June 2005, Retrieved on February 5, 2010 from <http://www.pff.org/issues-pubs/pops/pop12.9franchise.pdf>

The past decade has seen a wave of changes to telecommunications regulation in the United States. These policies directly or indirectly influence the price, quantity and type of broadband connections available to consumers. The scope of changes to these regulations, which have occurred in at least 25 states in the past decade, represent an important research question for policymakers considering federal, state or local adjustments to telecommunications policy.

This report is designed to summarize the type and extent of these policy changes. It presents a discussion of the issues influencing research and policy in these areas and evidence of the impact of one of these regulatory changes to broadband telecommunications adoption rates in US states. We begin with a summary of policy changes.

## A DECADE OF TELECOMMUNICATIONS REFORM

Over the past decade, more than half of all states have made significant adjustments to their telecommunications policy landscape. These changes have focused on five broad areas; 1) adjustments to pricing regulation; 2) changes in the flexibility of pricing; 3) authorization of statewide franchising of cable access TV; 4) deregulation of alternative sources of broadband such as wireless and voice over internet protocol (VOIP); and 5) regulation concerning provider of last resort for incumbent local exchange carriers. See Appendix Table 1 for a summary of selected current legislation.

The distribution of deregulatory initiatives across states tells a partial story about the role geographic variations, population density and urban density play in formulating state policy. For example, states with relatively more dense

populations have had the most open statewide franchising, often dating from 1984 when the federal Cable Franchise Policy and Communications Act was enacted.<sup>1</sup>

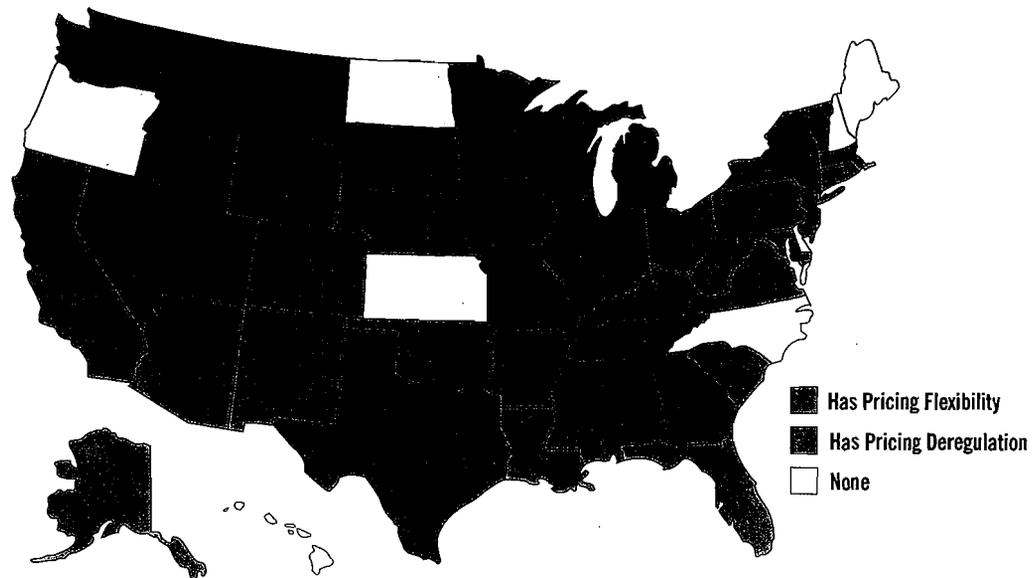
Far and away the most vigorous changes to telecommunications policy have been the relaxation of regional monopolization of cable access TV markets. This adjustment to regulatory policy permitted non-incumbent cable access television providers to enter markets to provide residential and commercial cable TV.

This deregulation effectively was a recognition of technological changes that permitted a wide variety of access technologies for cable TV. The primary benefit of statewide franchise reform was the expansion of opportunity and competition within the realm of video and cable services. Many other consequences of this deregulation have materialized and are worthy of more detailed policy focus, however.

## UNINTENDED BENEFITS: THE CASE OF STATEWIDE FRANCHISING

As of December 2009, 25 states have adopted provisions permitting free entry into cable access TV markets by any firm. This statewide franchising, it is argued, lowers the cost of entry into the cable television market by eliminating the lengthy, often protracted and costly market-by-market legal franchise negotiations. Without a statewide franchising law, a potential statewide cable TV competitor is required to negotiate a separate franchise for operation in each and every locality in the state. A statewide franchise allows such a firm to operate throughout the state subject to a uniform set of rules and with a single application facilitating entry into the cable TV market.

Figure 1: Selected Changes to State Regulation, 2000-2011



Advocates for statewide franchising generally have been large telecommunications firms wishing to offer their cable TV services at a statewide level. Opponents have included local cable incumbents. Advocates of statewide franchising have argued that its adoption would increase telecommunications investment and lead to more competitive cable television services. Opponents have denied such claims.

To the best of our knowledge, there is no evidence in the refereed academic literature of the impact of statewide cable franchise laws on either the quantity of investment in telecommunication infrastructure or on cable television rates. This is not surprising, as the both cable television rates and telecommunications infrastructure investment is proprietary information.

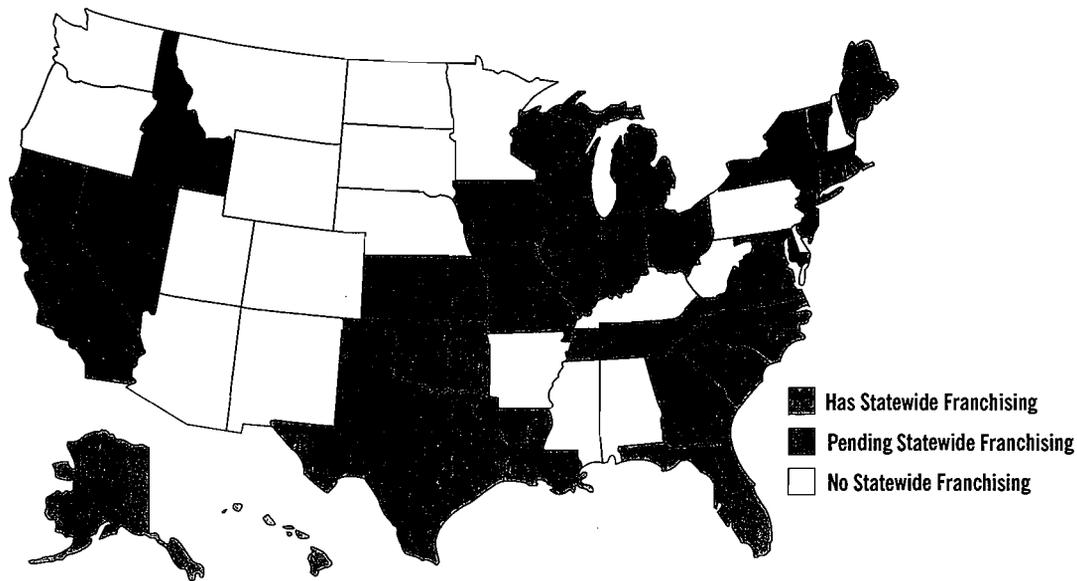
Since 1999 however, the Federal Communications Commission (FCC) has compiled data on the number of broadband connections by state. This data offers an avenue to assess the impact of statewide franchising on an important telecommunications metric: broadband connections. Telecommunications providers have increasingly offered bundled broadband services, blurring the line between a cable provider, a phone provider and an Internet provider. A statewide cable franchise encourages a traditional landline telephone provider not only to enter the cable TV market but also the market for broadband service. Although broadband service could be offered in a local market by a land line telephone provider in the absence of a statewide franchise, a statewide franchise “sweetens” the po-

tential returns to the capital investments necessary to facilitate the provision of both cable and other broadband services.

There is, therefore, reason to suspect that entry into a cable TV market will be accompanied by entry into the broadband market. Increased competition in broadband should be consistent with higher take rates for broadband, holding all other factors constant. The empirical issue we pose is straightforward: do states that adopt statewide cable franchising have higher growth rates in household and firm broadband connections than states that have not adopted such provisions—controlling for all other relevant factors? Not only does this offer to provide indirect evidence as to the initial claims of statewide franchise advocates—that such laws increase telecommunications investment—but also offers to potentially quantify another benefit of a statewide cable franchise law—increased Internet access.

An important consideration in light of the cost reduction in non-cable access TV-related broadband is the effect this has had on price and quantity of broadband connections. Unfortunately, we do not have access to broadband prices. We do however, have robust data on broadband connections at the state level. So, our empirical strategy is straightforward. We seek to test the relationship between statewide franchising legislation – the relaxing of geographic market constraints on the degree of competition within cable networks. To do so, we must construct models that account for the presence or introduction of statewide franchise legislation as

Figure 2: Statewide Cable TV Franchising Changes



well as indications of competition in broadband and cable services in each U.S. state.

To begin this process we obtained semi-annual, state level data on subscribers from the FCC's, Form 477 reports. This data provides administrative subscriber accounts as of June and December each year, beginning in June 1999. The data lag is roughly 16 months, so as of this writing the June 2008 data we analyzed represents the latest availability.

We also collected data on the presence of statewide franchising through a census of states. See Appendix Table 2. From this data, we crafted a panel of variables that accounted for the presence of statewide franchising, by state, in the semi-annual period which corresponds to the FCC data. In order to be conservative in our estimate, we imposed no restrictions on the duration of implementation. For example Illinois' Senate Bill 0678 was implemented in June of 2007, which dictated our coding Illinois as possessing statewide cable franchising during the period January-June 2007. As a practical matter, this would not likely be sufficient time to observe a competitive response to this change in regulation. We have adopted this convention because insofar as it imposes any bias in the treatment of de-regulation it would tend to reduce the magnitude of the impacts. This is a conservative assumption.

Further, we collected data on subscribers, by type, from the FCC Form 477 reports. These data cover a far shorter duration, with annual observations of no more than four years. While this is a richer data set with respect to the share of subscribers by pro-

vider type, the time frame is not really sufficient for dynamic analysis. This data contains nine different types of broadband providers, albeit with considerable data suppression in smaller states. We were able to add a variable for total years of statewide cable franchise availability, and demographic data on population, population density, per capita personal income and the share of population less than 65 years of age.

As a consequence, we have two data sets. The first is a semi-annual panel from 1999:S2 through 2008:S1 comprising broadband subscribers (in aggregate) and the presence of statewide cable franchising legislation. The second is a cross-sectional model with detailed information on demographic, geographic, economic and regulatory information on broadband subscribers by state. Thus, we have two potential families of competitive models to test.

### *Statewide Franchising and Subscriber Dynamics*

A fundamental consideration in the context of statewide cable franchising was the extension of broadband subscribers as a consequence of the price effect of statewide competition. Historical data on prices for Internet services are unavailable. As a consequence, we must rely upon other data to estimate this effect. Estimating this on statewide data provides us the following relationship:

$$Subscribers = f(x, Cable Franchise, Trends)$$

where a measure of broadband subscribers are a function of regional specific conditions ( $x$ ), the

**Table 3: Additional Broadband Connections Attributable to Statewide Cable Franchising**

State	Total Attributable	% of Total New Subscribers Attributable
California	1,489,551	2.41%
Connecticut	110,085	2.04%
Florida	444,977	2.03%
Georgia	149,513	1.93%
Illinois	305,114	2.05%
Indiana	226,719	2.47%
Iowa	59,469	2.04%
Kansas	98,983	2.33%
Louisiana	25,730	1.66%
Maine	7,925	1.85%
Michigan	284,587	2.23%
Missouri	111,962	2.03%
Nevada	69,556	1.99%
New Jersey	393,890	2.21%
North Carolina	278,784	2.22%
Ohio	184,494	1.91%
Rhode Island	176,634	5.32%
South Carolina	158,608	2.49%
Tennessee	50,385	1.82%
Vermont	86,493	5.88%
Virginia	327,981	2.42%
Wisconsin	105,987	2.04%
Total	5,147,425	

presence of a statewide cable franchising and trend dynamics. The more detailed econometric models are available in Bohannon and Hicks [2010]

We are interested in detecting a year-to-year variation in the number of subscribers in each state as a consequence of statewide cable franchising changes and other factors which may influence broadband subscriber growth. By estimating the dependent variable as a percent change, we abstract from state level population differences in the estimate. The model we use allows us to control for random variation which is common to each state, for the duration of the sample period. Thus, we can account for such things as relative population density, regional age differences, other demographic characteristics and incomes. A recession variable accounts for business cycle specific changes to broadband adoption. By permitting the time trend to vary by state we are attempting to isolate the differential growth in take rates by states that absorbed different technologies at different times. We also account for national growth trends and spillover effects across states.

Our estimation results speak primarily to the effect of statewide cable franchising deregulation. While the effect of recessions, broad regional influences and state trends also are of interest, these variables are primarily designed to control for other influences, hence isolating the effect of statewide franchising changes. The full results, theoretical model and econometric specification are available in Bohannon and Hicks [2011].

The important result of this model for this research is that the role statewide cable franchise deregulation has changed the number of broadband subscribers in the state, all things held constant. For that we turn to the model results. We found, across two slightly different models that for each observed period (six months) of statewide franchising, a state will experience a roughly 4 percent increase in subscribers. The mean duration of statewide franchising is just under two years and four months. It is possible then to provide a point estimate of additional broadband connections for each state with a deregulated cable franchising. See Table 3.

These findings are prime evidence of increased competition in broadband services that resulted from enactment of statewide cable franchise legislation in a few states. Another important facet of the debate is the change in competition resulting from changes to statewide franchising of cable services.

## SUMMARY AND CONCLUSIONS

Our preliminary research into the wave of state level telecommunications deregulation tells a tantalizing story about the changing landscape of regulation and its effect on broadband and other telecommunications services. However, this story is incomplete.

Changes to regulation are complex and potentially interactive. We note that much existing research speaks to the role pricing regulation plays on capitalization of technologies, how these rules might affect subsequent market entry (even in deregulated markets) and how technological change has altered previously natural monopolies. Consequently many of the most critical issues surrounding the influence of regulation are not yet known.

For example, the evidence provided here of statewide franchising hints at a more complex issue. We find that permitting statewide franchising had a significant effect on the adoption of broadband telecommunications, accounting for almost 6

percent of new subscriptions in those states which had the longest history of statewide market access by providers. What we do not yet know is equally compelling.

To date, research has not clearly linked the role recent changes to pricing regulation to quality or type of broadband service. Likewise, we do not know if legacy pricing regulation (rate-of-return) has influenced capitalization differently than alternative pricing regulation. Further, research has not clarified the role other broadband incentives – such as state and local tax policy, specific incentives for broadband or other telecommunications providers – has played on deployment and adoption of broadband. An important, and almost wholly unexplored arena of research is the combination of state policy differences and the mix of broadband providers.

The telecommunications policy environment is richly populated with state-level variability in pricing, access and fiscal conditions. For states considering changes to their policies, evidence from analysis of the experience of other states is critical.

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# Appendix

Table 1: Selected Changes to State Regulation, 2000-2011

	Pricing Dereg.	Pricing Flexibility	Explanation of Pricing	Comments		Pricing Dereg.	Pricing Flexibility	Explanation of Pricing	Comments
Alabama	X				Montana	X*		*Pending case	
Alaska		X	8% Per year price cap		Nebraska	X			
Arizona		X			Nevada		X	Price caps	Provider of last resort obligation
Arkansas		X			New Hampshire			Rate of return reg.	
California		X	Price caps		New Jersey		X	3 years of increases	
Colorado		X	Price ceiling		New Mexico		X		
Connecticut		X	Price caps		New York		X	Price capped at \$23	
Delaware			Statutory regulation		North Carolina			Fully regulated	
Florida		X	Price caps		North Dakota				
Georgia	X				Ohio		X	Max increase \$1.25	Broadband, VoIP
Hawaii			Fully regulated		Oklahoma		X	Price caps	
Idaho	X		W/ proven competition		Oregon				
Illinois		X	Basic increase no more than \$1 per year	Wireless deregulation	Pennsylvania		X	Price caps	
Indiana	X			Wireless, VoIP, and partial broadband deregulation	Rhode Island	X			
Iowa	X				South Carolina		X	2 year rate cap	
Kansas		X	Rates for retail dereg		South Dakota	X			
Kentucky		X	Rates for retail dereg		Tennessee	X			
Louisiana		X	Price caps		Texas	X			Broadband
Maine			Fully regulated		Utah	X		No price limits where competition is proven	
Maryland		X	Price caps		Vermont		X	Price caps	
Massachusetts		X	Price caps		Virginia		X	Price caps	
Michigan	X		Minimum plan protected	Wireless	Washington		X	AFOR allows for one time, \$1 increase	
Minnesota		X	Limited AFOR		West Virginia		X		
Mississippi		X	Rates for retail dereg		Wisconsin	X			Wireless
Missouri		X	Price caps		Wyoming		X	Capped at 2006 levels	

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Table 2: Statewide Cable TV Franchising Changes

	Statewide Franchising	Legislation	Last Action		Statewide Franchising	Legislation	Last Action
Alabama	No	N/A	N/A	Nebraska	No	N/A	N/A
Alaska	Yes	N/A	N/A	Nevada	Yes	AB 526	Enacted June 2007
Arizona	No	HB 2812	Enacted March 2006	New Hampshire	No	N/A	N/A
Arkansas	No	N/A	N/A	New Jersey	Yes	ACS 804	Enacted August 2006
California	Yes	AB 2987	Enacted September 2006	New Mexico	No	HB 675/SB 522	Legislation exhausted as of April 2009
Colorado	No	HB 1222	Dead as of June 2007				
Connecticut	Yes	HB 7182	Enacted July 2007	New York	Pending	AB 4469	As of February 2009
Delaware	No	N/A	N/A	North Carolina	Yes	H 2047	Enacted July 2006
Florida	Yes	HB 529	Enacted May 2007	North Dakota	No	N/A	N/A
Georgia	Yes	HB 227	Enacted July 2007	Ohio	Yes	SB 117	Enacted July 2007
Hawaii	Yes	N/A	N/A	Oklahoma	No	N/A	N/A
Idaho	Pending	S1100/In House	Passed Senate February 2009	Oregon	No	N/A	N/A
Illinois	Yes	SB 0678	Enacted June 2007	Pennsylvania	No	HB 1490	As of May 2009
Indiana	Yes	HR 1279	Enacted March 2006	Rhode Island	Yes	N/A	N/A
Iowa	Yes*	SF 554	Enacted March 2007, * additional legislation pending	South Carolina	Yes	HB 4428/HB 3396	Enacted May 2006 & March 2007 resp.
Kansas	Yes	SB 449	Enacted April 2006				
Kentucky	No	N/A	N/A	South Dakota	No	HB 1160	Modified franchising regulation, enacted March 2005
Louisiana	Yes	SB 807	Enacted June 2008	Tennessee	Yes	HB 1421/SB 1933	Enacted May 2008
Maine	Yes	HB 1515	Enacted April 2008	Texas	Yes	SB 5	Enacted August 2005
Maryland	Pending	HB 1182/ In Senate	As of February 2009	Utah	No	SB 209	Exhausted as of February 2007
Massachusetts	Pending	S2649	As of January 2009	Vermont	Yes	N/A	N/A
Michigan	Yes	HB 6456	Enacted December 2006	Virginia	Yes	HB 568/HB1404	March & July 2006
Minnesota	No	SB 3337	Enacted May 2008	Washington	No	SB 5421	Exhausted as of March 2009
Mississippi	No	N/A	N/A	West Virginia	No	HB 3161	Legislation Exhausted as of 2003
Missouri	Yes	SB 284	Enacted March 2007	Wisconsin	Yes	AB 207/SB 107	Enacted April 2007
Montana	No	N/A	N/A	Wyoming	No	N/A	N/A

# BALL STATE UNIVERSITY DIGITAL POLICY INSTITUTE

## About the Institute:

The Digital Policy Institute is involved with research and education issues relevant to digital media; involved in hosting symposia, workshops, and roundtables on current, highly relevant issues in the industry of digital media. Addresses issues behind intellectual property to raise the level of awareness on campus and, by extension nationally, about what constitutes intellectual property theft, rationalizations about it, and models for protecting digital rights.

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## Digital Policy Institute

Ball Communication Building, room 201

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Muncie, IN 47306



**Testimony to the  
Regulatory Flexibility Committee  
Submitted on Behalf of the  
Indiana Cable Telecommunications Association**

**September 28, 2011**

**Eric S. Tresh  
Partner  
Sutherland Asbill & Brennan LLP**

**I. Introduction**

My name is Eric Tresh and I am a partner with the law firm of Sutherland Asbill and Brennan LLP. Thank you for the opportunity to testify on behalf of the Indiana Cable Telecommunications Association (“ICTA”) regarding the tax and fee burden imposed on video programming services in Indiana. We appreciate the time and effort that the Regulatory Flexibility Committee will spend reviewing these important issues and its willingness to receive input from the cable industry.

Founded in 1985, ICTA is the principal trade association for the cable industry in Indiana. ICTA represents cable operators and cable programmers, as well as equipment suppliers and providers of products and services to the cable industry in a variety of forums. ICTA also monitors legislation on the local, state, and national levels to keep its members informed of current developments.

ICTA’s members directly and indirectly employ over 4,200 Hoosiers, equating to \$32 million in annual payroll. ICTA’s members typically invest over \$180 million in capital infrastructure and make \$13 million in charitable contributions. Our customers pay \$100 million in state and local taxes and fees every year. This infrastructure is vital to job growth and creating opportunity across the State.

**II. Background**

Video service providers including cable companies, satellite companies like DirecTV and Dish Network, telecommunications companies, and others use different technologies to provide video programming services to homes and businesses throughout Indiana. All of these companies benefit from the use of state and local infrastructure and the certainty of state and local laws and policies that facilitate the provision of their services to homes and businesses throughout Indiana.

Competition is robust and several companies offer access to video programming services including television shows, movies and news. In addition to cable, satellite, and traditional

**Exhibit C  
Regulatory Flexibility Committee  
Meeting #2 Sept. 28, 2011**

- Massachusetts imposes a 5 percent state excise tax on the gross receipts from satellite service while cable service providers remain subject to franchise fees;
- In North Carolina, satellite subscribers and cable subscribers pay an equal state sales tax. Cable providers are no longer subject to franchise fees;
- Ohio imposes sales tax on satellite services, which is approximately equal to the local franchise fees paid by cable customers;
- Delaware extended its public utility excise tax to satellite services;
- Florida achieved tax parity by imposing a state tax on satellite service at a higher rate than on cable service and repealing local franchise fees;
- Since 2005, Kentucky imposes approximately the same taxes on direct broadcast satellite service and cable service;
- Rhode Island imposes a 7 percent state sales tax on cable and satellite services. Cable service providers are not subject to local franchise fees;
- Tennessee imposes a state tax on satellite and cable services at a state rate of 8.25 percent. Effective July 1, 2011, the state tax is at a rate of 9.00 percent on cable and wireless cable service. Of note, 18 percent of the cable tax collected is distributed to localities and 82 percent of such tax is retained by the state;
- Utah imposes state sales tax on cable and satellite services, but cable providers may take a credit of up to 50 percent of the local franchise fees paid; and
- Virginia imposes state communication services tax on cable and satellite services. Cable providers also pay a cost based right-of-way fee of \$0.83 per subscriber and month.

Alabama, Georgia, Illinois, California, Texas, and other states are also considering parity legislation.

## **V. Video Tax Parity Regimes Are Constitutional**

The satellite industry has resisted states' efforts to create parity and provide their citizens with a tax neutral choice by claiming that parity measures are unconstitutional. Despite numerous lawsuits, federal and state courts in Ohio, North Carolina and Kentucky have found that state tax parity regimes are constitutional. And no federal or state court has found any states' video tax parity regime unconstitutional. While litigation is still pending in a few states, the satellite industry has been unable to win a claim that satellite equalization taxes are unconstitutional.

Turning a blind eye to this remarkable lack of success, the satellite industry persists in its efforts to twist federal law into a complete exemption from state-level taxation. ICTA asks that this Committee see these arguments for what they are – the satellite industry’s desperate attempt to preserve its out-dated tax loophole to the detriment of Indiana video programming consumers.

## **VI. Conclusion**

In summary, ICTA respectfully requests that this Committee recommend that the General Assembly take action to modernize its video tax and fee regime, close the federal loophole, and enact much-needed reform to ensure that functionally equivalent services are treated similarly. Sound tax policy dictates as much. Indeed, a fair and administrable tax system would promote the growth of the video programming marketplace and provide a tax-neutral choice for Indiana consumers.

We appreciate your care and due diligence in evaluating the unique issues faced by the video programming industry and the opportunity to appear before this Committee.

**Exhibit D  
Regulatory Flexibility Committee  
Meeting #2 Sept. 28, 2011**

**Don't Tax  
Our TV.**

Testimony of Damon Stewart  
Vice President, State Government Affairs, AT&T  
Before the Indiana Joint Regulatory Flexibility Committee

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Cable companies pay rent to local government for the right to dig up public streets and sidewalks and string wires from utility poles. That rent is called a Franchise Fee.



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Satellite TV uses innovative technology that does not require us to dig up streets and sidewalks to deliver service to our subscribers.

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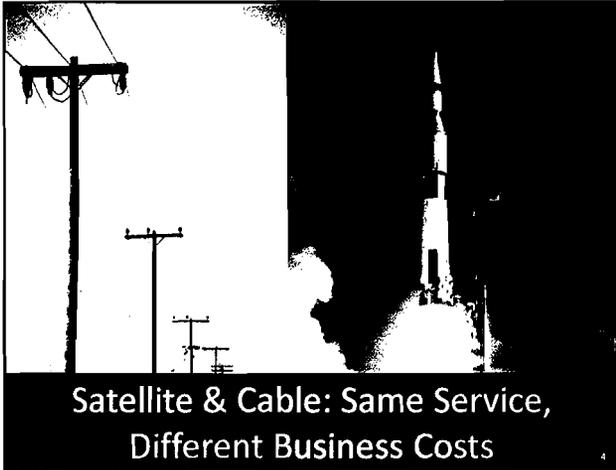
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**Indiana Supreme Court:**  
 Right of way fees are compensation  
 for private use of public land

“... not an impermissible tax but [i]nstead  
 valid compensation charged by Gary for  
 the private commercial use of [its] real  
 estate.”

*City of Gary v. Indiana Bell Telephone Co., Inc.*, 733 N.E.2d  
 149, 154 (Ind. 2000).

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**Federal Case Law:**  
 Franchise fees are rent

“Franchise fees are not a tax . . . but  
 essentially a form of rent [i.e.,] the  
 price paid to rent use of public right-of-  
 ways . . . there can be no doubt that  
 franchise fees imposed on the cable  
 operator are part of a cable company's  
 expense of doing business.”

*City of Dallas v. FCC*, 118 F.3d 393, 397-98 (5th Cir. 1997).

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**Exhibit E**  
**Regulatory Flexibility Committee**  
**Meeting #2 Sept. 28, 2011**

# **CITIZEN IMPACT STATEMENT**

Cable Access in Indiana

September 28, 2011

**TO: REGULATORY FLEXIBILITY COMMITTEE**

A. Competition, level playing fields, belief in and reasons for maintaining the status quo:

Competition among and between video services delivery systems is a stated concern of several in this room. The Indiana Chapter of the Alliance for Community Media believes the environment in which video services providers now operate, appropriately reflects their individual methods of delivery.

Satellite TV delivers its signals via the public airways which are managed and regulated by the federal government through the Federal Communications Commission. In this delivery methodology, no public roads, lands or infrastructure is damaged, dug up or disrupted during the installation or in any upgrade to their system. Homeowners merely have a small dish installed upon their personal property or home to receive this form of cable information.

Land delivered Cable Television on the other hand, uses the public rights of ways, which are managed and maintained by the local city or municipality where a cable operator is engaged in business. These valuable lands, owned by the public, are disturbed any time a cable operator installs, upgrades a system or moves into another area of a city to increase their cable TV penetration rate. The franchise fees that are charged by local municipalities are fair compensation for the use of these public lands and funds are utilized for a variety of public rights of ways uses besides constant maintenance.

Because of the two different methodologies of delivery systems these Video Providers use, each has advantages and disadvantages vis-à-vis the other.

Satellite enjoys a delivery system that can deliver signals cheaper than cable, but they also have a less robust system, which suffers from some rain fade and other weather related issues. This translates into a system that provides fewer channels, less stability and therefore not the expectations of record of traditional cable.

A cable TV system and plant costs more in infrastructure, maintenance, and daily expenses to operate, but because of the nature of their delivery method, they can provide a far greater number of channels and features, and a larger subscriber base, which offsets the costs that satellite gains from not paying franchise fees. Cable television also has the unique advantage of being able to offer PEG (Public, Educational and Government) Local Access channels which provide dialogue between local community members, educational programming for students and local government programming that creates

both inclusion and transparency in its operation, something which satellite cannot manage.

Cable television is then in the driver's seat of a larger subscriber base, making the competitive nature between the systems obvious as each can offer different information specific to their own system. Satellite can easily afford to deliver to more rural communities than cable. Satellite then has a larger footprint, but less subscribers, while cable has smaller footprint, but larger a subscriber base.

In the case of franchise fees, we submit that it would be wrong for the State to devalue these regularly-disrupted public lands that belong to the citizens of the local community. To reduce these franchise fees is an affront to the local residents of that community, and by that, telling them their public land has no value -- even less to the local municipalities who are the trustees for the local citizens to make sure they are getting fair compensation for that which belongs to all of them.

B. Effects on local geographical subdivisions:

On March 16, 2006, Indiana House Enrolled Act 1279 was signed into law. This Act, intended to foster competition among Video Services Providers to lower rate payers' bills; to hasten and simplify Suppliers' franchising process; and to establish a fertile environment for new communications industries jobs -- simultaneously removed almost all power from local hands.

A further devastating effect was the perhaps inadvertent dismantling of local cable access stations. The state very quickly went from a robust number of cable access stations to the six left in existence in our state today.

Indiana took virtually all power away from any kind of local control. The only vestige left to local geographical subdivisions is the franchise fee. In Richmond, our locally-owned and operated cable access station will move to the column of casualties if franchise fees go away.

C. What impact will this have in Richmond?

Localism not available elsewhere on Richmond or any cable TV. The dearth of diversity on commercial cable, offset by cable access today, would spew unabated and unchallenged. Echoes instead of choices would rule the content.

Media consolidation and domination by the few never ends. Local cable access stations are even more important in their roles of providing a local and unique, albeit diminishing voice.

We enjoy all three permissible cable access stations in Richmond. A public channel, an educational channel, and a government channel. Among programming choices are local weather radar, the only local, early warning signal, alerting viewers to take an umbrella, and sometimes to take cover.

Radar was a staple for years on Richmond cable, but was taken away by our provider in a channel shuffle. Through much hard work and at no small expense, this critical service was rescued by our local cable access entity and is again an early warning bulwark against injury and damage on one of our three channels.

Richmond is an aging community. Many of our citizens cannot be physically present for the several school, government, and church meetings and presentations. But, many can and do experience these events and actively process and participate in them thanks to cable access. An informed electorate is indispensable. Taxpayers and family know what's going on in our schools and local council meetings where decisions are made that affect their lives. Church services comfort and refresh our spirits.

Our local cable access staff members, ardently and professionally overcoming limits on staff and budget, force local access and its programming to happen. They are delicate in size, but robust, dedicated and dogged in pursuit of and capturing unique programming and bringing it back alive so those who cannot be there, "can be there." As viewers at home, we are accustomed to being in more places, events and meetings in a week than would ever be individually, humanly possible, thanks to our cable access stations.

D)

With few staff members and a small budget, it is easy to state that never has so much been accomplished by so few, with so little, when it comes to making Cable Access happen -- behind that camera with its passionate operator.

Our cable access stations play an important role in promoting Richmond. No other station on cable or on-the-air does that for us. Our cable access stations -- in Richmond for Richmond -- foster civic access and involvement in the best traditions of the American way.

Franchise fees and its earlier forms certainly needed reforms in the name of progress. However, federal and state de-and re-regulations have now taken virtually all control away from us, the citizens of this great state. It's time for the people. It's time to maintain the pendulum's position, and not let it again swing away from constituents, and keep the franchise fee intact, as it now exists.

Please protect free and diverse speech. Please keep some power with your people. Please help us provide a choice, and not an echo.

We know, benefit from, and believe in cable access. We are just plain citizens. We have no access to retainer or state or corporate legal counsel. We cannot afford professional lobbyists. We must depend on you, our elected representatives to intercede and protect on our behalf so that safety and services of cable access will be maintained on the local level.

Cable access --- over 21 years in Richmond fighting the good fight to inform our citizens -- would go dark if franchise fees are killed.

And, please, we respectfully request that you consider modifying and mandating that this ***fee*** not be referred to as a tax.

Presented by:

Sarah "Sally" Hutton, Mayor  
City of Richmond  
765-983-7207  
mayor@richmondindiana.gov

Karen Chasteen, IAMC, MMC  
City Clerk  
City of Richmond  
765-983-7232  
kchasteen@richmondindiana.gov

Eric Marsh, Director  
Whitewater Cable Television  
765-973-8488  
Marsh.e@comcast.com

Misty Hollis, Board Member  
Whitewater Cable Television  
765-967-5660  
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David Burns, Commission Member  
City of Richmond Telecommunications Commission  
765-914-4272  
dbradionow@aol.com

Erik Möllberg  
Cable Access Fort Wayne/Alliance for Community Media  
260-421-1200  
emollberg@acpl.info



## **WHITEWATER COMMUNITY TELEVISION**

Public, Education, Government Access Television

Cable Channels 11—20—21

Hayes Hall Suite 099 • Indiana University East

Phone (765) 973-8488 • Fax (765) 973-8489 • [www.wctv.info](http://www.wctv.info)

Good morning Ladies and Gentlemen:

My name is Eric Marsh. I am Station Director of Whitewater Community Television, the Public, Education and Government access center the serves Wayne County in East Central Indiana.

If you look at the early history of Whitewater Community Television, you will find a couple of times, where the decision was squarely at the point of closing the doors or continuing the mission of serving the community. At each of those points in WCTV's history someone, local government, both city and county, or an anonymous donor or a local institution such as Indiana University East stepped forward to help keep it going. They could see the potential of what Whitewater Community Television could become to the community. I believe their faith in the organization has paid off big time for the Wayne County community.

Over the years, an always small, but dedicated staff has worked hard to make sure that the channels entrusted to their care were much more than just bulletin boards. The staff covers meetings that affect the community including, but not limited to: City Council, County Council, Sanitary District, Human Rights Commission, Parks Board and The Board of Public Works and Safety, most of these meetings are broadcast live to Wayne County residents. Local citizens, with the assistance of WCTV, take their time to produce monthly half hour information programs, covering topics that include living with disabilities "*A Closer Look*", local environmental issues "*Environmentally Speaking*", not for profit organizations, "The Third Sector" and exciting ways teachers are helping students learn "*Learning By Heart*". The Mayor even hosts a monthly program called *City Connections*, giving her a chance to inform citizens about upcoming events or changes in zoning or other ordinances that affect them.

In Wayne County, our Public, Education and Government Access center is forming working relationships with other media to help engage the community in local topics and events. WCTV works with the local Gannett owned newspaper, the Palladium-Item to produce a weekly 1 hour live, interactive public affairs program, "*P-I Live*." Guests and topics on this program have included 6<sup>th</sup> District congressman Mike Pence, members of the Richmond Board of School trustees, the local animal shelter, the Minority Health Coalition and representatives of Reid Hospital and Health Care services among many others. Viewers can interact with guests either by calling in or sending a chat question to the newspapers website where the program is also streamed live. The audio from this program is shared with Earlham College's radio station WECL for rebroadcast to a wider area audience. Additionally, WCTV and the Palladium-Item work together on election night to provide the area with comprehensive local election night coverage again both on air and streamed on the web. During the holiday season, WCTV works with personalities from local radio stations WKBV & G1013 for a live 5 hour broadcast to help support the local Salvation Army.

**Exhibit F  
Regulatory Flexibility Committee  
Meeting #2 Sept. 28, 2011**

Our local internet provider, Parallax along with the Wayne County Health Department, Wayne County Emergency Management, Richmond Community Schools and WCTV worked together to set up an emergency cablecast system which allows Wayne County Emergency Management or the Wayne County Health Department to take control of all three stations in the event a natural or man-made disaster hits the Wayne County area and citizens need information on shelter, vaccines, food or other vital information.

After years of a degrading signal due to reduced bandwidth, representatives of Richmond Power & Light, Indiana University East, Comcast and WCTV worked together to provide a fiber feed so that Wayne County residents would receive a sharper, cleaner signal from their local public access center. That work was just completed last November.

The above points are not meant to pat WCTV on the back, but to pat the citizens of Wayne County on the back. Since 1988, the entire Wayne County community has embraced the idea of what Public, Education and Government access television is and what it can do for a community...especially one like ours with no major network affiliate in our area and constantly being kicked from one demographic market area to another.

Many times during school board meetings or other local government meetings officials will speak to the camera because they know they are speaking to citizens that are watching. They explain, they go into more detail about a topic, so that there is a greater understanding of the process of government, because they know Wayne County residents are watching. And our citizens watch and they comment back to our local officials. Even Congressman Pence has commented that he can tell when we re-air one of his town hall meetings a week or two after the event because of the spike in calls and e-mails to his office from Wayne County. Whitewater Community Television does not create, but helps facilitate the dialogue that goes on in our community. We don't have to tell our residents to "Lean Forward" or convince them that we are fair and balanced. They already know that. When they sit down to watch the Richmond Common Council or the Wayne County Council or a replay of the Chamber of Commerce candidate debate, they don't get only the 15 second "gotcha" sound bite. They get the full gavel to gavel meeting. They don't get a headline that tells them the important part of the meeting. They get to decide which issue was most important to them because they get to see it and hear it all and if they missed a portion, they can catch it in one of the multiple replays that we provide.

Our local residents watch us because we provide programs and programming that they can't find anywhere else on the many hundreds of channels they have available to them, programs like the local high school band, orchestra and choir concerts, the National Honor Society induction ceremony or commencements from Earlham College, Ivy Tech and Indiana University East. We record and air programs that include the Rotary Club Quiz Bowl, the Purdue M.A.T.H. Bowl, the Cambridge City Kiwanis Club "*Cambridge City Has Talent*" event and the Bethel AME "*Richmond Has Talent*" program. They watch us for the Earlham College Convocation Lecture Series, the Starr-Gennett Walk of Fame concert events, the Public Domain Movies that we sometimes show on Saturday nights and our annual Thanksgiving Weekend special, an 8 hour look at the history of the area called "*Richmond In Motion*."

Organizations including The Richmond Symphony Orchestra, Earlham College, Indiana University East, the Wayne County Area Chamber of Commerce and Ivy Tech use WCTV to reach the community with information about their organizations, programs, and events. These agencies and organizations understand the community is engaged in and with WCTV to the

point where they do not just provide slides for our community or education bulletin boards. They invest time in creating 30 minutes programs that WCTV helps produce and air.

Area churches use WCTV's public access channel as part of their outreach mission. Currently, 22 different local churches, of various faiths provide us video-taped copies of their church services on a weekly basis for re-air to the community.

I would be negligent if I didn't mention the Educational Opportunities we provide area students in the form of internships. WCTV has always provided a home for young people interested in starting their career in broadcasting both behind and in front of the camera. Just in my two years as director, we have hosted interns from Centerville and Richmond High Schools as well as Earlham College and Indiana University East. And once they have graduated, many young people have been able to find positions with Public, Education and Government access centers, including WCTV. Until recently, three of the 4 employees of WCTV were graduates of Indiana Colleges. One employee recently took a position at an Indiana High School as their radio/television instructor. The person we have offered the open position to is also a graduate of an Indiana institution of higher learning. There has been much talk about how to keep young people in the state and working...we are doing that.

At a time when you hear that the two parties in Washington can't agree on anything, it turns out that a Democrat from Wisconsin, Tammy Baldwin and a Republican from Ohio, Steven LaTourette, have co-sponsored H.R. 1746, known as the CAP Act. The idea of the bill is simple, save Public, Education and Government Access Television. Even on a national level, there is an understanding that what centers like Whitewater Community Television, and Access Fort Wayne and CTV 3, the government access center in Connersville and KISS-TV, the education access television channel in Union City, IN and Community Access Television Services in Bloomington do for our communities is important.

Ladies and Gentlemen, I am here to ask you not to destroy an institution that has been an important part of the Wayne County community for coming close to 25 years. Cutting off franchise fees, and that is what I am charged every month on my cable bill, a franchise fee, will cut off Public, Education and Government access television. Our annual audit last year showed that 80% of our funding comes from the franchise fees passed to us by Richmond and Wayne County government. Cutting off Public, Education and Government access centers cuts off dialogue and understanding in our local communities. It will help choke off conversation between citizens and their representatives. I would like you to understand that there are adverse consequences, I assume unintended, to the legislation that is being considered to do away with franchise fees. Those consequences will affect literally tens of thousands of lives throughout Indiana. I urge you to leave the franchise fees intact and allow all of us to continue serving our communities.

Thank you for your time.

#### BOARD OF DIRECTORS

Mark Linderman, President Valerie Shaffer, Vice President  
Robin Henry, Treasurer Sharon Palmer, Secretary  
Deanna Beaman, Ron Cross, Misty Hollis, Jeff Plasterer,  
Linda Molina, Larry Price, Jera Schwer, Jeff Thorne & Rob Zinkan

## Marsh, Eric

---

**From:** Wayne County EMA [ema@co.wayne.in.us]  
**Sent:** Saturday, March 05, 2011 8:48 PM  
**To:** Marsh, Eric  
**Cc:** Mark Linderman (Mark Linderman); Mayor; Ken Paust  
**Subject:** A Very Extra Special THANK YOU  
**Attachments:** Fred Griffin (ema@co.wayne.in.us).vcf

Eric,

THANK YOU so very much for the extra attention you and your great WCTV staff have given to our recent spate of weather emergencies. Your efforts to keep up with our very dynamic and frequent weather alerts and road closing lists in order to keep the community better informed is worthy of special recognition and deserves my sincerest and deeply held appreciation. From the info bar on the TV screen to the updates posted on your website, the WCTV Team has worked tirelessly to make sure that important information was made immediately available – and just a click of the remote or mouse away.

Thank you for you continuing commitment to your viewers and to our community. Wayne County is very well served by your devotion and is very fortunate to have such a dedicated Team and a great public information resource..

Sincerely,  
Fred

Fred Griffin, Director  
Wayne County EMA & ECD  
401 East Main Street  
Richmond, IN 47374  
Phone: (765) 973-9399  
Fax: (765) 973-9360  
Cell: (765) 969-1247  
Email: [ema@co.wayne.in.us](mailto:ema@co.wayne.in.us)  
Follow Us On Twitter:  
<http://twitter.com/WayneEMA>  
Register for Local Alerts:  
<http://www.nixle.com>

September 28, 2011

TO: Regulatory Flexibility Committee  
Legislative Services Agency

FROM: The Indiana Chapter of the Alliance for Community Media

Regarding the Matter of Competitive Environment between Cable Television, Satellite  
Television and Franchise Fees

As Chair of the Indiana Chapter and national board member at large of the Alliance for Community Media, I want to thank the Regulatory Flexibility Committee for this opportunity to testify in the matter of whether there is an anticompetitive environment between cable and satellite television. The Alliance for Community Media is a national nonprofit, membership-based organization, dedicated to insuring everyone's access to any electronic media. We represent over 2,000 Public, Educational and Government access centers in the United States.

The Indiana Chapter does not see an anti-competitive environment between Cable television and Satellite TV, specifically because of the method of delivery of the video signals that each party utilize particular to their systems. Satellite TV delivers their signals via the public airways, which are managed and regulated by the federal government through the Federal Communications Commission. In this delivery methodology, no public roads, lands or infrastructure are damaged, dug up or disrupted during the installation or upgrade to their system. Homeowners merely have a small dish installed upon their personal property to receive this form of cable information.

Cable Television on the other hand, uses the public right of ways, which are managed and maintained by the local city or municipality where a cable operator is engaged in business. These valuable lands, owned by the public, are disrupted any time a cable operator installs, upgrades a system or moves into another area of a city to increase their cable TV subscriber base. The franchise fee that is charged by local municipalities is fair compensation for the use of these public lands and funds are utilized for a variety of public right of ways uses besides constant maintenance.

Because of the two different methodologies of delivery systems these video providers use, each has advantages and disadvantages over the other. Satellite enjoys a delivery system that can transmit signals cheaper than cable, but they also have a less robust system, which suffers from rain fade and other weather related issues. This translates into a system that provides fewer channels, less stability and therefore not the strength of traditional cable. A cable TV system and plant costs more to operate, but because of the nature of their delivery method, they can provide a greater number channels and a larger subscriber base. This offsets the costs that satellite gains from not paying franchise fees.

Cable television also has the unique advantage of being able to offer PEG (Public, Educational and Government) Access channels that provide dialogue between local community members, educational programming for students and local government programming. This creates both an inclusive and transparency in local government and nationally, these PEG channels have a 75% viewership rate, an excellent selling point for cable television and something that satellite cannot manage.

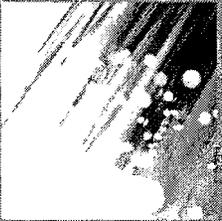
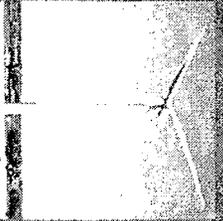
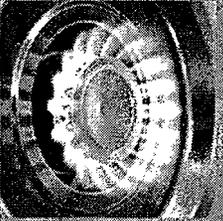
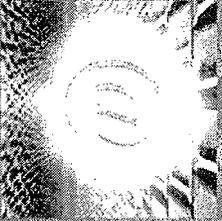
Cable television is then in the driver's seat of a larger subscriber base, making the competitive nature between the systems obvious as each can offer different information specific to their own system. Satellite can deliver to more rural communities than cable simply because of the cost of running cable television lines; thus, they have a better chance of garnering those subscribers than cable. Satellite then has a larger footprint, but fewer subscribers, while cable has a smaller footprint, but a larger subscriber base.

In the case of franchise fees, it would be wrong of the State to devalue these public lands that belong to the citizens of the local community. Furthermore, to reduce the franchise fees is an affront to the local residents of that community, by telling them that their public land has no value, much less to the local municipalities who are the trustees for the local citizens to make sure they are getting fair compensation from that which belongs to all of them.

Humbly submitted,

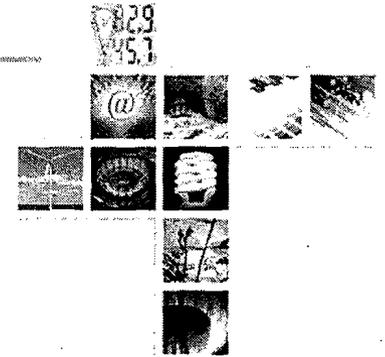
A handwritten signature in black ink, appearing to read 'Erik S. Möllberg', written in a cursive style.

Erik S. Möllberg  
Chair, Indiana Chapter  
Alliance for Community Media  
900 Library Plaza  
Fort Wayne, IN 46802  
260-421-1248  
emollberg@acpl.info



# Presentation on Outside-City Water Rates by the IURC

**Carolene Mays**  
*Commissioner*  
Indiana Utility Regulatory Commission

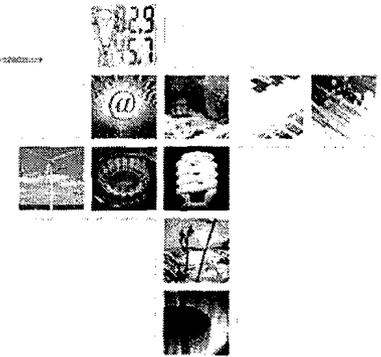


# Customer Rate Disparity

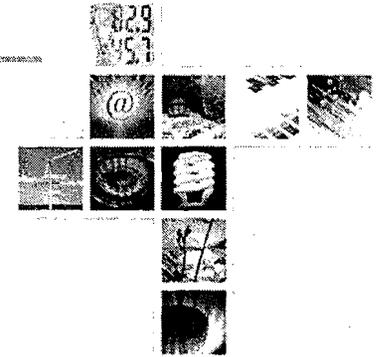
- There is an increasing tendency for some municipalities to charge outside-city customers higher rates or a surcharge.
- Demarcation is based on corporate boundaries.
- Is the issue about the cost to serve or are there other objectives?

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# Customer Rate Disparity

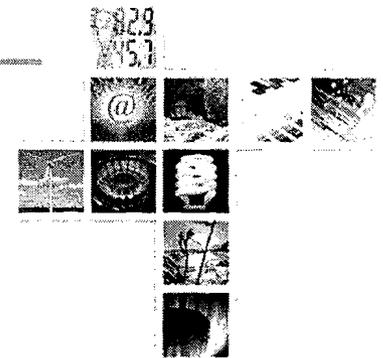


- When municipal utilities opt out of the Commission's jurisdiction, typically the local municipal governmental entity becomes the regulator.
- Impact on city customers vs. non-citizen customers.



# Existing Statutes

- I.C. § 36-1-3, Powers specifically withheld ...(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.
- I.C. § 8-1.5-3-8, (b) The rates and charges made by a municipality for a service rendered or to be rendered, either directly or in connection therewith, must be nondiscriminatory, reasonable, and just.



# Existing Statutes

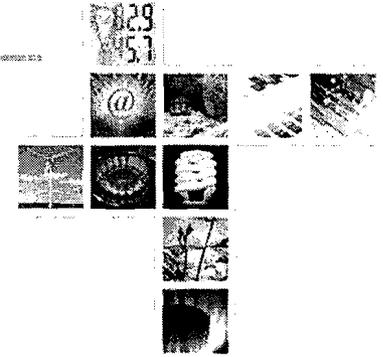
- I.C. 8-1.5-3-10, Whenever a municipality operates an electric utility that provides service outside the corporate boundaries of the municipality, the charges for service outside the corporate boundaries may not differ from the charges for service inside the corporate boundaries unless the utility clearly demonstrates significant cost factors that make different charges nondiscriminatory, reasonable, and just.



# Existing Statutes

- I.C. 8-1-2-103(a), No public utility...may charge, demand, collect, or receive from any person a greater or lesser compensation for any service...than it charges, demands, collects, or receives from any other person for a like and contemporaneous service.

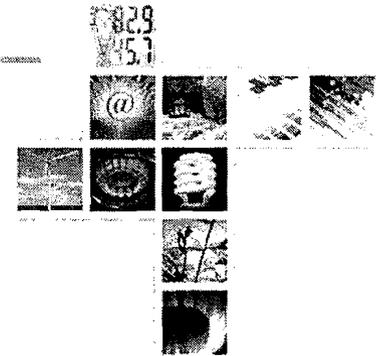
\*This statute does not apply to municipal utilities.



# Decided Cases

- Farley Neighborhood Association v. Town of Speedway, 765 N.E.2d 1226 (Ind. 2002)
  - Indiana Supreme Court affirmed trial court ruling sustaining 50% surcharge imposed by Town of Speedway for more than 50 years.
- Cause No. 42176, February 18, 2004, Indiana Utility Regulatory Commission
  - IURC denied Evansville's request to impose a new 35% surcharge.
- Cause No. 44C01-0912-MI-040, February 11, 2010, LaGrange Circuit Court
  - LaGrange Circuit Court determined that the Town of Wolcottville's ordinance to implement an outside city surcharge of 124% was invalid and the rate not just and equitable.

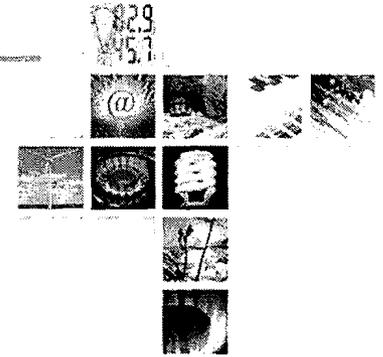
# Commissions with Jurisdiction



- **New Jersey** – Rate jurisdiction over municipal systems that serve 1,000 or more connections outside its municipal boundaries if rates differ
- **West Virginia** – Rate jurisdiction when a petition alleging discrimination is filed
- **New Hampshire** – Rate jurisdiction over outside city rates when a municipality elects a surcharge that exceeds 15%

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# Commissions with Jurisdiction



- **Texas** – The Texas Commission and Environmental Quality has jurisdiction if 10% of the customers outside of the city limits protest
- **Pennsylvania** – Rate jurisdiction over outside city rates for municipalities that serve beyond its corporate limits

**TESTIMONY BEFORE REGULATORY FLEXIBILITY  
COMMITTEE  
ON BEHALF OF OWENSVILLE  
OUT-OF-TOWN WATER CUSTOMERS**

**INTRODUCTION/ISSUE**

**GOOD AFTERNOON. MY NAME IS ROBERT BATDORF. I AM CHAIRMAN OF A COMMITTEE FORMED TO REPRESENT OUT-OF TOWN CUSTOMERS OF OWENSVILLE WATER. I AM HERE SPEAKING ON BEHALF OF APPROXIMATELY 280 OUT-OF-TOWN CUSTOMERS WHO PAY 100% MORE FOR THEIR WATER THAN IN-TOWN CUSTOMERS.**

**WE THANK YOU FOR YOUR TIME AND THE OPPORTUNITY TO ONCE AGAIN TELL OUR STORY. A TRUE STORY. ONE I BELIEVE IF YOU WERE IN OUR SHOES, YOU WOULD BE HERE TOO, AS YOU WILL HEAR THAT LEGISLATION IS OUR ONLY REASONABLE RESOLUTION BEING WE CAN'T GET ON THE BALLOT AND RUN FOR TOWN COUNCIL TO PURSUE RESOLUTION; AND WE CAN'T VOTE FOR TOWN COUNCIL MEMBERS AS WE LIVE OUTSIDE THE TOWN LIMITS.**

**WE HAVE A DEEP RESPECT AND APPRECIATION OF REPRESENTATIVE BATTLES, AS HE MET WITH OUR COMMITTEE, LISTENED TO OUR ISSUE AND CONCERNS. HE COMMITTED TO CONTACTING THE TOWN COUNCIL AND CLERK TO HEAR THEIR SIDE OF THE STORY BEFORE CONSIDERING A REMEDY.**

**AFTER HEARING BOTH SIDES OF THE ISSUE, HE RECOGNIZED THE NEED FOR LEGISLATION TO PROVIDE FAIR AND EQUITABLE RATES FOR CUSTOMERS BASED ON A COST OF SERVICE, AND NOT TOWN BOUNDARIES OR SOME OTHER ARBITRARY DISCRIMINATORY BASIS.**

**WE BROUGHT A LARGE GROUP IN 2010, WITH THREE OF US TESTIFYING BEFORE THE HOUSE ENERGY, COMMERCE, AND TECHNOLOGY COMMITTEE IN SUPPORT OF HOUSE BILL 1107, WHICH PASSED OUT OF COMMITTEE 10 TO 0 IN FAVOR, AND CLEARED THE HOUSE FLOOR 86 TO 10.**

**BUT WE FAILED. APPARENTLY WE WERE NOT CONVINCING ENOUGH, AND THAT IS WHY WE ARE BACK PROVIDING TESTIMONY AND SHOWING OUR SUPPORT OF HB1072. HOPEFULLY OUR TESTIMONY AND THAT OF OTHERS WILL CONVINCEN YOU SOMETHING NEEDS TO BE DONE.**

**WE AREN'T BYPASSING THE APPROPRIATE STEPS. WE DID WHAT ANY CITIZEN SHOULD DO. WHEN NOTIFIED OF A PUBLIC HEARING ON A 40% INCREASE IN WATER RATES AND A 100% DIFFERENTIAL IN RATES FOR OUT-OF TOWN CUSTOMERS, WE ATTENDED THAT HEARING.**

**THE HEARING WAS HELD AT 1:00 PM IN THE AFTTERNOON ON A WORK DAY. DESPITE THE TIMING, WE MANAGED TO GET 26 PEOPLE THERE, AND CONVINCED THE TOWN COUNCIL TO SCHEDULE ANOTHER HEARING AT A MORE CONVENIENT TIME, WHEN THOSE WORKING COULD ATTEND.**

**WE HAD OVER 70 CUSTOMERS PRESENT AT THE SECOND HEARING. WE PRESENTED THE TOWN COUNCIL WITH A WATER RATE STUDY, WHICH IS YOUR (EXHIBIT A). I PERSONALLY CALLED OVER 150 MUNICIPALITIES AND WATER PROVIDERS. THE EXHIBIT REFLECTS THOSE RESPONDING, WITH 56 REFLECTING THE SAME RATES FOR IN-TOWN AND OUT-OF-TOWN CUSTOMERS. I ONLY FOUND 7 WITH DIFFERENTIAL RATES. NONE OF THEM APPROACH THE 100% DIFFERENTIAL CHARGED BY OWENSVILLE TO OUT-OF-TOWN CUSTOMERS.**

**AND, IF MY INFORMATION IS CORRECT AFTER REVIEWING THE LIST OF MUNICIPALITIES AND WATER PROVIDERS WHO HAVE WITHDRAWN FROM THE COMMISSIONS JURISDICTION, ALL BUT TWO OF THE SEVEN WERE UNDER THE COMMISSION'S JURISDICTION; THUS BEING HELD ACCOUNTABLE TO JUSTIFY SUCH DIFFERENTIAL IN RATES.**

**THAT BEING SAID, I DON'T SEE WHY CITIES AND TOWNS WOULD HAVE ANY OBJECTIONS TO FAIR AND EQUITABLE RATES IF THEY ARE BASED ON COST OF SERVICE. SURELY THEY DON'T EXPECT BOUNDARIES AND PROVIDING WATER AS A CURTEOUSY AS JUSTIFICATION FOR A DISCRIMINATORY RATE OF 100% MORE TO OUT-OF-TOWN CUSTOMERS FOR THEIR WATER!**

**AT THE PUBLIC HEARING, THE TOWN COUNCIL WAS ASKED IF THEY ACCOUNT AND TRACK THEIR COSTS AND REVENUES SEPARATELY FOR IN-TOWN AND OUT-OF-TOWN CUSTOMERS. THEIR LAWYER'S RESPONSE WAS.....WE DO NOT NOR DO WE HAVE TO!**

**IF THEY DON'T, THEN I ASK YOU..... HOW CAN THEY ADOPT AN ORDINANCE THAT INVOKES A 100% SURCHARGE ON OUT-OT-TOWN CUSTOMERS WHEN THEY DON'T EVEN KNOW WHAT THE COST OF SERVICE IS?**

**(EXHIBIT B) IS A LIST OF REASONABLE QUESTIONS ONE WOULD THINK ANY RESPONSIBLE TOWN COUNCIL SHOULD BE ABLE TO ANSWER RELATIVE TO THEIR OPERATIONS, YET SUCH QUESTIONS REMAINED**

**UNANSWERED. QUESTIONS LIKE THE 2<sup>ND</sup> ONE ON THE LIST...(READ QUESTION).**

**(EXHIBIT C) INCLUDES LOCAL NEWS MEDIA COVERAGE OF THE HEARING. I DIRECT YOU TO THE ARTICLE ENTITLED, RESIDENTS BOILING OVER WATER RATE INCREASE. WHY? PLEASE TURN TO THE 2<sup>ND</sup> PAGE OF THE EXHIBIT, AND I DIRECT YOUR ATTENTION TO THE BOTTOM RIGHT CORNER IN THE BLOCKED OFF AREA. (READ QUOTE). COULD YOU ACCEPT THIS AS JUSTIFICATION FOR PAYING 100% MORE FOR YOUR WATER THAN IN-TOWN-CUSTOMERS?**

**YOU CAN REVIEW THE OTHER ARTICLES AT YOUR CONVENIENCE, AND BELIEVE AFTER REVIEWING THEM YOU WILL GAIN A BETTER APPRECIATION AS TO WHY WE ARE HERE TODAY.**

### **PERCEPTION/REALITY**

**IN 2008 THE INDIANA UTILITY REGULATORY COMMISSION PRESENTED A REGULATORY FLEXABILITY REPORT TO THE GENERAL ASSEMBLY. THE REPORT WAS VERY THOROUGH, IDENTIFYING KEY ISSUES THAT MAY CONFRONT THE INDIANA ELECTRIC, NATURAL GAS, COMMUNICATIONS, AND WATER AND WASTEWATER INDUSTRIES AND CUSTOMERS.**

**I REFER YOU TO (EXHIBIT D), WHICH IS EXCERPTS FROM THE 2008 REGULATORY FLEXABILITY REPORT TO THE GENERAL ASSEMBLY. I REFER YOU TO SECTION II, SPECIFICALLY THE SECTION REFERENCING OUTSIDE CITY CUSTOMERS. I SHARE WITH YOU THE HI-LITED STATEMENTS ON PAGE 9 AND 10 (READ HI-LITED SECTIONS).**

**WHAT WAS PERCEIVED AS A POTENTIAL PROBLEM IS A REALITY FOR US, THE OUT-OF TOWN WATER CUSTOMERS OF OWENSVILLE WATER. AND, AS THE COMMISSION PREDICTED, THE PROBLEM HAS GROWN.**

**IF YOU GLANCE BACK TO (EXHIBIT A – 2<sup>ND</sup> PAGE), YOU WILL FIND BARGERSVILLE MUNICIPAL WATER UTILITY AS HAVING THE SAME RATE FOR IN-TOWN AND OUT-OF-TOWN CUSTOMERS. YOU WILL HEAR TESTIMONY FROM OUR FRIENDS THERE, THAT AN ORDINANCE WAS INTRODUCED TO CHANGE THIS, PROPOSING TO ADOPT A SURCHARGE ON OUT-OF-TOWN CUSTOMERS. WHO IS NEXT?**

**THIS ONCE AGAIN REINFORCES WHY WE ARE HERE TODAY. WE CURRENTLY PAY 100% MORE FOR OUR WATER THAN IN-TOWN CUSTOMERS. WHY? BECAUSE THE TOWN COUNCIL PRESIDENT STATED; “WE WORK FOR THE TOWN OF OWENSVILLE, AND WE SELL WATER TO OUT-OF-TOWN CUSTOMERS AS A CURTEOUSY”.**

**HAVING WORKED IN INDUSTRY AND BUSINESS FOR 34 YEARS, AND IN REVIEWING VARIOUS RULINGS FROM THE COMMISSION, I KNOW NEITHER OF THESE REPSONSES WOULD MEET WITH THE APPROVAL OF THE COMMISSION FOR CHARGING OUT-OT-TOWN CUSTOMERS 100% MORE FOR THEIR WATER.**

**ALL WE WANT ARE FAIR AND EQUITABLE RATES BASED ON THE TRUE COST OF SERVICE ACROSS THE VARIOUS CUSTOMER BASES.**

**WE BELIEVE LEGISLATION, MUCH LIKE WHAT WAS PROPOSED IN HB 1107 AND CURRENTLY HB 1072 IS NEEDED. IT PROVIDES THE COMMISSION WITH LIMITED JURISDICTION OVER MUNICIPAL WATER RATES CHARGED TO OUT-OF-TOWN CUSTOMERS WHERE PREVIOUS UNAPPROVED DISCRIMINATORY RATES ARE ASSESSED, EVEN WHEN THE MUNICIPALITY HAS OPTED OUT OF THE COMMISSION'S JURISDICTION, MUCH LIKE THE TOWN OF OWENSVILLE.**

**I THANK EACH OF YOU FOR YOUR TIME, FOR THE OPPORTUNITY TO PROVIDE TESTIMONY, AND FOR YOUR CONSIDERATION AS YOU EVALUATE WHAT YOU'VE HEARD. MRS. LESLIE MUSTARD WILL NOW PROVIDE THE SECOND HALF OF OUR TESTIMONY ON BEHALF OF THE OUT-OF-TOWN WATER CUSTOMERS OF OWENSVILLE.**

## **INTRODUCTION/SUPPORT**

**GOOD AFTERNOON. MY NAME IS LESLIE MUSTARD. I SINCERELY APPRECIATE EACH OF YOU TAKING TIME FROM YOUR BUSY SCHEDULES TO AFFORD THOSE WHOM YOU REPRESENT THE OPPORTUNITY TO PROVIDE TESTIMONY TODAY.**

**I TOO AM AN A VERY UNHAPPY OUT-OF-TOWN CUSTOMER OF OWENSVILLE WATER. UNHAPPY AT “TAXATION WITHOUT REPRESENTATION”, BEING I CAN’T VOTE FOR TOWN COUNCIL MEMBERS WHO HAVE INVOKED THIS DISCRIMINATORY 100% RATE ON OUT-OF-TOWN CUSTOMERS.**

**UNDERSTANDING IT IS A NORMAL WORK DAY, WE DIDN’T ATTEMPT TO BRING A BUS OF FRIENDS AND NEIGHBORS, BUT WE DO HAVE (EXHIBIT E), WHICH IS A PETITION WITH OVER 120 SIGNATURES FROM OUT OF TOWN CUSTOMERS THAT WAS PRESENTED TO THE OWENSVILLE TOWN COUNCIL WANTING ANSWERS AS TO WHY WE PAY 100% MORE. I APOLOGIZE FOR ALL THE NOTES AND MARKINGS ON THE PETITION, BUT WE USED IT AS A MEANS TO ALSO ENCOURAGE THEM TO WRITE LETTERS, SEND EMAILS, AND MAKE PHONE CALLS SUPPORTING LEGISLATION TO PROVIDE FAIR AND EQUITABLE RATES BASED ON COST OF SERVICE.**

**SEVERAL OF THEM MADE THE TRIP TO THE HEARING IN 2009, EVEN IN WINTER BLIZZARD CONDITIONS. LIKE ME, I AM CONFIDENT EACH AND EVERY ONE ANXIOUSLY AWAITS LEGISLATION REQUIRING WATER RATES TO BE FAIR, JUST, AND EQUITABLE.**

## **JUSTIFICATION OF RATES**

**WHAT DOES THE COMMISSION REQUIRE OF A WATER PROVIDER IF THEY WANT TO IMPOSE A DIFFERENTIAL RATE ON VARIOUS CUSTOMERS?**

**I REFER YOU TO OUR (EXHIBIT F), WHICH ARE PAGES EXTRACTED FROM CAUSE #42176. THE CITY OF EVANSVILLE FILED A PETITION WITH THE COMMISSION TO IMPOSE A 35% SURCHARGE ON OUT-OF-TOWN CUSTOMERS. I SHARE WITH YOU THEIR RESPONSE, READING FROM THE HI-LITED SECTIONS.**

**AS WE CAN SEE, A TRUE COST OF SERVICE, NOT BOUNDARIES IS ESSENTIAL FOR ESTABLISHING DIFFERENTIAL RATES AMONG CLASSES OF CUSTOMERS.**

**WE AND OTHER CITIZENS OF INDIANA WANT AND NEED THAT SAME ACCOUNTABILITY FOR WATER PROVIDERS NOT UNDER THE COMMISSION'S JURISDICTION.**

**HB1072 PROVIDES FOR THIS PROTECTION. IS IT FAIR? IS IT REASONABLE? MY RESPONSE IS YES. IF A MUNICIPALITY OR WATER PROVIDER WHO HAS WITHDRAWN FROM THE COMMISSION'S JURISDICTION AND IS ACCOUNTABLE TO NO ONE, AND THEY REFUSE OR FAIL TO PROVIDE AN EXPLANATION AS TO HOW THEY DETERMINED A DIFFERENTIAL IN RATES; SHOULD THERE NOT BE A REASONABLE ALTERNATIVE FOR THE CUSTOMER TO SEEK AND OBTAIN FAIR AND EQUITABLE RATES?**

**HB 1072 PROVIDES THIS ALTERNATIVE, ALLOWING THE CUSTOMERS, IF THEY SO CHOOSE, TO FILE A PETITION SEEKING A REVIEW BY THE COMMISSION.**

**ONLY THOSE MUNICIPALITIES AND WATER PROVIDERS WHO FAIL TO FULFILL THEIR OBLIGATION TO THE CUSTOMER MAY FIND THEMSELVES IMPACTED BY HB 1072.**

**ANY DIFFERENTIAL IN RATES SHOULD BE BASED ON COST OF SERVICE AND NOT BOUNDARIES OR OTHER ARBITRARY REASONS.**

**WE KNOW GIVEN THE CURRENT STATE OF THE ECONOMY THAT ANY BILL THAT HAS COST IMPLICATIONS OR NEGATIVE IMPACT ON REVENUES IS DESTINED TO DIE IN COMMITTEE OR ON THE FLOOR. THE INITIAL FISCAL IMPACT STATEMENT HINTED THAT THERE COULD BE AN IMPACT ON THE UTILITY RECEIPT TAX (URT), THE UTILITY SERVICE USE TAX (USUT), AND SALES TAX REVENUES.**

**AS WITH THE EVANSVILLE RATE CASE AND OTHERS THAT COME BEFORE THE COMMISSION, WITH THE DENIAL OF ANY DIFFERENTIAL, THE RATE INCREASE NECESSARY TO SUPPORT OPERATIONS WOULD BE ALLOCATED ACROSS ALL CUSTOMER CLASSES.**

**AS SUCH, THIS BILL IS COST NEUTRAL.**

**THE SUGGESTED REMEDY IN THE REGULATORY FLEXABILITY REPORT WAS TO PROVIDE THE COMMISSION WITH LIMITED JURISDICTION OVER MUNICIPAL WATER RATES CHARGED TO OUT-OF-CITY CUSTOMERS WHERE A SURCHARGE IS ASSESSED, EVEN WHEN THE MUNICIPALITY HAS OPTED OUT OF THE COMMISSION'S JURISDICTION.**

**PLEASE PUT YOURSELF IN OUR PLACE BEING ASSESSED A 100% DISCRIMINATORY RATE, OR IN THE PLACE OF OTHERS IN INDIANA**

**WHO MIGHT BE SUBJECT TO SIMILAR ACTIONS BY THEIR WATER PROVIDER, WITH NO ACCOUNTABILITY OR JUSTIFICATION FOR SUCH ACTION.**

**SOME CITIES AND TOWNS MAY HAVE PROVIDED THEIR CUSTOMERS WITH AN EXPLANATION AND JUSTIFICATION FOR IMPOSING A DIFFERENTIAL WATER RATE ON OUT-OF-TOWN CUSTOMERS. WE COMMEND THEM FOR THAT, FOR THEY HAVE ACTED RESPONSIBLY.**

**WITH HB1072 THOSE MUNICIPALITIES AND WATER PROVIDERS WHO ACT RESPONSIBLY AND ACCEPT ACCOUNTABILITY SHOULD HAVE NOTHING TO FEAR.**

**BUT FOR OUT-OF-TOWN CUSTOMERS FROM TOWNS LIKE OWENSVILLE HB1072 IS NEEDED, FOR IT IS OUR ONLY MEANS TO CHALLENGE PREVIOUS UNAPPROVED RATES CHARGING US, THE OUT-OT-TOWN CUSTOMERS 100% MORE FOR WATER. ALL WE WANT ARE FAIR AND EQUITABLE RATES BASED ON A TRUE COST OF SERVICE.**

**UNLIKE CITIES AND TOWNS LIKE OWENSVILLE WHO ADOPTED THE DISCRIMINATORY SURCHARGE OR RATE OVERNIGHT, WE SUGGEST ANY LEGISLATION ALLOW CITIES AND TOWNS THE OPPORTUNITY TO EQUALIZE WATER RATES OVER A THREE YEAR PERIOD WHEN SUCH RATE IS PETITIONED BY OUT OF TOWN CUSTOMERS AND DURING THE ABBREVIATED HEARING PROCESS DOES NOT MEET WITH THE COMMISSION'S APPROVAL.**

**AGAIN, I SINCERELY APPRECIATE YOUR TIME, YOUR CONSIDERATION, AND YOUR SUPPORT TO HELP LEGISLATION LIKE HB 1072. WE LOOK FORWARD TO THE DAY THE GOVERNOR SIGNS IT INTO LAW.**

**(EXHIBIT A)**

<b>COMPARISON RATE STUDY OF METERED WATER RATES OF TOWNS AND CITIES IN INDIANA</b>		
List of municipals, towns, associations, or water providers that have a metered water rate that is DIFFERENT for in-town and out-of-town customers.		
<b>WATER PROVIDER</b>	<b>CONTACT</b>	<b>METERED WATER RATES</b>
<b>Aurora Municipal Water Utility</b>	<b>812-926-2745</b>	<b>In town \$ 7.20. Out of town \$ 8.60. 19.4% higher</b>
<b>Ellettsville Municipal Water Utility</b>	<b>812-876-2297</b>	<b>In town \$ 9.24. Out of town \$12.49. 35.0% higher</b>
<b>Fort Wayne Municipal Water Utility</b>	<b>260-427-1158</b>	<b>In town \$ 1.49. Out of town \$ 1.71 14.7% higher</b>
<b>Fortville Municipal Water Works</b>	<b>317-485- 4044</b>	<b>In town \$11.79. Out of town \$ 17.67. 49.8% higher</b>
<b>South Bend Municipal Water</b>	<b>574-235-9322</b>	<b>In town \$19.90. Out of town \$ 23.88. 20.0% higher</b>
<b>Troy Municipal Water Department</b>	<b>812-547-7501</b>	<b>In town \$ 2.30. Out of town \$ 2.78. 20.8% higher</b>
<b>Logansport City Municipal</b>	<b>574-753-6231</b>	<b>In town \$ 3.37. Out of town \$ 4.21. 25% higher</b>
<b>Owensville Water</b>	<b>812-724-4151</b>	<b>In town \$ 7.00. Out of town \$ 14.00. 100% higher</b>

Exhibit A - p. 2

<b>COMPARISON RATE STUDY</b> <b>OF METERED WATER RATES OF TOWNS AND CITIES IN INDIANA</b> List of municipals, towns, associations, or water providers that have a metered water rate that is the SAME for both in-town and out-of-town customers.		
WATER PROVIDER	CONTACT	METERED WATER RATES
Auburn Municipal Water Utilities	260-925-6450	Same Water rates for In-town & out-of-town
Akron – Town Of Akron	574-893-4123	* Same Water rates for In-town & out-of-town (Had different rates prior to '95 hearing & rate study, all were then made the same.)
Ashley – Town Of Ashley	260-587-9276	Same Water rates for In-town & out-of-town
Auburn Municipal Water Utility	260-925-6450	Same Water rates for In-town & out-of-town
Bargersville Municipal Water Utility	317-422-5115	Same Water rates for In-town & out-of-town
Battle Ground Conservancy District	765-567-2603	Same Water rates for In-town & out-of-town
Boonville Municipal Water Works	812-897-6543	Same Water rates for In-town & out-of-town
Brown County Water Utility Inc.	812-988-6611	* Same Water rates for In-town & out-of-town (Serve 5 counties of in-town & out-of-town customers).
Bunker Hill	765-689-8758	Same Water rates for In-town & out-of-town
Cannelton – Town Of Cannelton	812-547-2349	Same Water rates for In-town & out-of-town
Carmel Municipal Water Utility	317-571-2443	*Same Water rates for In-town & out-of-town (Acquired other customers on different rate, will phase them into same rate after 5 years).
Chandler Municipal Water Works	812-925-6883	Same Water rates for In-town & out-of-town
Charlestown Municipal Water Dept	812-256-7126	Same Water rates for In-town & out-of-town

Exhibit A - p.3

**COMPARISON RATE STUDY  
OF METERED WATER RATES OF TOWNS AND CITIES IN INDIANA**

Continued list of municipals, towns, associations, or water providers that have a metered water rate that is the SAME for both in-town and out-of-town customers.

<b>WATER PROVIDER</b>	<b>CONTACT</b>	<b>METERED WATER RATES</b>
<b>Connersville Water Corporation</b>	<b>765-825-2158</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Corydon Municipal Water Works</b>	<b>812-738-3958</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Cynthiana – Town Of Cynthiana</b>	<b>812-845-2924</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Dublin – Town Of Dublin</b>	<b>265-478-4878</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Eastern Bartholomew Water Corporation</b>	<b>812-526-9777</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Eastern Heights Utilities Inc.</b>	<b>812-384-8261</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Elberfield – Town Of Elberfield</b>	<b>812-983-4365</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Elkhart Municipal Water Works</b>	<b>574-293-2572</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Evansville Municipal Water Works Dept</b>	<b>812-436-7844</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Fayette Township Water Association</b>	<b>812-535-3912</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Fort Branch – Town Of Fort Branch</b>	<b>812-753-3538</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Floyds Knobs Water Company Inc</b>	<b>812-923-9040</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Hamilton – Town Of Hamilton</b>	<b>260-488-3607</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Harbour Water Corporation</b>	<b>317-639-1501</b>	<b>Same Water rates for In-town &amp; out-of-town (Serve 8 counties of in-town and out-of-town customers).</b>

Exhibit A - p. 4

**COMPARISON RATE STUDY  
OF METERED WATER RATES OF TOWNS AND CITIES IN INDIANA**

Continued list of municipals, towns, associations, or water providers that have a metered water rate that is the SAME for both in-town and out-of-town customers.

<b>WATER PROVIDER</b>	<b>CONTACT</b>	<b>METERED WATER RATES</b>
<b>Haubstadt – Town Of Haubstadt</b>	<b>812-768-5929</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Jackson County Water Utility Inc</b>	<b>812-358-3654</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Indianapolis Water</b>	<b>317-639-1501</b>	<b>*Same Water rates for In-town &amp; out-of-town (Had different rates prior to '07 hearing, after which all were placed on same rate).</b>
<b>Knightstown Municipal Water Utility</b>	<b>765-345-5977</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Lafayette Municipal Water Works</b>	<b>765-807-1109</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Marysville Otisco Nabb Water Corp</b>	<b>812-256-6378</b>	<b>Same Water rates for In-town &amp; out-of-town (Majority are out-of-town customers)</b>
<b>Michigan City Municipal Water Works</b>	<b>219-874-3228</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Morgan County Rural Water Corp</b>	<b>765-342-7370</b>	<b>Same Water rates for In-town &amp; out-of-town (Majority are out-of-town, but do serve Monrovia and Eminence)</b>
<b>New Castle Municipal Water Works</b>	<b>765-529-7605</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>North Lawrence Water Authority</b>	<b>812-279-2774</b>	<b>Same Water rates for In-town &amp; out-of-town (Majority are out-of-town customers)</b>
<b>Peru Municipal Water Department</b>	<b>765-473-6681</b>	<b>Same Water rates for In-town &amp; out-of-town (Some out-of-town customers annexed).</b>
<b>Petersburg Municipal Water Works</b>	<b>812-354-8707</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Posey Township Water Corp</b>	<b>812-472-3432</b>	<b>Same Water rates for In-town &amp; out-of-town</b>
<b>Princeton Municipal Water</b>	<b>812-385-3283</b>	<b>Same Water rates for In-town &amp; out-of-town</b>

<b>COMPARISON RATE STUDY OF METERED WATER RATES OF TOWNS AND CITIES IN INDIANA</b>		
Continued list of municipals, towns, associations, or water providers that have a metered water rate that is the SAME for both in-town and out-of-town customers.		
<b>WATER PROVIDER</b>	<b>CONTACT</b>	<b>METERED WATER RATES</b>
Salem Municipal Water Works	812-883-4264	Same Water rates for In-town & out-of-town
Sellersburg Municipal Water	812-246-7039	Same Water rates for In-town & out-of-town
LMS Townships Conservancy District	812-926-2850	Same Water rates for In-town & out-of-town
Petersburg Municipal Water Works	812-354-8707	Same Water rates for In-town & out-of-town
Posey Township Water Corporation	812-472-3432	Same Water rates for In-town & out-of-town
Prince's Lake Municipal Water Dept	812-933-2163	Same Water rates for In-town & out-of-town
Princeton Municipal Water	812-385-3283	Same Water rates for In-town & out-of-town
Ramsey Water Company Inc	812-347-2551	Same Water rates for In-town & out-of-town
Reelsville Water Authority	765-672-8419	Same Water rates for In-town & out-of-town
Remington – Town Of Remington	219-261-2523	Same Water rates for In-town & out-of-town
Salem Municipal Water Works	812-883-4264	Same Water rates for In-town & out-of-town
Schererville Municipal Water Works	219-322-4581	Same Water rates for In-town & out-of-town
Seelyville – Town Of Seelyville	812-827-2665	Same Water rates for In-town & out-of-town
Warren – Town Of Warren	812-738-3958	Same Water rates for In-town & out-of-town
Westport – Town Of Westport	812-591-3500	Same Water rates for In-town & out-of-town (Have higher tap in fee for out-of-town)

**(EXHIBIT B)**

**QUESTIONS RELATIVE TO ORDINANCE 2008-5  
INCREASE IN METERED WATER RATES**

What actions has the town taken to reduce current O&M and A&G costs to help minimize the size of the proposed increase in metered water rates? I met with the town clerk and offered some suggestions to consider such as combining purchasing power with surrounding towns on the purchase of chemicals, meters, and other supplies via system contracts. There is economy of scales in purchases. Has the town considered such actions?

If water rates are not based on a true cost of service or study showing costs of providing water services to out of town customers is higher, then on what basis are the rates established? Why is the out of town rate double that of in town customers? (Please remember from information presented, boundaries alone are not a justification).

Has the town at any time conducted a survey of other towns to do a comparison rate study to see if they had the same rate for in-town and out-of-town customers, or if they had differential rates?

Does the town track and account for revenues and costs separately for in town and out of town customers? If not, why? Absent doing this, wouldn't one conclude different rates for in town and out of town customers is arbitrary, unjustified, and discriminatory?

Are revenues from water rates dedicated solely to the costs of providing water services? If not has there been a time funds were allocated to other services? Why? Wouldn't water customers then be subsidizing those other services?

With a significant difference in water produced vs. water billed....62,740,000 gals produced and 51,062,000 billed, for a loss of 11,678,000 gals., what is being done to identify and correct this 18.6% loss, which in itself results in increased costs for purchased power to run the pumps, maintenance of the pumps, and depending where the leaks are, also additional costs of chemical for treating? Next to wages, and based on the comparative detail of operating disbursements provided by the town, these are the three highest expenses of the water department. What company can stay in business if they can't account for 18.6% of their products?

The towns in better shape than the Federal Government, having a current cash balance that is gradually decreasing over the last three years, thus the need for an increase in rates. On the one sheet provided at the last hearing, under option 2 which I presume is the one the town council is leaning to, excluding the \$30,000 for replacements/improvements, it reflects a 24% increase in operating expenses over 12/31/07. What time period is this to cover?

After hearing information presented tonight by all of those present, will you seriously consider and evaluate what has been presented and factor that in your decision? As town council members, your duty is to do what is proper, and not do what is popular.

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(EXHIBIT C)

the physical punishment dished out on the gridiron, but band is And so it goes this Saturday Gibson Southern and Princeton Bret Wintermeyer, Gibson • Additional photos, page 2A

'yes,'" said Rep. Carol Shea-Porter, D-N.H.

Fears about an economic downturn sent the Dow Jones industrials down nearly 350 points Thursday, three days after Monday's historic 778-point drop. The Federal Reserve reported record emergency lending to banks and investment firms, fresh evidence of the credit troubles squeezing the country.

# Residents boiling over water rate increase

## Owensville panel hears concerns, then raises water rates 40 percent

By TRAVIS NEFF  
travisn@pdclarion.com

OWENSVILLE — More than 70 residents were at the community center on Thursday night as the town board raised water rates 40 percent.

Several residents who live outside town limits expressed dismay that the rate hike will hit them harder, as they pay double what people living within the corporate limits pay.

Bob Batdorf, speaking on behalf of some of the water customers who live outside of town, said he does not oppose the rate increase but wants an explanation as to why the out-of-town residents pay double. He also

wanted to know why the increase is coming all at once.

"Why does it have to be in one fell swoop?" Batdorf asked. "Why not phase it in?"

Council President Dale Henry said the increase was needed because of rising water prices. He also said it costs more to service residents who live in the country.

"We're not out of line," Henry said.

Council members have said the out-of-town residents have paid double for several years. There has not been a rate increase for Owensville water in 12 years.

Batdorf also asked what



Daily Clarion/Travis Neff

More than 70 residents came out to show their opposition to a proposed increase in water rates in Owensville. They also argued residents living out of town should not have to pay more than in-town residents. The town council approved the rate hike.

town leaders have done to help reduce costs. He also said the town loses 11 million gallons of water a year

due to leaky lines. Batdorf said he spent four days calling employees of other towns in Indiana to

find out if their customers who live out of town pay more. He said he found examples where residents

Residents, continued on Page 10A

### OUTSIDE



**SUNNY**  
High 72  
low 45

### INSIDE

Comics 8A  
Classifieds 4B  
Dear Abby 8A  
Deaths 3A  
Dr. Gott 3A



#1 web site in Gibson County — [www.tristate-media.com](http://www.tristate-media.com)

## Residents

Continued from Page X1A

"Bob may not want to go to court over this, but some may," said Dave Hudnall. "You want to take that one case and shove it down our throat."

"I don't think you'll prevail on the legal distinction," Druley said.

Diane Battdorf got an "amen" when she said that by paying double, it was like an out-of-town customer was paying for an in-town resident's water bill.

She said she even sought divine guidance in the rate-hike situation. Diane Battdorf told the biblical story of Matthew, who was a tax collector.

She said Matthew took too much money and when he realized the error of his ways, he paid back more than he took.

There were four Owensville police officers at the Thursday meeting. "We're glad the police are here. We were worried about you guys," she told the council members.

Diane Battdorf said there are 253 residents living outside of town who use Owensville water.

As the council moved to adopt the ordinance, residents walked out of the community center in disgust. The measure passed unanimously.

living outside of town paid 19, 20 or 25 percent more, but not double.

"There are none that have a rate that is 100 percent higher than the town rate," he said.

Battdorf cited a court case involving the city of Speasway and its attempt to increase the cost of sewer service for out-of-town customers.

Owensville Attorney Ray Druley said his interpretation of the decision in that case says the town is within its rights to have a higher rate for residents who live outside the town line.

"Rate making is a legislative, not a judicial function," he said.

"Why is it double? Where is the justification for that?" Battdorf asked.

"I'm advising (council members) they would be on solid ground if they approve this," Druley said.

Battdorf wanted to know if specific details for costs to the utility could be provided for residents living outside the corporate limits.

Druley said there was no obligation on the part of the council to provide those specifics.

Henry drew scoffs and laughter when he attempted to explain the council's main obligation was to in-town residents.

"We work for the town of Owensville," he said. "We sell water to out-of-town customers as a courtesy."

Battdorf said he did not want to initiate legislation over the water issue, but would contact state legislators about the matter.

Serving Owensville,  
Haubstadt and  
Fort Branch areas

South Gibson  
**Star-Times**

Exhibit C - p. 3

VOLUME 54 NUMBER 25 FORT BRANCH, INDIANA 47133-0001 PHONE 402-6201 TUESDAY, OCTOBER 25, 2008

# Owensville water rates to increase 40 percent

## Out-of-town rates double in-town rates

By John Clise

About 75 residents packed into the Owensville Community Center to continue discussions on a proposed 40 percent increase to water rates in the Owensville area this past Thursday evening.

Robert Batdorff, who lives outside the corporate limits of Owensville, and spoke for the residents in attendance at the first public hearing, presented the council with another 41 names of residents against the increase, bringing the total number of signers to 159. Batdorff presented a petition at the first meeting with 108 names of residents who are against the increase because they feel the fees charged to out of town customers is arbitrary and discriminatory.

Batdorff said he contacted about 150 municipalities and water companies and found only seven with differential rates for in and out of town customers. Of those seven, the highest rate charged between in and out town customers is 49.7 percent. Owensville's differential rate is 101 percent.

"We feel people out of town paying double is discriminatory," Batdorff said.

He also said he determined about 11 million gallons of water was lost in 2007 and felt the loss is a contributing factor to increasing water costs.

"That's an 18.6 percent loss in water due to leaks," Batdorff said. "What's being done to address the loss?"

It was explained part of the loss was due to leaks, of which, many are forgiven on a customer bill and each

Continued on page 8

## ★ Owensville town board

Continued from page 1  
The water tower has to be emptied for maintenance, it costs the town 200,000 gallons in water.

Batdorff also said a cost of service analysis had not been presented to prove supplying water to out of town customers is more than supplying it to in town customers.

The minimum for 2,000 gallons of water inside corporate limits is \$10 and for the same amount is \$20 for out of town customers.

Clerk/treasurer Kristi York noted the split in fees between in town and out of town customers was first noted in council minutes from 1988. The cost at that time for 2,000 gallons of water was \$2 for in town customers and \$3 for out of town customers. According to York, no clear reason was given for the split in fees, though town minutes, at the time, alluded to the increased cost of providing the service to out of town customers.

Of the 75 residents in attendance, only 13 were in town water customers. Several in town residents said while they may pay less for

water, they also pay in town taxes.

At the conclusion of the hour and a half long hearing, council members voted on a motion by Bernard Thompson and a second from Clyde Scott 3-0 to approve the increase, which will take effect November 15, 2008 and will first be reflected on the January 1, 2009 billing cycle, according to York.

Several reasons were given for the increase including cost of maintenance, aging lines and the fact Owensville water is self sustaining. The utility does not receive continued support from the state and exists on user fees. No definite answer was given as to why there is a differential in rates, except for the brief answer given in town council minutes noted by York.

Council President Dale Henry reported the water utility maintains 33 miles of water lines out of town and seven miles in town.

"We have a lot of overhead people don't see in getting water to the community," Henry said. "It's more expensive to get water to out of town customers."

"We're not here to get you up on water," Henry said. "You're not the only ones going to pay. We're all going to have to pay."

"By average water sewer bill with the increase is going to be \$70," Henry added.

Most of the residents out of town customers protesting the specific increase, but rather they already pay double in town customers pay.

This is the first water increase since 1996.

# Owensville considers water rate increase

## Hike would be the first in 12 years for town

By TRAVIS NEFF

travian@pdclarion.com

OWENSVILLE — Prices are going up for everyone, it seems.

But people living in and near Owensville want to know why the town council is considering raising water rates 40 percent.

More than 25 people wanted answers this week from the council during a meeting about the proposed rate hike.

Most of the people looking for more information live outside town limits where they pay double the water rate of residents living within corporate limits.

No action was taken at Tuesday's special session, and the council will reconvene at 6:30 p.m. on Thursday, Oct. 2, at the Owensville Community Center.

Clerk/Treasurer Kristy York said residents in town pay 25 cents per 100 gallons with a base cost of \$5. Residents living outside of town pay 50 cents per 100 gallon with a base rate of \$10.

"What they charge in-town customers compared to us is discrimination," said Ri, who lives outside the corporate limits.

Batdorf said he understands the cost to provide

Owensville, continued on Page 2A

Exhibit C - p. 4

2

PRINCETON DAILY CLARION

THURSDAY, SEPTEMBER 25, 20

# Owensville

Continued from Page 1A

water services is increasing, but he and other residents who attended the meeting want a detailed look at how much it costs Owensville to operate its water system.

The town has not increased water rates in 12 years, York said.

"We also want to know what the town is doing to curtail prices," Batdorf said.

Batdorf said a petition bearing more than 100 signatures was presented to the council.

The petition does not specifically call for blocking the increase, Batdorf said, but rather calls for some answers and parity with in-town resident fees.

"We are not saying we don't need a rate increase," Batdorf said. "We just feel this increase is arbitrary and unjustified."

Batdorf said he paid \$67.95 on his most recent water bill. If the increase is enacted, that amount will climb to \$95.13.

"We understand business," Batdorf said. "But we want documented evidence and justification (for the increase)."

Batdorf said residents

*'We are not saying we don't need a rate increase. We just feel this increase is arbitrary and unjustified.'*

Robert Batdorf,  
Owensville-area resident

may find a phase-in of the new increase easier to stomach. He said Poseyville is slowly raising its water rates over a three-year period.

Owensville Councilman Clyde Scott said the water rates need to go up to cover the rising cost of providing the service. "We've been going in the red," he said.

He said the 40 percent figure was one provided by consultants who did a water rate study for the town.

"Costs just keep going up," Scott said.

Batdorf said he and other water customers still want more answers.

He also wants to know what efforts the town has made to try and reduce costs.

"I want them to tell me what they've done," Batdorf said.

(EXHIBIT D)



# Indiana Utility Regulatory Commission

Regulatory Flexibility Report  
to the Indiana General Assembly '08

Tradition. Innovation. Change.

## Exhibit D - p. 2

developer for its SDC. Elimination of the three-year revenue allowance would allow utilities to reduce the administrative burden and costs associated with administering the rule. SDCs are discussed in greater detail in the Infrastructure Investment portion of the Report.

The revenue allowance also has the unintended effect of distorting the market for serving new subdivisions. In the case of main extensions, two utilities may compete to serve a subdivision built by a developer. Furthermore, a developer is usually concerned about recovering the investment and not the long-term viability of a utility system. If one utility is required to share the cost of the main extension, another utility could react by counter-offering with the same or better offer. However, the first utility may not have the financial resources to make the counter-offer even though it may be in a better position, managerially or technically, to provide service. Thus, in the long-run, customers may be worse off. The main extension rule can raise costs for utilities, thereby eliminating certain firms from competing based solely on whether they can fund the cost of the main extension. The Commission is continuing to study this issue.

### Outside-City Customers

Many municipal utilities provide service to customers outside their corporate boundaries, which can create beneficial economies of scale and rate stability to the municipality.<sup>8</sup> However, many municipalities charge outside-city customers higher rates or a surcharge with premiums ranging from 5% to 50% greater than what is paid by inside-city customers for the same service.

**Different rates between customers located inside and outside a municipality may raise questions about whether the non-city rate is cost-justified and non-discriminatory.**

A corporate boundary is usually not the same as a natural boundary such as a river or mountain, which may create additional costs to provide service to the other side of the boundary. With corporate boundaries, the imposition of higher rates or a surcharge may

<sup>8</sup> This can also constrain the proliferation of small developer-owned systems that sometimes become troubled.

## Exhibit D - p. 3

seek to stimulate support for annexation or may be simple revenue enhancement. As a result, it may be difficult to support different amounts for inside-city and outside-city water rates, as rates approved by the Commission must be cost-justified and non-discriminatory.

A larger issue occurs for outside-city customers of municipal water utilities that have opted out of the Commission's jurisdiction. When municipal utilities opt-out of the Commission's jurisdiction, customer-citizens of that municipality have a voice in how the utility is operated when voting for local leaders. Customers located outside a municipality's corporate boundaries cannot participate in the local municipal elections and therefore, have no input.

One possible remedy might be to provide the Commission with limited jurisdiction over municipal water rates charged to outside-city customers where a surcharge is assessed, even when the municipality has opted out of the Commission's jurisdiction. This would be similar to the jurisdiction the Commission has over rates of a conservancy district that serves outside its district boundaries.<sup>9</sup> It is uncertain whether this will achieve the intended result, as municipalities that provide both water and wastewater services could eliminate the water surcharge and increase the wastewater surcharge to make up the difference. We continue to examine whether outside-city customers of municipalities need to be accorded greater protection than currently exists.

### Service Area Disputes

**Without specific Commission-defined territories, water utilities engage in robust competition for new areas.**

Competition for new territory and customers sometimes leads to service area disputes. Utilities have taken actions such as extending water mains to marginally feasible areas in an effort to discourage another utility from providing service and have installed duplicate infrastructure in areas served by another utility to attract and serve customers. In addition,

<sup>9</sup> See, I.C. §14-33-20-12.

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(EXHIBIT E)

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF EVANSVILLE, )  
INDIANA, BY ITS WATER AND SEWER )  
UTILITY BOARD FOR AUTHORITY TO )  
ISSUE BONDS, NOTES, OR OTHER )  
OBLIGATIONS, FOR AUTHORITY TO )  
CHANGE ITS RATES AND CHARGES )  
FOR WATER SERVICE, AND FOR )  
APPROVAL OF NEW SCHEDULE OF )  
RATES AND CHARGES APPLICABLE )  
THERE TO. )

CAUSE NO. 42176

APPROVED:

FEB 18 2002

*Handwritten signatures and initials:*  
AG  
Jm  
CWA  
Jee  
WOM

**BY THE COMMISSION:**

David E. Ziegner, Commissioner  
Thomas Cobb, Administrative Law Judge

On February 13, 2002, the City of Evansville, Indiana ("Petitioner") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") seeking authority to issue bonds and for approval of a new schedule of rates and charges for water service. Azteca Milling, LP, Bristol-Myers Squibb Company and its wholly owned subsidiary; Mead Johnson & Company; Deaconess Hospital; George Koch & Sons, LLP; German Township Water District, Inc.; Gibson Water, Inc.; PPG Industries, Inc.; St. Mary's Medical Center; and Whirlpool Corporation (collectively, "Intervenor") filed petitions to intervene in the proceeding. Each petition to intervene was granted by the Commission.

Pursuant to notice duly published as prescribed by law, a prehearing conference was held in this matter on April 24, 2002, at 11:00 A.M., in Room E-306, Indiana Government Center South, Indianapolis, Indiana. Petitioner, Intervenor and the Office of Utility Consumer Counselor ("Public") appeared and participated in the prehearing conference.

After receiving an extension of time to file its case-in-chief, Petitioner prefiled the direct testimony and exhibits of John R. Skomp and Joe A. Thais on July 22, 2002. Petitioner subsequently filed numerous corrections, revisions and supplements to its direct case-in-chief without seeking a modification to the Prehearing Conference Order. (On September 17, 2002, Petitioner filed Petitioner's Exhibit JC, the supplemental testimony of witness Cameron. On October 15, 2002, the City filed the bond and rate resolutions as Exhibits JC-S-2 and JC-S-3. On October 17, 2002, new counsel entered appearance for the City, and, on October 21, 2002, original counsel for Evansville withdrew from this proceeding. On November 13, 2002, and November 19, 2002, Petitioner prefiled corrections and revisions to the direct testimony of witnesses Skomp and Thais.

## Exhibit E - p. 2

c. Proposed Surcharge. For the first time in its history of providing water service, Petitioner proposes to assess a 35% "surcharge" on customers who are located outside the City of Evansville. Petitioner's surcharge, which would be collected indefinitely, is based on the asserted premise that it costs at least 35% more across the board to serve customers who are outside Evansville's municipal boundaries than those who lie within those municipal boundaries. More specifically, Petitioner's premise urges the assumption that utility plant located outside the city limits benefits only customers located outside the city limits; whereas utility plant located inside the city limits benefits all customers of the utility including those located outside the city limits.

Petitioner's witness advocating the 35% surcharge, Mr. John Skomp of the accounting firm of Crowe, Chizek, articulated this rationale by testifying that some of the increased costs of serving outside customers would include, but not be limited to:

The cost of capital improvements which are made outside the City Limits and provides no benefit to inside customers;

The annual cost of depreciation and debt service on utility plant which is located outside the City Limits and provides no benefit to inside customers; and

The annual cost of repairs and maintenance to utility plant and equipment that is located outside the City Limits and which provides no benefit to inside users.

In his testimony, Mr. Skomp explained that the 35% surcharge used in his "Prefiled Cost of Service Study and Financial Report" ("COSS") was developed as a proxy to recover a portion of these costs. Mr. Skomp acknowledged that nowhere in Petitioner's case is Petitioner's 1.35 equivalency factor demonstrated to be the result of a computation. (Hearing Tr. at A-145) In fact, while his Cost of Service Study and Financing Report was dated July 22, 2002, Mr. Skomp testified that the 1.35 equivalency factor was selected in 2001. (Hearing Tr. at A-149) Moreover, Mr. Skomp acknowledged that at the time Crowe Chizek was first engaged, Petitioner asked him to look to see if there was a cost basis to have an outside city surcharge. (Hearing Tr. at B-21) However, in support of its argument that a surcharge is appropriate, Petitioner provided no calculation in its COSS and Financing Report showing an actual cost of serving its in-town and out of town customers. Nor did Petitioner provide this Commission any detailed engineering study comprehensively allocating specific costs to out of town customers. Nonetheless, Mr. Skomp maintained that if all the increased costs to serve customers outside the City Limits were allocated to only those customers, the percentage surcharge or "true cost" would be even greater.

First, we note that what Mr. Skomp called the "true cost" of serving the customers located outside the city limits, was never presented. The Commission can not consider a particular equivalency factor as a compromise or deviation from a more "accurate" number when

### Exhibit E - p. 3

the more accurate number is not placed in evidence. A number that is not presented, in addition to being unknown, is not subjected to any scrutiny by this Commission, the Public, and intervenors. The Commission may not accept the unsubstantiated assertion of any witness that we should adopt a particular number because he believes that the true number is much larger. Moreover, a review of cross-examination of Mr. Skomp casts some doubt as to whether such "true cost" had ever been written down and shared. (Hearing Tr. at A-142 – 143)

Second, even if we had been presented with what Mr. Skomp would call the "true cost" of serving out-of-town customers, we consider Mr. Skomp's methodology that would yield that value to be fundamentally flawed. Mr. Skomp asserted that the outside city surcharge developed and used in this Report is in compliance with the principles and methods outlined in the AWWA Manual. Mr. Skomp was of the opinion that the AWWA Manual (Hearing Tr. at B-2) provides in its entirety that the cost of the system located within the city limits should be borne by both inside city and outside city customers. The AWWA Manual in fact suggests the opposite. On the very page Mr. Skomp relied on for his assertion, the AWWA Manual provides the following:

A government-owned utility, in most cases, where not regulated by a state public utility commission, determines its total revenue requirements, or costs of service, on a cash-needs basis; that is, it must develop sufficient revenue to meet cash needs for O&M expense, debt-service requirements, capital expenditures not debt-financed, and possibly other cash requirements as described in chapter 1. Such cash needs must be met by the utility as a whole. However, when that utility serves outside-city, non-owner customers, it is most appropriate to measure the costs of such service on a utility basis; that is, assign costs to outside-city customers for O&M expense, depreciation expense, and an appropriate return on the value of property devoted to serving them. It is then the responsibility of the inside-city customers to meet all remaining cash requirements not derived from outside-city customers. (emphasis added.)

But nowhere in Petitioner's entire case has Petitioner set forth cash requirements it did not regard to be derived from outside city customers. There is no single cost or revenue requirement associated with the Petitioner's system that the Petitioner's out of town customers will not be paying at least a proportionate share. Conversely, there is no single cash requirement that Petitioner would make the responsibility of the inside city customers.

For instance, Petitioner proposes that all customers located outside the jurisdictional limits of the city, and only those customers, should bear the burden of all infrastructure located outside the city and the cost of all other associated cash requirements. Conversely, Petitioner's Cost Of Service analysis assumes that all out of town customers receive the same benefit and should bear the same cost as the inside city customers for all infrastructure located within the city limits. If Mr. Skomp had consistently applied the methodology described in the AWWA Manual, he would not have relied on the premise that the outside city customers should equally bear the cost of improvements located inside the city limits. Moreover, there is simply no credible evidence that would support the proposition that the infrastructure located outside Evansville's municipal boundaries only provides a benefit to those located outside Evansville's

## Exhibit E - p. 4

wide. (A review of page 4 of JRS 5, shows that 66.03% of the system wide costs are allocated to customers inside the city limits and that 33.97% of system wide costs are allocated to customers outside the city limits. Thus, \$14,483 (58.72%) of bad debt expense would be allocated to the inside city customers and \$10,161 (41.23%) of bad debt expense would be allocated to the outside city customers. Thus, outside city customers who represent no more than 25% of the customer base would bear more than 41% of bad debt expense. There is no evidence or analysis in the record that would support such an unbalanced allocation.

We also find that, in focusing its surcharge on whether the customer is located outside the municipal limits, Petitioner has chosen a broad classification that does not reflect the diverse use characteristics and other factors that affect the cost of providing service. Nor has Petitioner established that out of town customers necessarily have any use characteristics that are different from in town customers. So far as cost is concerned, the classification appears to be arbitrary. Based on the evidence of record, Petitioner has had out of town customers for many decades. Petitioner's efforts to create classifications based on municipal citizenship status does not reflect a policy of growth paying for the cost of increased demand. For instance, at the field hearing, we received the written comments of John Gerard, an out of town customer. Mr. Gerard testified that his home was built in 1956, less than one mile from the reservoir, that the original line was built in 1944, and that the last house was built on his road over 30 years ago. Mr. Gerard, along with his immediate neighbors, is an example of individuals who have invested in the system over many years through the payment of rates. The only basis for separate treatment is their lack of City of Evansville citizenship. There is no logical, equitable or natural basis provided for imposing a higher charge on such individuals.

It appears that Petitioner has arbitrarily drawn a line delineating customer classification along its corporate limits and then asserted that every customer on one side of the line should be considered to have one use characteristic and everyone on the other side of the line should be considered to have another more costly use characteristic. This type of allocation guarantees that customers who are on the outside of the line will be allocated a significantly larger proportion of costs than customers who are inside of the line. Even if we accept Mr. Skomp's theories and assumptions about a greater cost being created by new service demands somewhere outside the municipal boundaries, there has been no factual basis provided that would justify lumping all out of town customers together and drawing a line of demarcation at the municipal border.

Petitioner proposes that any customer outside the city limits must pay for 100% of the plant on their side of the line plus a proportionate share for all plant on the other side of the arbitrary line. This allocation guarantees that customers who are on the outside wherever the line is drawn, will be allocated a significantly larger proportion of costs than customers who are inside of that line. Yet, that mere allocation does not establish that customers who are outside of the line cost more to serve than customers who are inside. The methodology proposed by Petitioner is not based on the actual cost to serve its customers. And the fact that this line would move if the City of Evansville annexed water customers who currently live outside the limits, further demonstrates that the line is not based on cost to serve but is merely an arbitrary demarcation of rates.

## Exhibit E - p. 5

Contrary to Mr. Skomp's suggestion, a municipal boundary is not a natural boundary. Whether a person lives on one side or the other of a municipal boundary does not by itself establish the cost of serving that customer. Nor does it change his or her use characteristics. It does affect whether the individual pays taxes to the city or votes in the municipal election. The obvious fact that an individual who lives outside the corporate limits has less political voice than the municipal utility's other customers and hence less recourse to address an unfairly discriminatory rate structure, renders it to be even more important for this Commission to scrutinize the cost assumptions made in setting rates for such customers.

While a customer who is not a taxpayer of the municipality is not subject to the possibility of subsidizing the utility through taxes paid, there is no evidence in this case that such subsidization has occurred or will occur. Mr. Skomp acknowledged that the customers of the system have for the most part invested in the system through the payment of rates and that the out of town customers have paid these same rates. (Hearing Tr. At A-137) Mr. Skomp further acknowledged that the proposed investment in the system will be done through rates and bonds, the latter of which will be retired through rates. Thus, there is simply no reason provided that would justify treating Petitioner's out of town customers differently than its in town customers.

Moreover, Petitioner's proposal would involve charging different rates within the same interconnected system. Petitioner's proposal would violate principles we have embraced when considering the approval of single tariff rate making. Under single tariff ratemaking a utility with multiple disconnected systems would charge the same rate for each system. In our final order in Indiana American's rate case, Cause No. 40703, discussing single tariff ratemaking, we stated the following:

We already have a policy against considering geographical differences in costs within an interconnected system. For example, customers on the north side of town pay the same rates as customers on the south side of town even though the sources of supply, transmission mains, pumping stations and distribution lines serving these areas may have different costs.

Final Order Cause No. 40703 at p. 81 (emphasis added.)

The Commission places a heavy burden of proof on Petitioners seeking to impose disparate rates on its customers. This is particularly true when a significant portion of those customers would have no recourse by virtue of the ability to vote for or against those imposing the rates, or to this Commission. In such cases, we will seek to determine:

- a. Are the proposed rates discriminatory;<sup>3</sup>
- b. Is the Petitioner's system interconnected and functionally integrated;

<sup>3</sup> In Re: In the Matter of the Petition of Eastern Heights Utilities, Inc. for (1) Authority to Amend Indebtedness to the USDA Rural Utility Services; (2) Authority to Commence a Construction Program; (3) Approval of a New Unified Schedule of Rates and Charges; (4) and Authority to Issue Taxable Revenue Refunding Bonds, July 26, 1999, p. 11

## Exhibit E - p. 6

- c. Do Petitioner's customers receive essentially the same type and quality of service, that is, that there is no undo discrimination among customers "so long as they are paying an equivalent price for an equivalent product". In Re Petition of Indiana American Water Company, Cause No. 40/03, December 11, 1997, at p. 81.
- d. Can Petitioner demonstrate, by sufficient evidence, that the cost of providing service between the customer classes can be clearly delineated and shown to be uneven.

Petitioner's proposal does not satisfy any of these criteria. If we were to accept Petitioner's proposal, we violate the policies that we affirmed in numerous prior Orders. Petitioner has not provided any compelling evidence that would lead us to abandon our current policies.

In its proposed order, Petitioner provides several assertions that relate to a Cost Of Service Study (COSS) filed in Cause No. 23554, the City of South Bend rate case. The COSS prepared by the City of South Bend employee references the "Rate and Financing Report" prepared by Municipal Consultants to acquire the rate increase data necessary to complete the COSS. A review of the South Bend COSS reveals one of the numerous shortcomings of Petitioner's cost allocation report. From the South Bend COSS, one can readily see that it costs \$92,661 out of its total \$7,058,393 costs to serve its "Suburban Residential" customer class (SRS-11, p.19, Table 13). Petitioner's cost allocation report does not provide such critically important information. Petitioner has failed to provide evidence necessary to support its proposal. This Commission has no idea what it costs to serve the customers living outside Evansville's city limits.

Petitioner also asserted in its proposed order that the Public agreed that the Cost Of Service Study provided in the South Bend case was "reasonable and should be used for the establishment of a new schedule of rates and charges." (Petitioner's Proposed Order at p.43.) However, as previously indicated, the Public and intervenor identified several flaws in the cost allocation report filed in this case that were not present in the South Bend COSS. Further, a review of the South Bend COSS indicates that its "Suburban Residential" customer class was in existence when the COSS was prepared. We cannot determine the facts, circumstances and evidence that were presented to support the establishment of such a class or in what case it was presented, but it is clear that in this case, Petitioner has not supported its request to establish its proposed out-of-town customer class.

In support of its proposed surcharge, Petitioner relies on several cases from other states. We note that such cases are not binding on this Commission and can only be considered persuasive at most. We also note that in each of these cases, there does not appear to be a Commission such as ours that had jurisdiction and a statutory obligation to set just and reasonable rates. For instance, encouraging annexation is not a basis that would support a surcharge approval by this Commission. (See Mitchell v. Supreme Court of Kansas 12 P.3d 402 (Kansas, 2002)). In order to establish just and reasonable rates, we must look to the costs of providing the service to the various classes of customers. We can only approve the creation of different classes where we can reasonably distinguish the costs of serving each such class.

(EXHIBIT F)

**PETITION OPPOSING THE PROPOSED SCHEDULE  
OF WATER RATES PROPOSED BY THE OWENSVILLE TOWN COUNCIL  
ORDINANCE NO. 2008-5**

We the undersigned, customers of Owensville Water, hereby oppose the proposed increase of metered rates per month as proposed in Ordinance No. 2008-5. As residents and customers outside the town limits, we believe such rates are arbitrary, unjustified, and discriminatory.

We believe the increase should be delayed until the Town Council can provide all customers with documented evidence showing the justification for any increase, what it has done to minimize costs defraying or minimizing any increase in water rates, and justification showing why rates for residents and customers outside the town limits should be charged rates double that of in-town customers, as we believe any such costs should be based on a cost of service, and not some arbitrary, random, discriminatory basis.

<u>Name</u>	<u>Address</u>
<u>Robert E. Bradford</u> ⊕	<u>6531 W. Whispering Cr. Drive</u>
<u>Diane Batdorf</u> 9-28-08	<u>6531 W. Whispering Cr. Dr.</u>
✓ <u>Mary Barrett</u>	<u>6522 Whispering Creek Drive</u> - 724 240
<u>[Signature]</u>	<u>681 W. EVENING SONG LANE</u>
✓ <u>Eric W. Fisher</u> ⊙ Amy	<u>6617 W. Evening Song Lane</u> — 724 4010
✓ <u>Lennie Gulik</u> ⊙ [Signature]	<u>6669 W. EVENING SONG LANE</u> - 729 736
<u>[Signature]</u> ✓	<u>6688 W. Evening Song Ln.</u> — 72
✓ <u>Paul W. Bennett</u> ✓ ⊙	<u>6620 Evening Song Ln</u> → 729 7117
✓ <u>Phyllis Dossert</u> ✓	<u>6620 Evening Song Ln.</u>
✓ <u>Jana Cochran</u> ✓ ⊕ [Signature]	<u>6586 W. Evening Song Ln</u> — 724 2609
✓ <u>[Signature]</u> ⊙ ✓	<u>6554 W. Evening Song Ln</u> — 729 753
<u>Crystal Deary</u> ⊙	<u>6530 W. Evening Song Lane</u> —
✓ <u>Crystal Deary</u> ⊙	<u>6531 W. Evening Song Ln</u> — 729 7125
✓ <u>Jackie Strang</u>	<u>6810 W 4005</u>

Exhibit F - p. 2

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Name	Address
* <sup>3</sup> James L. Shackelford IV	6600 N. WHISPERING CREEK 729-7290 Owensville, TN 37665
Dione Shackelford	
724-3513 Ray Hale	5088 S 700 W
* Robert Main	5044 S 700W Owensville TN
724-4095 Emmie Sledge	4898 S 700W, 47665
729-6015 Michelle Frazier	4897 S 700W 47665
* Daniel Frazier	" "
729-7344 Anita Simpson	4428 S 700W
* <sup>2</sup> Joseph Simpson	" "
729-7595 * <sup>2</sup> John Chamberlain	6215 W 450 S
385-8489 * <sup>2</sup> Robert Garrison	6637 W 450 S
Beverly Lucas	4486 S. 2K 65
Mark Steward	729-7261
* Tony & Diane Wilson	
	729-7261
	4900 S 700 W

**Exhibit F - p. 3**  
**PETITION OPPOSING THE PROPOSED SCHEDULE**  
**OF WATER RATES PROPOSED BY THE OWENSVILLE TOWN COUNCIL**  
**ORDINANCE NO. 2008-5**  
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729-7615	Name <u>Wm &amp; Beel</u>	Address <u>R # 3</u>
724-4173	<u>Angel Videm</u>	<u>6808 W. 450S.</u>
	<u>Cinda Miller</u>	<u>6800 W. 450S.</u>
	<u>John Fene Jr.</u>	<u>6854 W. 450S.</u>
729-7361	<u>Wm Selby</u>	<u>4216 S 700W</u>
	<u>Albert Selby</u>	<u>4216 S 700W</u>
	<u>Trent Selby</u>	<u>6924 W 450 S</u>
	<u>John Wheeler</u>	<u>3975 S 700W</u>
724-2281	<u>Donelle Matosh</u>	<u>5343 W. SR 168</u>
729-7518	<u>Karen Neibert</u>	<u>6039 S 450 W</u>
729-7143	<u>Garrison Neibert</u>	<u>6039 450 W</u>
	<u>Paul Douglas</u>	<u>6555 W SR 168</u>
724-301	<u>James W Bush</u>	<u>4381 W SR 168</u>
729-7155	<u>Paul Douglas Sr</u>	<u>6227 W 600S</u>
729-7867	<u>Shari Mahoney</u>	<u>6222 W 600S</u>
	<u>Tina Winterhewer</u>	<u>6800 W 450S</u>
	<u>Bill</u>	

Exhibit F - p. 4  
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Name	Address
✓ <sup>Kathy</sup> Darrel Thompson <sup>9-22-08</sup> <sup>with credit</sup> <sup>waive</sup>	6649 W. Whispering Creek - 729-759
✓ Kevin Collins <sup>with credit</sup> <sup>waive</sup>	5141 Bannerstone Dr. - 729-761
✓ Doug Chamberlain <sup>Kristy</sup>	5005 S. Narrow Point Dr. - 729-717
Chris Davis	5063 S. Narrow Point Dr. - 7
✓ John Shred	6751 W. Willow St - 729-74
✓ Steve Winstead	6700 W. 450 S - 729-776
✓ <sup>B</sup> Kerry Penner <sup>As per back</sup> <sup>books</sup>	6709 W 450 S - 729-732
✓ Frank Dier	3873 S. 700 W. - 729-7145
✓ <sup>1/2</sup> Scott Drury <sup>old one 2007</sup>	6539 W 450 S - 729-7245



Exhibit F - p. 6

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Name	Address	Phone	Notes
*B 1/2 Joe Trotter	6769 W. Stonehead Dr	729 6676	GRANT-SON, 9-22, No work, Letter
*H Norma White	5165 S. Bennetton Dr		9-22
*H Harry Heat	1684 N. North St.	724-4303	Manly, 9-22, will be in
✓ Wm & Amy	4902 S 700 W	729-7972	
*H Cheryl Burg	5132 S 700 W	724-7807	will be in
H* Mark Fisher	7027 W. Shortadon	729-7658	will be in
*H Tim Godson	7016 W. Shortadon		will be in
*B Teri Dishon	7099 W. Shortadon, Owensville	724-3046	Kendall, Cash letter
B* Marti Allen	7133 Short ad Owensville		hospital
✓ Murnahan	5765 South 700 W Owensville	724-2157	
✓ Bill V. Barrett	6558 W 450S	724-4371	Not interested
✓ Tammy Klem	6792 W. Stonehead Dr	729-7322	Chris, not interested
1/2 Kimberly A Woods	6793 W. Stonehead Dr	724-7359	dis-connected
*H Mary Lou Stearns		729-7508	dis-connected
6558 W North St			
*B Matthews			

Exhibit F - p. 7

**PETITION OPPOSING THE PROPOSED SCHEDULE  
OF WATER RATES PROPOSED BY THE OWENSVILLE TOWN COUNCIL  
ORDINANCE NO. 2008-5**

We the undersigned, customers of Owensville Water, hereby oppose the proposed increase of metered rates per month as proposed in Ordinance No. 2008-5. As residents and customers outside the town limits, we believe such rates are arbitrary, unjustified, and discriminatory.

We believe the increase should be delayed until the Town Council can provide all customers with documented evidence showing the justification for any increase, what it has done to minimize costs defraying or minimizing any increase in water rates, and justification showing why rates for residents and customers outside the town limits should be charged rates double that of in-town customers, as we believe any such costs should be based on a cost of service, and not some arbitrary, random, discriminatory basis.

Name	Address
*H <u>John R. Kelley</u> 9-22-08	6623 W. Whispering Creek Dr. - 729-7828
<u>Lisa Naas</u> 9-22-08	6675 W. Whispering Creek Dr. - 729-7364
*B <u>Marla Goodman</u> 9-22-08	5038 S. S.R. 65 - 729-6033
*B <u>Deana &amp; Daniel Thompson</u> 9-22-08	6271 W. Stalheim Ave - 724-2381
*H <u>Don &amp; Debbie Riley</u> 9-22-08	8239 S State 65 Owensville - 729-7473
*B <u>Rayburn Delbeck</u> 9-22-08	5245 State 65 Owensville - 729-7997
*H <u>Phil D. Olen</u> 9-22-08	6520 North St. - 729-7940
<u>Chester Brantton</u>	6544 North St. - 729-7501
*H <u>Jary &amp; Janet Jones</u>	North 2nd St. - 729-7755
<u>Dreg Wright</u>	6622 W. North St.
<u>Charlotte Wright</u>	" " "
<u>Jim Robinson</u>	6657 W. North St. - 724-2062
*H <u>Sunny Davis</u> 9-22-08	6628 Stonebend Dr. - 724-4099
*B <u>Kristal A. Kender</u> 9-22-08	5117 S. Bannerstone Dr. - 724-2185
*H <u>Phyllis Whitley</u>	
*B <u>Brantton</u>	

Exhibit F - p. 8

**PETITION OPPOSING THE PROPOSED SCHEDULE  
OF WATER RATES PROPOSED BY THE OWENSVILLE TOWN COUNCIL  
ORDINANCE NO. 2008-5  
(OUT OF TOWN)**

We the undersigned, customers of Owensville Water, hereby oppose the proposed increase of metered rates per month as proposed in Ordinance No. 2008-5. As residents and customers outside the town limits, we believe such rates are arbitrary, unjustified, and discriminatory.

We believe the increase should be delayed until the Town Council can provide all customers with documented evidence showing the justification for any increase, what it has done to minimize costs defraying or minimizing any increase in water rates, and justification showing why rates for residents and customers outside the town limits should be charged rates double that of in-town customers, as we believe any such costs should be based on a cost of service, and not some arbitrary, random, discriminatory basis.

*H	Name <u>Don Strange</u> - Jackie	Address <u>6810 W 400 S</u>	- 729-7357
*B	<u>Sibyl Davis</u> - Bill	<u>6703 W 400 S</u>	- 729-7225
✓	<u>Kenny Dillon</u>	<u>6664 W 400 S</u>	724-3641
✓	<u>Peggy Dillon</u>	<u>6664 W 400 S</u>	
*B	<u>KAREN CLEVENGER</u> - Brian	<u>6572 W 400 S</u>	- 729-7780
*H	<u>Cheryl Antero</u>	<u>6546 W 400 S</u>	- 724- <del>3151</del> 4437
*B	<u>Beverly Cash</u>	<u>6557 W. 400 S.</u>	724-3151
*B	<u>Paul Cass</u>	<u>6557 W. 400 S.</u>	
	<u>Kind Decker</u>	<u>6873 W. 400 S.</u>	
	<u>David Schlyngers</u>	<u>6873 W. 400 S</u>	
	<u>Leann Smith</u>	<u>6834 W 400 S</u>	
	<u>Kerry Smith</u>	<u>683 W 400 S</u>	
	<u>John Paul Edger</u>	<u>6834 W 400 S</u>	
	<u>John Paul Edger</u>	<u>6735 W 400 S</u>	
*H	<u>Sandi Moxley</u>		

Exhibit F - p. 9

**PETITION OPPOSING THE PROPOSED SCHEDULE  
OF WATER RATES PROPOSED BY THE OWENSVILLE TOWN COUNCIL  
ORDINANCE NO. 2008-5  
(OUT OF TOWN)**

We the undersigned, customers of Owensville Water, hereby oppose the proposed increase of metered rates per month as proposed in Ordinance No. 2008-5. As residents and customers outside the town limits, we believe such rates are arbitrary, unjustified, and discriminatory.

We believe the increase should be delayed until the Town Council can provide all customers with documented evidence showing the justification for any increase, what it has done to minimize costs defraying or minimizing any increase in water rates, and justification showing why rates for residents and customers outside the town limits should be charged rates double that of in-town customers, as we believe any such costs should be based on a cost of service, and not some arbitrary, random, discriminatory basis.

<u>Name</u>	<u>Address</u>
724-2141 <u>JOHN STATEN</u>	<u>7318 W 250 S</u>
724-2104 <u>Brian K. Gattman</u>	<u>7593w 250S</u>
724-3767 <u>Jack P. Garner</u>	<u>7916 W 280S</u>
729-1209 <u>Marilyn &amp; Leo Ramsey</u>	<u>29118. 825 W</u>
729-6054 <u>Susan Rany</u>	<u>8646 W 350 S</u>
729-7457 <u>Almed Heald</u>	<u>8646 W 350 S</u>
729-7457 <u>Mary Beth &amp; Bill Pung</u>	<u>3207 S - 825 W</u>
729-7356 <u>Bob Hayes</u>	<u>7356 W 350 S</u>
<u>Kathy Hayes</u>	<u>7356 W 350 S</u>
<u>Deana Jones</u>	<u>7597 W 250 S</u>
724-2975 <u>Susan Maunto</u>	<u>5201 S. Bannerstone Dr</u>
724-2185 <u>Christine M. Lend</u>	<u>5117 S Bannerston DR</u>
724-3671 <u>Member</u>	<u>5156 S 700 W</u>

Exhibit F - p. 10

**PETITION OPPOSING THE PROPOSED SCHEDULE  
OF WATER RATES PROPOSED BY THE OWENSVILLE TOWN COUNCIL  
ORDINANCE NO. 2008-5**

We the undersigned, customers of Owensville Water, hereby oppose the proposed increase of metered rates per month as proposed in Ordinance No. 2008-5. As residents and customers outside the town limits, we believe such rates are arbitrary, unjustified, and discriminatory.

We believe the increase should be delayed until the Town Council can provide all customers with documented evidence showing the justification for any increase, what it has done to minimize costs defraying or minimizing any increase in water rates, and justification showing why rates for residents and customers outside the town limits should be charged rates double that of in-town customers, as we believe any such costs should be based on a cost of service, and not some arbitrary, random, discriminatory basis.

Name	Address
<i>Richard Quirk</i>	<i>10823 W. NORTH</i>
* <i>David Hunt</i>	<i>6546 W 400 S</i>
<i>Jim Baker</i>	<i>200 S Mill St</i>
✓ <i>Albert Lilly</i>	<i>Owensville</i> <del>729</del> <i>7361</i>
<i>Lynn Lilly</i>	<i>6924 W-450 S</i>
<i>Chris Selaty</i>	<i>410 Bitter St.</i>
✓ <i>Judith Warner</i>	<i>210 Oak St. - 724 3532</i>
<i>Termy [unclear]</i>	<i>6222 W 600 S</i>
<i>Brynn Henson</i>	
✓ <i>Hal A. Clark</i>	<i>3854 S 700 W OWENSVILLE</i> <i>724 3400</i>

AMERICAN WATER WORKS ASSOCIATION

MANUAL OF WATER SUPPLY

Principles of Water Supply

Technical Committee

Exhibit J  
Regulatory Flexibility Committee  
Meeting #2 Sept. 28, 2011

quantities of water for short periods of time at any of a large number of points in the water distribution system while the total annual quantity of water delivered is relatively small.

There are two principal approaches to determining fire-protection service costs that differ widely in both theory and application. One approach proposes that the costs of fire-protection service, in addition to those of the direct cost related to the hydrants themselves, be determined on the basis of the potential demand for water for fire-fighting purposes in relation to the total of all potential demands for water. A second approach proposes that fire-protection service costs be allocated as an incremental cost to the costs of general water service. This second approach is based on the premise that the prime function of the water utility is to supply general water service and that fire-protection service is a supplementary service. Each approach has advocates among water utility professionals. For the purposes of illustration in this manual, the first approach is used.

Costs allocated to fire-protection service as a class can be subdivided to those related to public fire-protection service and private fire-protection service. The reader should refer to chapter 30 of this manual for further discussion of fire-protection rates and charges.

**Lawn irrigation.** Residential lawn irrigation is characterized by the relatively high demands it places on the water system, usually during the late afternoon and early evening hours. Throughout most of the United States, lawn irrigation is very seasonal in nature; it is most pronounced during the summer months and virtually nonexistent during the winter months.

In most instances, lawn irrigation service is not separate from other service; therefore, the high-peaking characteristics of lawn irrigation need to be recognized as a part of residential-class water use characteristics. However, a separate class designation is warranted when separate metering for lawn irrigation is provided, as is often the case for automatic lawn sprinkling systems, parks, and golf courses, and where such loads are significant in the system.

## Service Outside City Limits

Many government-owned utilities recognize in their rate structures the differences in costs of serving water users located outside the corporate limits of the supplying city or jurisdiction compared with those located within the corporate limits. A government-owned utility may be considered to be the property of the citizens within the city. Customers within the city are owner customers, who must bear the risks and responsibilities of utility ownership. Outside-city customers are non-owner customers and, as such, bear a different responsibility for costs than do owner customers.

The costs to be borne by outside-city (non-owner) customers are similar to those attributed to the customers (non-owners) of an investor-owned utility. Such costs include O&M expense, depreciation expense, and an appropriate return on the value of property devoted to serving the outside-city customers.

Sometimes, those who design or review water rates do not fully understand how the cash-needs approach to measuring total revenue requirements relates to the utility basis of cost allocation with regard to government-owned water systems, and why both elements are used in many rate studies.

A government-owned utility, in most cases where not regulated by a state public utility commission, determines its total revenue requirements, or costs of service, on a cash-needs basis. That is, it must develop sufficient revenue to meet cash needs for O&M expense, debt-service requirements, capital expenditures not debt-financed, and possibly other cash requirements as described in chapters 1 through 6 of this

manual. Such cash needs must be met by the utility as a whole. However, when that utility serves outside-city, non-owner customers, it is most appropriate to measure the costs of such service on a utility basis; that is, to assign costs to outside-city customers for O&M expense, depreciation expense, and an appropriate return on the value of property devoted to serving them. The inside-city customers are then responsible for all remaining cash requirements not derived from outside-city customers. Thus, if total utility revenue requirements are relatively low, perhaps as a result of retiring a major part of the bonded indebtedness and thus having a large amount of paid-up equity, the inside-city customers have relatively low rates. Thus, the inside-city customers benefit from having invested in and owning paid-up equity in the system. The reverse situation could also occur. If the rate of return is properly set, the utility basis of allocating cost of service is fair to both the supplier and the outside-city customer.

In some instances, as a matter of policy, a government-owned utility might choose to waive the distinction between owner and non-owner customers and consider the utility to be metropolitan in nature. In such a case, differences in costs between owners and non-owners are not recognized in cost allocation and rate making. This generally would require the owner customers to subsidize the non-owner customers to some degree. Such a policy is a choice to be made by the governing body of the utility.

## UNITS OF SERVICE

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As a step toward rate design, component costs may be distributed among customer classes in the proportion that the respective class responsibility for those costs bears to the total cost responsibility of all customer classes served by the system. This applies for each of the component costs of service. Responsibility for each component may be expressed in terms of the number of units of service required by each class of customer. The sum of all component costs attributable to a customer class is the total cost of service to be recovered from it.

The total cost of each component, such as base cost, may be divided by appropriate total customer requirements or units of service to express a unit cost for each component. The unit costs of each component serve as a basis for designing rates. As a basis for distributing component costs to customer classes, the units of service attributable to the respective classes must be established for the test year. To do so, the utility must determine or estimate the total quantity of water to be used by each class in the test year and the peak rates of use by the class, usually for both maximum-day and maximum-hour rates of use. (In some systems maximum-week or other periods may be appropriate.) In addition, the utility must determine the number of equivalent meters and services by class, as well as the number of bills by class.

Maximum rates of use may be expressed in terms of capacity factor—that is, a percentage relationship of the class maximum rate of use to average annual rate of use. Thus, if a customer class maximum-day rate of use is 2.5 times its average rate, it is said to have a maximum-day capacity factor of 250 percent.

To estimate customer-class capacity factors, utilities need to investigate and study all pertinent sources of information. Such data should include daily and hourly pumpage records, recorded rates of flow in specific areas of the system, studies and interviews of large users regarding individual and group characteristics of use, special demand metering programs, and experience in studies of other utilities exhibiting like characteristics. Sound and logical inferences can be drawn from

## Speedway Indiana Sewer rate disparity

The Town of Speedway is a municipality that owns and operates both its water and sewer utilities. My recent experience and the focus of my testimony today is with the inherent unfairness of the process whereby a citizen or ratepayer may challenge the establishment of or increase in sewer rates as it is currently defined under IC36-9-23-26.1. The process required under this statute creates a burden that is too great for any citizen, group of citizens or businesses affected by the rates to even undertake, and even more so for ratepayers who happen not to be residents of the municipality.

Here are some of the problems that are very difficult to overcome:

- 1) The petition objecting to the increase must be filed with the municipality within 5 days after the ordinance passing which is a very short time period to prepare a solid case.
- 2) The court system is the only mechanism to resolve the dispute which also must be heard within 20 days which is a very short time period to prepare a case.
- 3) The burden of proof rest solely on the petitioner not on the municipality which is very difficult for an ordinary citizen to gain access to the information you need to see if the rates are justified.
- 4) The court in most circumstances requires the petitioner to post a large bond (usually in the sum of several hundred thousand dollars to millions of dollars) which is VIRTUALLY IMPOSSIBLE for a single rate payer to do. This requires the individual rate payer to take on the burden of hundreds of thousands of dollars of risk to just be given a chance to be heard. This single item ELIMINATES most rate payers from being able to challenge rates.
- 5) The cost of litigation is too high for the potential reward. An individual rate payer is expected to bear the cost of litigation for the benefit of all rate payers. The burden is too high and an insurmountable barrier to the average ratepayer.

If a municipality, such as Speedway, chooses to charge different rates to different classes of customers then they should not be allowed to opt out of oversight from the IURC. As an example here are some of the issues that arise from having different classes of customers and NO oversight.

Outside-the-city of Speedway customers have paid 50 Percent higher rates than inside-the-city customers since the 1950's when out of town customers were first hooked onto the Speedway system.

The first challenge to the basis for these rates was in 2002 under Indiana Supreme Court Case cause # 49S04-0109-CV-424. In this case the burden of proof was on the rate payer to prove its case and it was determined that "Speedway did NOT abuse its discretion by perpetuating the rate differential"

Speedway has NEVER been required to do a cost of service study to prove that there is a cost difference to serve the out-of-town rate payer vs. the in-town-rate-payer. This has been asked for repeatedly by the out-of-town customers and has been refused to be done by the city. A cost of service study cannot be performed by any entity other than the city itself because the data required is not available to the average ratepayer.

Inside city rates in Speedway, as compared to all of surrounding areas are among the LOWEST rates charged in comparison to the outside city rates are among the HIGHEST rates charged.

Inside city rates are being artificially lowered because the out-of-town customers subsidize the entire system. Because out-of-town ratepayers have no vote and therefore NO representation on the town council who sets the rates, there is no real incentive for elected officials to try to address the inequity. Inside the city customers who benefit from the added source of revenue are unlikely to object.

In reports filed by the Indiana State Board of Accounts in the years since 2006, the town of Speedway has been cited on a number of occasions for utilizing utility funds for costs actually associated with functions of the city. For example in 2009 in report #B33349 all salaries of the Clerk-Treasurer's office were paid on a 50-50 ratio by the water and sewer utility with none paid by the town. The Town Manager's salary is also 100 percent paid by the utility. These functions and charges drive up the cost for the out-of-town user and increase the expenses of the utility which increases the rates and even creates more disparity for the out-of-town user because the out-of-town user is actually paying for functions of the town that they have NO benefit of.

In the most recent rate increase in the Fall of 2010 Speedway planned to spend 22 million dollars on upgrades to the system with only \$750,000 of that money allocated to out-of-town projects but yet the out-of-town ratepayers pay 150 percent of the inside rate.

I have attempted to demonstrate how there exists the potential in municipalities with different classes of users for there to be abuse of one class for the good of another. As I have also discussed, the current system which requires the rates to be challenged in the courts makes it virtually impossible for a individual ratepayer to find an impartial forum for these issues to be addressed. In my opinion, the only fair and equitable solution would be for municipalities who operate utilities with different classes of users, and especially those who reside outside the limits of the municipality itself, to be required to have oversight by the IURC.

Prepared by: Michael Gilley, President  
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Indianapolis, IN 46219  
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provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

(1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or

(2) the number of users in various locations.

*As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.317, SEC.23; P.L.35-1990, SEC.70; P.L.114-2008, SEC.29.*

## **IC 36-9-23-26**

### **Fees; hearing; notice; adoption; readjustment**

Sec. 26. (a) After the introduction of the ordinance establishing fees under section 25 of this chapter, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which users of the sewage works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be:

(1) published in accordance with IC 5-3-1;

(2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for sewer availability to vacant or unimproved property; and

(3) mailed to users of the sewage works located outside the municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of the hearing is conspicuous. The hearing may be adjourned from time to time.

(b) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified. A copy of the schedule of fees adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk.

(c) Subject to section 37 of this chapter, the fees established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

*As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.45, SEC.62; P.L.77-1991, SEC.4; P.L.114-2008, SEC.30.*

## **IC 36-9-23-26.1**

### **Objections to rates and charges; bonds; hearings**

Sec. 26.1. (a) Owners of property connected or to be connected to and served by the sewage works authorized under this chapter may file a written petition objecting to the rates and charges of the sewage works so long as:

(1) the petition contains the names and addresses of the petitioners;

(2) the petitioners attended the public hearing provided under section 26 of this chapter;

(3) the written petition is filed with the municipal legislative body within five (5) days after the ordinance establishing the rates and charges is adopted under section 26 of this chapter; and

(4) the written petition states specifically the ground or grounds of objection.

(b) Unless the objecting petition is abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the rate ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing

by certified mail to the municipality and to the first signer of the petition at the address shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the rates and charges until the matters presented by the petition have been heard and determined by the court.

(c) At the discretion and upon direction of the court, the petitioners shall file with the petition a bond in the sum and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(d) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(e) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body shall set the rates and charges in accordance with the decision of the court.

*As added by P.L. 77-1991, SEC. 5.*

### **IC 36-9-23-27**

#### **Fees; collection upon commencement of construction; amount**

Sec. 27. After a contract for the construction of sewage works has been let and actual work has commenced, the municipality may bill and collect fees for the services to be rendered, in an amount sufficient to pay:

- (1) the interest on the revenue bonds; and
- (2) other expenses payable before the completion of the works.

*As added by Acts 1981, P.L. 309, SEC. 96.*

### **IC 36-9-23-28**

#### **Deposit to ensure payment of fees; amount of deposit; refund; forfeiture; use to pay judgment; unclaimed deposits**

Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter may, by ordinance, require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

- (1) has been conveyed or transferred to another person; or
- (2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (unclaimed property) does not apply to a deposit described in

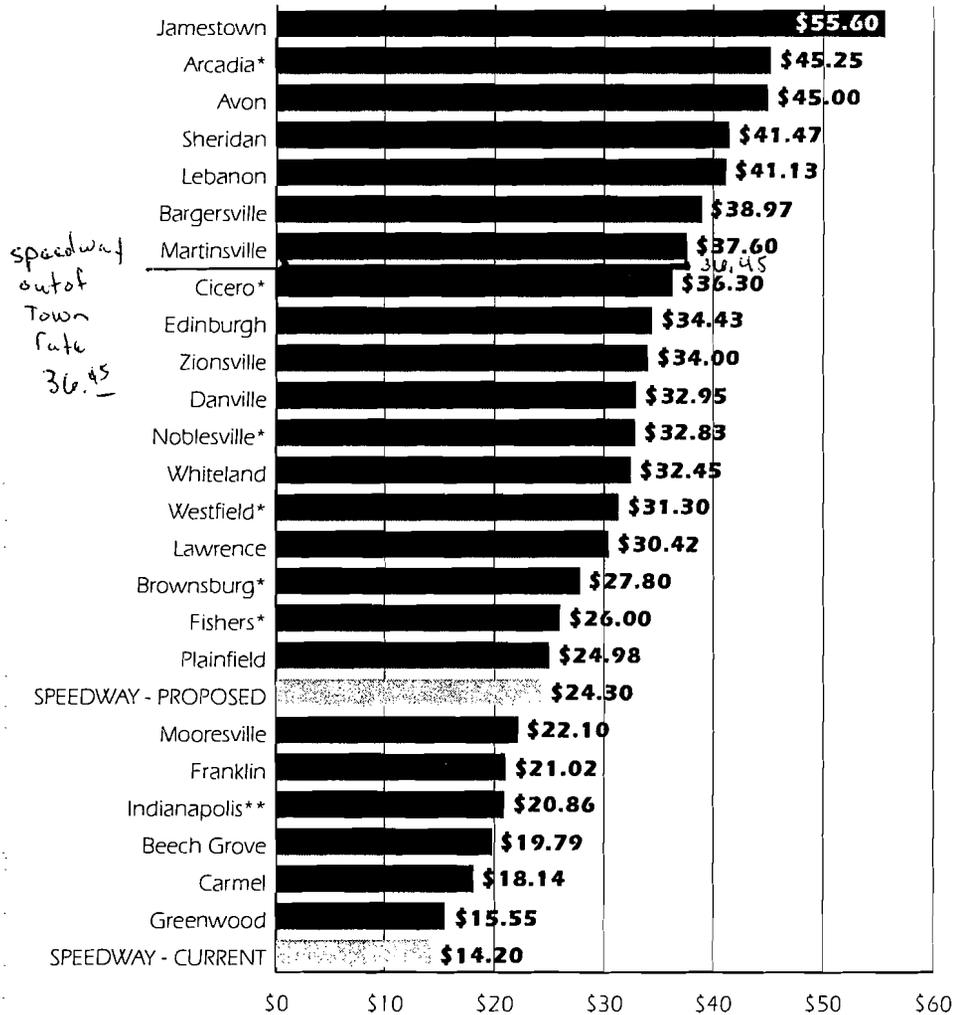


# Protecting Our Waterways: The Cost

Speedway must invest \$31.9 million to protect area waterways and bring the wastewater treatment plant into compliance with Clean Water Act requirements. The Town is aggressively pursuing state and federal grants and low-interest loans to keep ratepayer costs down. At this time, we plan to finance most of the projects through the sale of municipal bonds. A one-time rate increase will be proposed to the Speedway Town Board to pay off these bonds over time. Under the proposal, the average ratepayer's sewer bill would rise from the current \$14.20 per month to \$24.30 in October 2010 – an increase of \$10.10 per month.

The chart to the right shows that Speedway's current sewer rates are the lowest in the Central Indiana region. If the proposed increases are approved, Speedway's rates would still compare favorably to those in other communities.

**RATE COMPARISON - NEARBY CITIES & TOWNS**



\*Rate increase expected

\*\*Rate increase expected; Subsidized by property tax



**DRAFT 8/18/10 6:30 PM**

**Via: E-Mail**

**August 18, 2010**

## **MEMORANDUM**

**To: Bette J. Dodd, Esq.  
Lewis & Kappes**

**Re: Speedway Municipal Sewage Works Rate Increase**

Speedway Municipal Sewage Works (Speedway) is proposing a 71% equal percent increase to sewer rates for customers inside and outside the City. In addition to the fact that the outside-the-City rate is already 50% higher than the inside-the-City rate, we believe the proposed equal percent change is not appropriate based on the cost drivers of the revenue deficiency in this proceeding. Based on our assessment, we believe inside-the-City customers should receive a larger percent increase than outside-the-City customers. Since Speedway is over-allocating a disproportionately large share of its rate increase to outside-the-City customers, an economic development rate (EDR) for an outside-the-City customer is fully cost justified.

Speedway has over-allocated costs to outside-the-City customers because it has double allocated a portion of treatment plant costs and SRF bond costs to outside-the-City customers. This is accomplished by allocating a portion of these costs to only the outside-the-City customers, and then the allocating the remaining costs to all customers, both inside and outside the City. The treatment plant and SRF bond proceeds should only be allocated across all customers in equal proportion. By making this adjustment, the rate of return component for outside-the-City customers would be decreased from \$1.81 to \$1.10. This adjustment also



**MEMORANDUM**

- 2 -

**August 18, 2010**

reduces the direct allocation of utility plant to outside-the-City customers by approximately \$5 million. This is developed on **Schedule 1**.

Similarly, Speedway has also double-allocated operating expenses and debt service costs to outside-the-City customers. Speedway allocated a portion of operating expenses and debt services costs to only the outside-the-City customers and the remaining balance to all customers. The operating expenses and debt service costs should only be allocated across all customers in equal proportion. By making the adjustment shown on **Schedule 2**, the Speedway proposed total return component for outside-the-City customers went from \$12.55 to \$7.37. This adjustment also reduces the direct allocation of operating costs to outside-the-City customers by approximately \$1.5 million.

Speedway has not proposed an EDR. However, because Speedway has over-allocated costs to outside-the-City customers, reducing the revenue to one outside-the-City customer would be fully consistent with proper cost of service for outside-the-City customers. In other words, outside-the-City customers as a group, would still fully pay their cost of service, even with an EDR to retain one customer.

As shown on **Schedule 3**, an EDR would lower outside-the-City revenue collections by \$21,290 per year. This is well beneath the over-allocation of cost of service to outside-the-City customers. An EDR will benefit all customers because it will maintain more customers on this system, which will spread Speedway's fixed costs across more customers and result in lower cost responsibility to each customer. As such, this EDR is cost justified, no other customers will be disadvantaged economically from this discount rate, and the system as a whole will maintain a larger customer base which will lower rates.



MEMORANDUM

- 3 -

August 18, 2010

In addition, another fact in support of the EDR is that the Laundry & Tan Connection should be allowed a water evaporation allowance of approximately 5% because not all of the water used is returned to the sewer system for treatment. Specifically, in coin laundries, some of the water is left in the clothes and evaporated during the drying process. Many local authorities have granted coin laundry operators a water evaporation allowance to account for the water that is evaporated rather than returned to the sewer system for treatment.

Finally, an EDR for outside-the-City customers will more than recover Speedway's variable costs, and will make a contribution to its fixed costs. The proposed EDR will produce \$42,540 per year of revenue, and the variable costs of providing service is \$16,353. Hence, this EDR will make a contribution to Speedway's fixed costs of \$26,187 per year. This is developed on **Schedule 3** and **Schedule 4**.

I look forward to discussing this analysis in support of an EDR at your earliest possible convenience.

BRUBAKER & ASSOCIATES, INC.

Michael Gorman

Attachments

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## Speedway Municipal Sewage Works

### Estimate of Rate of Return Allocation Between Customer Classes

#### Calculation of Utility Plant Used by All Customers

Total Balance of Utility Plant as of December 31, 2009	\$ 19,569,459
Less: Plant Costs Allocated Directly to Outside Users	\$ (1,070,750)
Utility Plant Used by All Customers	\$ 18,498,709

#### Calculation of Annual Rate of Return Included for All Customer Classes

Utility Plant Used by All Customers	\$ 18,498,709	
Times: Annual Return on Investment	4.00%	
Annual Return on Investment Allocated to All Customers	\$ 739,948	
Divide by: Total Annual Consumption (In 1,000 Gallons)	823,824	
Return Component Included for All Customer Classes	\$ 0.90	
(Rate per 1,000 Gallons of Consumption)		

#### Calculation of Additional Rate of Return Included for Outside Customers

Utility Plant Used by Outside Customers	\$ 1,070,750	
Times: Annual Return on Investment	4.00%	
Annual Return on Investment Allocated Only to Outside Customers	\$ 42,830	
Divide by: Total Annual Consumption (In 1,000 Gallons)	213,327	
Return Component Included for Outside Customers	\$ 0.20	
(Rate per 1,000 Gallons of Consumption)		

#### Summary of Rate of Return Component

Return Component Included for All Customer Classes	\$ 0.90
Add: Additional Return Component Included for Outside Customers	\$ 0.20
Total Return Component for Outside Customers	\$ 1.10
Ratio of Outside Return Component to Inside Component	1.22

#### Comparison Summary of Rate of Return Component

Crowe Horwarth Proposed Total Return Component for Outside Customers <sup>1</sup>	\$ 1.81
BAI Proposed Total Return Component for Outside Customers	\$ 1.10
Difference	\$ 0.71
Percent Decrease	39.3%
Crowe Horwarth Proposed Utility Plant Allocated Directly to Outside Customers <sup>1</sup>	\$ 6,161,502
BAI Proposed Utility Plant Allocated Directly to Outside Customers	\$ 1,070,750
Difference	\$ 5,090,752
Percent Decrease	82.6%

Source: <sup>1</sup> Crowe Horwarth LLP , Preliminary Analysis of Differential Between Customer Classes Located Outside Corporate Boundaries versus Customer Classes Located Within Corporate Boundaries, pg 3.

## Speedway Municipal Sewage Works

### Comparison of Annual Flow Rate

#### Calculation of Annual Flow Rate Included for All Customer Classes

Rate of Return Allocated to All Customers	\$ 739,948
Total Adjusted Annual Operating Expenses	\$ 2,389,270
Less: Operating Expenses Allocated Directly to Outside Customers	\$ -
Purchased Power for Outside City Lift Stations	\$ (7,010)
Major Maintenance Expenses for Outside Customer Facilities	\$ (40,000)
Total Estimated Maximum Annual Debt Service	\$ 2,638,673
Less: Debt Service Allocated Directly to Outside Customers	
Total Operating Costs Allocated to All Customer Classes	\$ 5,720,881
Divide by: Total Annual Consumption (in 1,000 Gallons)	823,824
Annual Flow Rate Included for All Customer Classes	<u>\$ 6.94</u>

#### Calculation of Additional Flow Rate Included for Outside Customers

Additional Return Component Included for Outside Customers	\$ 42,830
Adjusted Annual Operating Expenses Allocated Directly to Outside Customers	\$ -
Purchased Power for Outside City Lift Stations	\$ 7,010
Major Maintenance Expenses for Outside Customer Facilities	\$ 40,000
Debt Service Allocated Directly to Outside Customers	\$ -
Total Operating Costs Allocated Directly to Outside Customers	\$ 89,840
Divide by: Annual Outside Consumption (in 1,000 Gallons)	213,327
Additional Annual Flow Rate Included for Outside Customers	<u>\$ 0.42</u>

#### Summary of Flow Rate Component

Annual Flow Rate Included for All Customer Classes	\$ 6.94
Add: Additional Annual Flow Rate Included for Outside Customers	\$ 0.42
Total Return Component for Outside Customers	<u>\$ 7.37</u>

Ratio of Outside Flow Rate Component to Inside Component 1.06

#### Comparison Summary of Flow Rate Component

Crowe Horwath Proposed Total Return Component for Outside Customers <sup>1</sup>	\$ 12.55
BAI Proposed Total Return Component for Outside Customers	\$ 7.37
Difference	<u>\$ 5.18</u>
Percent Decrease	<u>41%</u>

Crowe Horwath Proposed Operating Costs Allocated Directly to Outside Customers <sup>1</sup>	\$ 1,583,033
BAI Proposed Operating Costs Allocated Directly to Outside Customers	\$ 89,840
Difference	<u>\$ 1,493,193</u>
Percent Decrease	<u>94%</u>

Source: <sup>1</sup> Crowe Horwath LLP , Preliminary Analysis of Differential Between Customer Classes Located Outside Corporate Boundaries versus Customer Classes Located Within Corporate Boundaries, pg 5.

**INDIANA REGULATORY  
FLEXIBILITY COMMITTEE**

**SUPPLEMENT TO TESTIMONY**

September 2011

**WHITE RIVER CITIZENS UNITED  
WHITE RIVER TOWNSHIP  
JOHNSON COUNTY**

**BARGERSVILLE WATER UTILITY  
RATE INCREASE**

**Exhibit L  
Regulatory Flexibility Committee  
Meeting #2 Sept. 28, 2011**

September 6, 2011

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# **I. Executive Summary**

On September 9, 2010, the Bargersville Town Council, acting as the Board of Directors of the Bargersville Municipal Water Utility, passed ordinance 2010-15 which increased water rates by 77% and doubled the Fire Protection Fee. This increase was for the construction, financing, and operation of a new water system in the southern half of their utility district. This system includes new wells, treatment plant, pumps, and distribution system piping. Because the utility had withdrawn itself from oversight by the Indiana Utility Regulatory Commission in November of 2008, this extensive system expansion, which approximately doubles its capacity, was not subject to a critical review by utility experts.

A group of citizens conducted extensive analysis of Indiana Utility Regulatory Commission and State Board of Accounts reports on current and past performance of the Bargersville utility. Internet data of other local utility rates was also reviewed. It was concluded that the new rates were, discriminatory, lacking justification via a Cost of Service Analysis, and based on flawed logic of the cause of system peak demand. Increasing the utility debt from \$12M to \$47M became a considerable concern because there was no growth projection that would substantiate the need for the new system capacity as proposed. Also not provided, was an explanation as to the effectiveness of this expansion to solve the existing water distribution problems without further capital expense after the new system was completed.

Information provided by Bargersville during two public meetings was limited and did not provide adequate justification for a capital expansion of \$20 million. Public questions of any type were not permitted at these meetings, and if asked, were not answered, thus limiting the ability of citizens to have dialog with those deciding the new rates. Because 82% of the water utility residential customers do not live within the corporate boundaries of the Town of Bargersville, they are unable to participate in the election process that decides who will make the decisions that places such a financial burden upon them. This is plain and simple; "Taxation without Representation", and it is wrong!

Having decided that the proposed rate increase was unreasonable and unfair, a petition of opposition was filed with the Town Clerk of the Town of Bargersville asking the Superior Court of Johnson County to hear the opposition. Legal representation was established with Lewis and Kappes of Indianapolis, Indiana. A decision by Judge Kevin M. Barton in October 2010, ruled that the group of citizens (White River Citizens United) did not have standing under Indiana Statute IC 8-1.5 to file the petition. Although as individuals they were customers of the utility and owned property, as a group they did not, thus making them ineligible to petition. As individuals, they would have been liable for damage claims from Bargersville, and therefore had chosen to protect themselves by filing the petition as a group. There is therefore no other recourse than for the citizens to appeal to the Indiana State Legislature for corrective amendments to the Statutes. Those amendments should be designed such as to prevent such grievous abuse of taxation without representation as has been demonstrated by the Bargersville Municipal Water Utility.

White River Citizens United recognizes that one of the needed corrective measures was contained in House Bill HB 1072, introduced during the legislative session of 2011. That bill provided the following provision:

A review by the Indiana Utility Regulatory Commission can be initiated by petition if the proposed rate structure for users outside the corporate boundaries exceeds by more than 10% the rates for users within the corporate boundaries.

We also recognized that legislative procedures require a new bill to be written for consideration by the 2011/2012 legislative session. We therefore recommend that the new bill contain the provisions of HB 1072 stated above, and the additions of items 2 and 3 listed below:

**1. A review by the Indiana Utility Regulatory Commission can be initiated by petition if the proposed rate structure for users outside the corporate boundaries exceeds by more than 10% the rates for users within the corporate boundaries**

**2. A review by the Indiana Utility Regulatory Commission can be initiated by a petition if the proposed rate structure increases by more than 10%, or is occurring in less than two years since the last increase.**

**3. A review by the Indiana Utility Regulatory Commission will be initiated if the proposed rate structure includes a rate increase to finance a capital improvement that exceeds 20% the current system capitalization.**

We ask the legislature to also consider the merits of the following possible provisions:

**4. The operations of a utility as an enterprise of a civil government shall be isolated from the civil operations by assurance that no utility assets (either personnel, equipment, or revenue) are used for civil purposes without compensation to the utility. The converse of this shall also be true; no civil unit assets shall be used for utility purposes. The State Board of Accounts shall be required to define those operational features and accounting practices that will insure that isolation. If required, the SBA audit authority shall be expanded to permit verification.**

**5. No part of municipal utility enterprise operations is to be financed with property tax or other taxing revenue dollars.**

## II. Bargersville Water Utility

The Bargersville Municipal Water Utility district is defined by nearly all of White River Township, all of Union Township, the northern third of Hensley Township, the western third of Franklin Township, and the south western corner of Pleasant Township in Johnson County, Indiana. This area exceeds 90 square miles and contains a highly urban section in the north, and open rural area in the south. The utility serves approximately 10,000 customers. Eighty one percent of those customers are located in unincorporated White River Township, the rest are residents of the corporate limits of the Town of Bargersville. Consequently, 82% of customers do not have political representation on the Town Council, which is the regulating body of the utility, and therefore do not have political recourse to the actions of the Council regarding water rates.

The map on the next page presents the geography of the issues. Bargersville Water Utility existing well field and treatment plant (shown in blue) is located on Smith Valley Road in the northern section of its utility district. The majority of the existing customers are located in the area north of Smokey Row Road designated as the North Hydraulic System. The new water system (shown in red) will serve a primarily rural area to the south of Smokey Row Road.

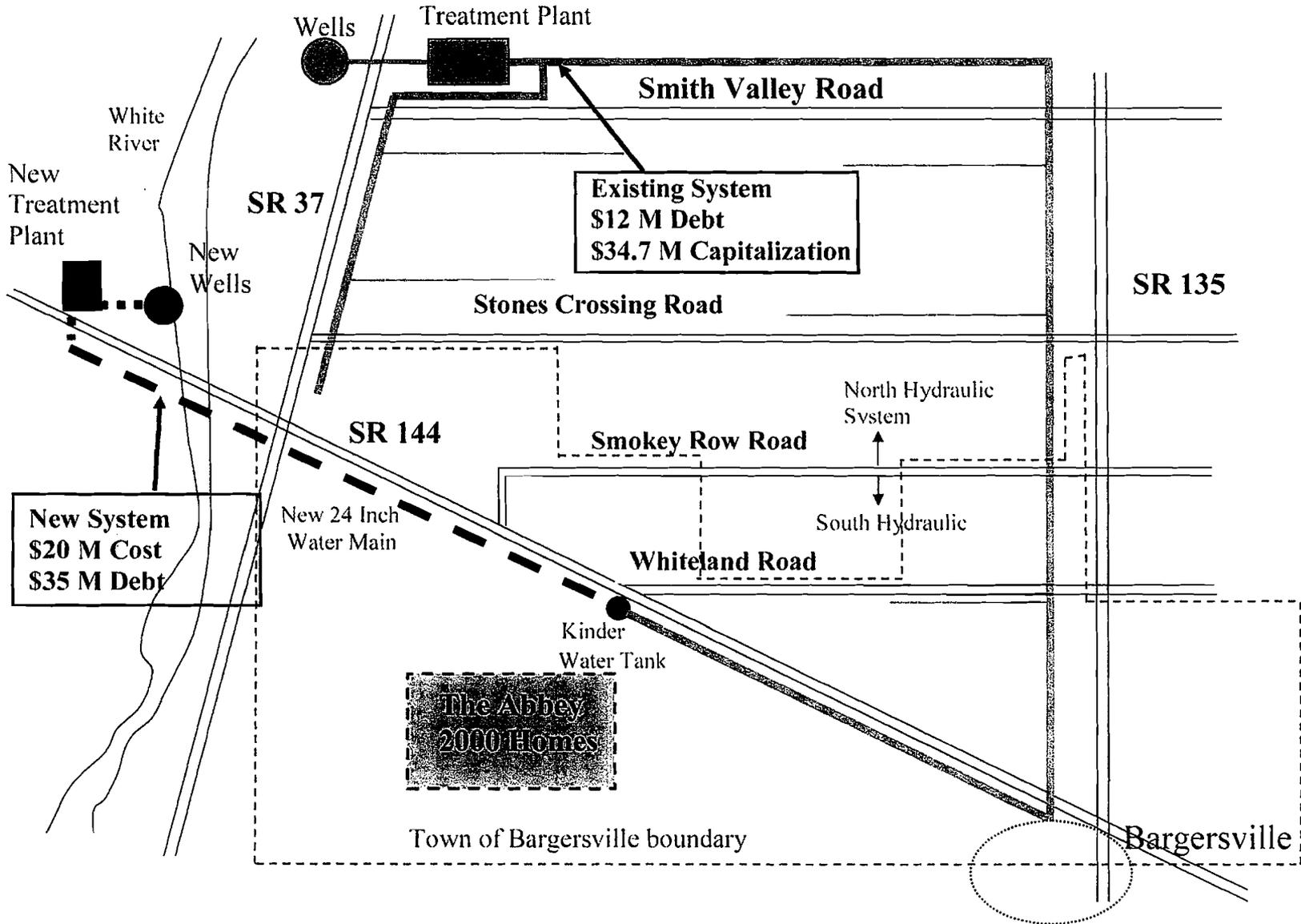
The dotted line on this map indicates the current corporate boundaries of the Town of Bargersville. This represents an expansion from 1 square mile (the oval in the lower right corner as of 2008) to 18.4 square miles in the past two years through annexations. The growth in population has not followed this growth in area. That has increased from 2,500 to only 4,000.

A developer announced the plans for the large housing area (2000 residents) called "The Abbey", prior to the economic downturn in 2008. It became part of Bargersville in 2010 by way of the Southwest Annexation. The new 24" water main running parallel to State Road 144 from the well field and treatment plant in Morgan County will terminate at the Kinder Tank just north of this large future development.

The existing water system has a debt of \$12M. The new well field, treatment plant, and transmission mains will have a construction cost of \$20M, with a total cost including interest of \$35M. When the project is completed, the water system will have a total debt of \$47M and a capitalization of \$54.7M, resulting in an 86% debt to capitalization ratio. (Capitalization as of 12/31/09 has been reported as \$34.7M)

The Town Council passed an Ordinance (2010-15, dated September 9, 2010) increasing water rates by 77% for the construction and financing of this project. There are a multitude of issues that have been raised by this action. It is the purpose of this document to list those issues, and support them with analysis and reasons why objections to that issue exist.

# BARGERSVILLE WATER UTILITY



### III. Issues and Analysis

#### A. HEARINGS:

Two Public Hearing meetings were conducted by the Bargersville Water Utility Board (Bargersville Town Council). The first was on July 15, 2010 at 5:00pm in the Center Grove High school auditorium. The second was held on August 24, 2010 at 7:00 pm in the Bargersville Town Hall. The second meeting was necessary because the rate structure presented prior to the July meeting could not be supported because a planned annexation by Bargersville had been negated by a court action.

##### 1. Conduct of the meetings:

The President of the Utility Board/Town Council (Mr. Combs) did not control the meetings. Consulting Attorney Nicholas Kile initiated each meeting by announcing that this was a public hearing and that comments from the public would be heard, but that there would be no questions answered by the Board members. This, of course, limited the interchange of ideas and most importantly, an interchange of information as to why the expansion was needed. A consulting engineer presented information on system peak demand (at the first meeting) and how cost reduction efforts had been made for the treatment plant (at the second meeting). There was no information presented to justify that an expansion of the magnitude being proposed was necessary to solve current water system problems, that system alternatives had been studied, or that the expansion was sized to meet the expected future needs.

A resident of Highland Park subdivision (Mr. William Dickey), who attended the July 15 meeting, commented at the meeting, and also several days later, that he found the procedure objectionable in that there was no interchange of information between utility representatives and the public. Several senior citizens expressed gratitude that White River Citizens United had made a presentation speaking up on their behalf.

August 24 Public Meeting attendee, Mr. Gary Tomey, (not a member of WRCU) wrote a letter to the editor that appeared in the September 22, 2010 edition of the Daily Journal. He expressed his disappointment at the way the meeting was conducted, pointing out that it was "orchestrated by the councils attorney", and reported on specifics to which Mr. Tomey objected.

State Representative Frizzell, co-author of HB 1107 regarding excess rates by municipal utilities, attended the meeting. He also spoke advising the Council of their obligation to be fair and reasonable.

##### 2. Opposition suppressed:

Bargersville Town Council member Mr. Kehl was opposed to the expansion. He had expressed this position in previous Town Council meetings and was quoted in the Daily Journal as having boycotted a Council meeting because of his opposition. The format and conduct of the Public Hearings did not permit his views to be heard. After the council meeting on September 9, 2010, at which the rate ordinance was approved, Mr. Kehl spoke to a WRCU representative and said he had talked with the utility employees who operate the water treatment plant, and was told this expansion was not needed. It would appear that Mr. Kehl had utility operating knowledge that

differed with what the consulting engineering representative reported, and that the conduct of the Public Hearings did not permit this to be heard.

3. Presentation suppressed:

White River Citizens United was permitted to deliver a presentation in opposition to the proposed rate increase at the first hearing. A planned presentation was not permitted at the second hearing. Prior to that meeting, when the Town Clerk was contacted relative to the availability of presentation facilities, WRCU was advised that the Council had ordered that presentation facilities be removed from the meeting room, and that no presentations would be permitted. However, the consulting engineering representative was recognized by the Council to deliver a presentation on the water treatment plant cost reduction history. In that presentation, no information was made available relative to the total scope of the project; nor to the total cost. Presentation projection equipment was present in the meeting room; being permanently attached to the ceiling.

## **B. MASTER PLAN:**

New Water Plant: The Water Utility Master Planning Report (Executive Summary), dated November 2002, and prepared by Commonwealth Engineers, Inc. presents a multiple phased development plan for the utility system. It, and several associated documents are contained in the Indiana Regulatory Commission Cause #42555, and file dated February 10, 2004. The review of this document set generates the following issues.

1. Cost

“Phase IIC” is the designation given in the Master Plan to the current proposal of constructing a new well field, a new treatment plant, a new clear well, and a 30” transmission main. The estimated cost of these items was given on page 4 of the summary as \$15,782,000. However in the testimony given by Mr. G.E. Tinkle II, on page GET-10, he estimates the same project would cost \$14,410,000. There is therefore some uncertainty on the part of the various consultants as to what was the cost of the project in 2004. Does that same uncertainty exist in the current plans?

The Phase IIC project was delayed to further study the cost. Now the cost is estimated at \$20,450,000. We were told in the August 24 hearing that considerable cost reduction had been achieved on the treatment plant, however current project cost estimates are at least \$5,000,000 above the 2004 numbers reported above.

2. Water Main Size:

The size of the water main size is specified as 30” in these documents. The proposed project has the mains reduced to 24”. This suggests that perhaps there are other system parameters that have been over stated in the master plan, but not as yet corrected.

3. Growth

The justification for Phase IIC is supported by the phrase, “...to be completed by 2005 to keep up with *anticipated* growth.” (Page 4 of the Executive Summary). There is neither in the Master Plan nor in materials made available to the utility customers

to date, data that supports that anticipated growth has actually taken place, or can reasonable be expected in the future. Data of this type, which measures anticipated growth by detailing approved development sizes, is contained in previous Cause numbered reviews of Bargersville Water Utility by the IURC. On the contrary, evidence was presented at the August 24 Public Hearing by Mr. William Shakal that a considerable reduction in home building permits for Johnson County has taken place in the last several years. A critical question of justification for this project remains unanswered.

Following Phase IIC in the Master Plan are three additional phases: Phase IA South, IIA South, and IIIA South. These are reported to be necessary if water service is to be extended to the Town of Trafalgar, and to Brown County (Page 5, Executive Summary). Certainly this objective of utility expansion to these communities cannot be meet without the completion of Phase IIC, which would increase the water availability by over 50% from current capacity. The question is then generated as to the true need for the current proposal; is it a preparation to serve this far southern reach of the utility district, or is it to solve a current capacity problem in the far northern district where 82% of the current customers are located? The latter issue has not been answered in a manner that would indicate that problem is well understood, and its solution can be supported by the new system.

The Preliminary Engineering Report of March 2011 justified the project by projecting future water needs of the proposed service area population. It assumed a 20-year (2009-2031) growth of nearly 50%. However, only in 1970-1990 did the service area population ever grow by 50%. Those were years of exceptional growth for the area. No years since have come close to approaching those numbers. This raises questions about the overall justification for the project.

**On 9/4/11 the Daily Journal reported that The Abbey, a 2000 home 5000 resident golf course community that would be served by this water expansion, is being scrapped. Land options have been given up and the project now will consist of 88 acres of estate homes.**

#### 4. Master Plan Deviation:

A Master Plan should be considered as a guide that requires periodic revisions. This is so stated in the IURC annual 2010 Legislature Report. The Master Plan needs to be adapted to the actual community growth that has taken place since 2002. A typical example of the process is a City/Town Comprehensive plan that guides a community's development. It requires updates to assure that it is compatible with current conditions. Given the significant economic slow down during the past several years, and the subdued recovery forecast, it would be prudent to re-evaluate the 2002 Master Plan for the water utility before embarking on a \$20M expansion.

#### 5. Peak Demand:

Data supplied by consulting engineering representatives at the public hearing defined the most pressing current problem to be a peak hour system demand. We have been told that peak hour demand has exceeded threshold values on several occasions in the summer season. There has been no discussion offered on alternatives

that would be appropriate for that problem, only that a new water plant is needed. There is therefore the question that we are being asked to pay for a new water plant when there could be other less costly solutions. Those solutions may even be appropriate for any supply problems that will exist in the southern district of the utility in the near future, but they have not been defined nor considered.

The existing water treatment plant has been equipped with a Fluidized Bed Reactor that is used only in the summer months to supplement peak capacity by 1.5MGD. Modifying the Master Plan to repeat such an expansion methodology would add to existing capacity during peak demand months in a similar cost effective manner.

#### 6. Commitments:

A deviation from the current Master Plan should now contain consideration of the “water commitments” that are reported in the Bargersville letter of September 1, 2010. This letter is a response to concerns expressed by the customers at the several hearings. A customer concern relative to the practice of conservation was countered with the response that Bargersville has committed availability of water supply to potential future customers, and therefore conservation is not a solution to any current supply problem. If that is true, then it should become a part of the revised Master Plan and consideration be given as to how that future customer will pay for their fair share of the system expansion.

### C. WATER RATE ELEMENTS

The water utility receives monthly revenue from several water rate elements. Each has been reviewed, and the issues found are contained below:

#### 1. Fire Protection Fee:

The Fire Protection Fee for customers who are not residents of the Town of Bargersville has been **doubled** to \$20.00 per month. Residents of the Town of Bargersville are not charged this fee in their water bill. Instead, they pay an “equivalent” fee through their town property tax rate. There are several issues with this fee structure;

a. Greenwood and Franklin, which surround the Bargersville Water Utility service area, are served by Indiana American Water and pay considerably lower Fire Protection Fees. Customers in Franklin, even those outside the city boundary, pay \$2.64/mo., and those in Greenwood pay \$3.80/mo. In contrast, Bargersville non-residents pay \$20/mo., five times more than nearby communities.

b. A customer paying this fee through property tax can claim this expense on federal income tax as a deduction. However a customer paying this fee as a monthly water bill charge cannot. The town resident therefore has a tax advantage that the non-resident does not have.

c. The Town of Bargersville transfers property tax revenue from the Town to

the Utility to pay for the Town residents Fire Protection Fee. This will deplete that revenue by approximately 30% in future years as a result of the rate increase. Tax revenue intended for municipal services is thereby diverted from providing the intended community services.

Indiana has initiated a cap on property taxes. Many Bargersville residents are already subject to those credits because of the combination of large town and fire tax rates, and low Accessed Valuation properties. Since the Fire Protection Fee contained within the tax bill is a fixed amount, the cap effect reduces only the revenue available to deliver community services.

d. When inquiries were made relative to the origin of the cost basis of the Fire Protection Fee, we were directed to an IURC cause #40187 dated April 20, 1995. Since then, any rate increase percentage has been applied to this fee **without performing a current cost of services analysis**. However, in a review of the referenced cause, we could find no basis for that derivation. A possible relevant document found in the IURC archives was a report by an engineering firm named SEICO. It was entitled "Report on Technical Phase of Cost of Service Study and Related Work for Bargersville Water Utility". The cost of service derivation contained within this document is relative to the "Sprinkler vs. No-Sprinkler" rate difference and the derivation of the "Base Extra Capacity" method of allocating operating costs. The origin of the Fire Protection Fee remains unjustified.

## 2. Sprinkler vs. No Sprinkler Rate Difference:

Bargersville Water utility claims that summer season peak hour demand is the result of customers who have in ground sprinkler systems. They have therefore designed a water rate structure which charges customers with an in ground sprinkler system a higher monthly meter fee than a customer without. A number of issues are present with this rate structure;

a. The document by SEICO referenced above is a cost of service study regarding the use of in ground sprinkler systems performed in 1995. While it should be considered out of date for today's rate structure, it never the less is what is used as the basis for current rates. On page 3 of the report, an analysis is performed on customers with and without sprinkler systems regarding their water consumption records in the 5 months in which sprinklers are most likely to be used. Two very small groups of customers were studied; one group had in ground sprinkler systems, and the other did not. A criterion was established for a decision that a customer is, or is not, contributing to the peak demand of the system. That criterion is; if the ratio of sprinkler month average usage to non-sprinkler month average usage is greater than 2.5, the customer is considered to be contributing to the system problem. In a sample of 17 customers with sprinklers, the analysis fails to note that 6 of those customers have peak to average consumption less than the criteria. In comparison, 2 of the 22 customers with out sprinklers exceed the criteria. The data being analyzed indicates there are a sufficient number of customers in each category that fail the test criteria. In addition, the sample size used to derive conclusions is far too small to have any statistical validity

whatsoever. Therefore, to have established the in-ground sprinkler customers as being the cause of the system problem, and imposing a premium water meter charge, is an erroneous conclusion from the data.

b. A handout at the August 24 hearing presented a graph of average water consumed per month for each type of customers. Those that have sprinkler systems demonstrate a peak monthly average consumption of 23,200 gallons. Those that do not have sprinklers have a peak monthly average consumption of 8,600 gallons per month. This data is intended to enforce the conclusion that system peak demand is caused by customers with sprinklers. A more careful analysis of the data yields a much different conclusion. Using the number of customers in each category contained in the Umbaugh rate analysis of August 17, 2010 reveals just the opposite. The 1729 customers with sprinklers create a peak monthly demand of just over 40M gallons. The 8155 customers without sprinklers create a monthly demand of just over 70M gallons. The system peak demand is therefore more dependent on the usage of non-sprinkler customers than it is on the sprinkler customers. The graph also indicates that during the non-sprinkler usage months, the average monthly demand of the sprinkler customers is approximately 1000 gallons per month LESS than the non-sprinkler customers. With the data supplied by Umbaugh, it is obvious that customers who own sprinkler systems are unfairly being penalized because they are not the major consumers of the water. They individually may have a higher peak to average usage, but in total consumption that group is **not** the major consumers of water.

### 3. System Development Charge:

The current System Development Charge (SDC) of \$625 per new customer connection was developed in conjunction with a rate increase proposal presented to the IURC in 2004. That is documented in Cause #42555, and reports that the “Equity (Buy-in) Method” was employed. In that method, as stated on Page 7 of the testimony of J.F.Doninger of Umbaugh Associates, “the goal is to charge a fee for new customers sufficient to allow customer user rates to be revenue-neutral with respect to growth”. The current proposed rate increase fails to address several aspects of the SDC fee;

a. There is some uncertainty as to the correct calculation of the SDC fee contained in Cause #42555 of 2004. In Mr. Tinkle’s testimony (page GET-6, lines 8-11), the consulting engineer estimates future growth in terms of Equivalent Dwelling Units (EDU )to be 4,891 (This is the sum of 2755 units in the next five years, and 2136 units for the Intermediate-Term, with no Long-Term projection.) The EDU’s used by Umbaugh in calculating the current SDC fee is shown on page 23 of their report to the Town Council dated February 10, 2004 as 8,831. This larger EDU number has resulted in a smaller SDC fee than if the estimated EDU’s of the consulting engineer had been used. This condition needs to be reviewed for consistency and the predictions updated.

b. There has been a failure to apply the Equity Buy-in Method to the current

expansion project. Equity Buy-in is a consideration that existing customers have acquired some equity in the water utility as a result of paying a water bill that contains payment for past capital expenses. New customers, who will benefit from the previous capital investment when they become customers, compensate for their lack of acquired equity by paying a System Development Charge (SDC) when they become connected to the system. This is not the “hook-up fee”, which only pays for the mechanical connection to the system. In the revised rate structure, no recalculation of an SDC rate has been made. A request that there be consideration of adjusting the SDC has been rejected by the Director of Utility (Mr. Davis). It would seem reasonable that in a case such as this, where it is obvious that the project is for the benefit of future customers, that those customers need to be defined (as accurately as possible), and that they match the investment current customers have in the existing system when they are connected. The letter from the Town of Bargersville announcing the second Public Hearing, dated August 9, 2010, has as an attachment of the proposed rates. That schedule fails to include the SDC fee, so there is no evidence to assure the customers that there will even be an SDC fee, let alone any adjustment. Bargersville Ordinance 2010-15, which authorizes the new rate schedule, also does not contain any reference to an SDC fee.

#### 4. Revenue from Future Growth:

Rather than place the cost burden of a new facility on just the existing customers, past revenue review cases with the IURC by Bargersville Water Utility have contained alternatives to such financing. The use of an SDC fee (mentioned above), as well as other techniques, have been put forth by the consultants advising the Town. Those other techniques are worthy of further consideration:

##### a. Delayed Payment of Principal:

In cause #42555, Umbaugh proposed that a delay of payment on the principle of the Bond issue be made. In this manner, any new customers added to the water system, who are major beneficiaries of these improvements, would pay a larger portion of the proposed debt. On page 8 of his testimony, Mr. J.F. Doninger of Umbaugh declares; “In my opinion, this is a fair and reasonable approach of extending the burden of funding the proposed improvements to both the present and future ratepayers of the Bargersville Water Utility....”. While this exact bonding method may not be applicable to the current system needs, it is paramount that considerations of this type be made so that a fair and reasonable cost allocation between existing and future customers is accomplished.

##### b. Cost Allocation to SDC:

On page 96 of the 2002 Master Plan (not the Executive Summary), a proposal is made regarding “Water Availability Fee” relative to Phase IIC funding. It was proposed that the project cost be split in half. One half to be funded by the “Water Availability Fee” (currently referred to as SDC) from future customers, and the second half to be included in the rates paid by existing customers. The percent sharing should of course be performed based on the

allocation of future benefits to be derived by both classes of customers, and not necessarily the 50/50 split quoted in the Master Plan. Her again we see that SDC fees are considered by the consultants advising Bargersville in the past to be a significant factor in arriving at a fair and reasonable rate structure.

c. Revenue from Future Customers:

The proposed rate structure assures that bond debt obligations will be met by applying the whole debt to existing customers. There are no provisions for the revenue that will be realized from new customers. With existing customers paying the rates necessary to finance the debt and to pay the additional operating expenses, any new customer revenue will be free and clear "PROFIT". There is no consideration given as to how these funds will be applied for debt reduction or operating the new system. That is not fair and not reasonable.

d. Base Maximum Method of cost allocation;

In the 1995 IURC cause number 40187, a document by SEICO, entitled "Report on Technical Phase of Cost of Service Study and Related Work for Bargersville Water Utility" is referenced. In that document, the cost sharing percentages are derived that are allocated to Base, Peak Day, and Peak Hour categories for classifying operating costs. The derivations on page 6 contain computation errors relative to number rounding. They result in percentages that are used in the accompanying Umbaugh Rate Analysis which are in error, thus propagating the round off error through out the rate structure derivation. Through out the years, any rate changes have used these percentages, thereby propagating the error to the proposed rate structure of Town ordinance 2010-15.

## D. EXPANSION PLAN

1. The Total Project:

The total scope of the expansion project has never been revealed to the public. There were never any charts or diagrams to indicate the full extent or cost. Only in the June 23 and August 17 Rate Studies has there been any record of the project scope and its associated costs. Public Hearing presentation information has been limited to the cost of the new water treatment plant, which is only half of the total project cost.

2. System Requirements Document:

A verbal request for a copy of a "Systems Requirement Document" was made to the Town Clerk at the time she supplied a number of requested documents. It was expected that the consulting engineering firms would have been given a document by the Town Council describing the needs of the Water Utility to meet current and expected system capacity needs, and which defined the scope of the contracted design efforts. This is a standard industrial method of communicating with a consultant with regards to the scope of services one is contracting for. She responded that no such document existed. If that is truly the case, one is left with the question as to what

were the design objectives that defined the needs of the new facilities, and how was the end product of the consultants given a sense of direction?

3. Is it Necessary? :

The Town of Bargersville web site in July of 2009 was accessed for the purposes of obtaining the details of the water rate structure. Several items of “Key information” from that web site were noted at that time. They are quoted below:

- a. “Currently serving a customer base of approximately 9,000 people”
- b. “The current design capacity is 7.5MGD, has an average daily production of 2.0MGD, and new customer availability of 3.2MGD”

This information indicated that there was adequate capacity for expansion. A year later a letter arrived from Bargersville advising of a 118% water rate increase in order to finance a new water plant. Although the increase of 118% was later retracted, a 77% increase is presently enacted. A credibility gap exists between the customers and the utility when a reported 40% surplus capacity disappears within a year, and we are asked to pay \$20 million for an increase in capacity.

4. An Alternative Proposal:

A review of the Bargersville Water Utility facilities map suggest that alternative solutions may exist that will not only solve current capacity problems (if they exist), but strengthen the integrity of the system for serving future customers. They are:

- a. A 12” line runs south on SR 37 and then east on Travis Road to the Orchard Tank. This should be capable of supporting an initial commercial development at SR 144 and SR 37 with a very short extension. Very limited residential customers exist in this area. A booster pump station on SR 37 may be needed if pressure drops are excessive.
- b. The system contained in the area defined by Smith Valley Road on the north, Stones Crossing Road on the south, Morgantown Road on the west, and SR 135 on the east contains the highest density residential and commercial area of the system. It experiences low water pressure at residences internal to the distribution mains network during peak summer demands. An additional water tower at Olive Branch Road and Morgantown Road may be a solution to this issue. Since this is a high population density area, a tank larger than 500K gallons may be needed to meet peak hour demands.
- c. Of the four system elements (well, treatment, pump, and transmission), the weakest link is transmission. With an additional 1.5MGD Fluidized Bed Reactor for peak season use only at the existing treatment plant, the existing well and treatment plant should serve average day (4.2MGD), and peak day (9.8MGD) through 2020. Peak hour capacity of 16.1MGD may require a separate solution, if additional and existing water tanks do not.
- d. System transmission problems are more likely to exist in the southern regions of the service area where current development is occurring. A solution would be

to add a 12" line from the Orchard Tank down Morgantown Road to the Kinder Tank. This is open rural country and right of way would be easy to acquire. This would parallel the 8' line that runs from Stones Crossing Road to the Town of Bargersville along SR 135, and thereby improve the supply availability to the Town of Bargersville.

e. These changes would more tightly couple the North and South Hydraulic Systems, and thereby strengthen the integrity of the entire system.

## E. UTILITY OPERATIONS

### 1. Operating Expenditures:

The State Board of Accounts receives an annual financial report from the Town of Bargersville. That report is referred to as the CTAR-1 report ( ID 41-3-702). The CTAR-1 for 2010 was reviewed, and the following observations are made relative to all Bargersville utility operations:

#### a. Civil vs. Utility Enterprises:

In addition to providing the customary services of a Town, Bargersville is operating four utility enterprises. The Council is required to apply its time and talents to not only the management of a civil unit, but it must do the same for the four utility enterprises. In the table below, the 2010 expenditures serves as a measure of the management effort relative magnitude required for each unit. The population for the Town is shown for the civil unit and the storm water utility, while customer numbers are shown for the other utility units. These provide another means of judging the relative amplitude of management effort required from the Council.

ENTERPRISE	Population	Customers	2010 Disbursements
<b>CIVIL</b>	<b>4,013</b>		<b>\$4.4M</b>
Water		10,171	\$8.2M
Electric		3,427	\$7.2M
Sewer		1,761	\$2.7M
Storm	4,013		\$0.36M
<b>TOTAL</b>			<b>\$22.86M</b>

Several observations can be drawn from this data that question the viability of allowing a civil unity of government the sole authority to control enterprises that greatly exceed the geographical boundaries and fiscal size of its incorporation. By using a factor of 2.6 residents per household (typical for Johnson County), the

customer data above can be converted to population numbers. This conversion is used in the following observations:

i.) The disbursements of the civil unit are only 1/4<sup>th</sup> that of all the enterprises. If one considers that management oversight effort is proportional to disbursements, the following conclusion follows: The primary purpose of the Town Council is for the governance of issues related to the safety and welfare of its constituents. When the management of enterprises so dominates the function of the Council, its civil obligation effectiveness is considerable reduced.

ii.) The water utility serves a community of approximately 26,000 residents. That is a population more than 6 times larger than the Town. The electric utility serves a community of approximately 9,000 residents. That is a population more than 2 times larger than the Town. It is unreasonable to assume that the Council can maintain an allegiance to a population of utility customers that is so significantly composed of those not residents of the Town, and therefore unable to vote for those elected offices.

iii.) It is unreasonable to assume that the process of electing a portion of the five Town Council members every two years, for a four year term, will produce an enterprise management team that will be well informed and capable of effectively managing such large enterprise operations. These enterprises need long term visionary planning, consistent adherence to the planning, and technical and fiscal knowledge of the operational issues of each utility for efficient operations. The political process associated with a civil unit of government is inconsistent with the needs of utility operations. Some form of utility expertise oversight is therefore required.

b. Employee Compensation:

If each utility enterprise was operated with an equivalent policy of employee compensation, one would expect that, (a) Benefits would be a consistent percentage of Wages, and (b) Wages plus Benefits would be a consistent percentage of Disbursements. The data in the tables below has been taken from the 2010 CTAR report for the Town of Bartersville.

**Benefits as a Percentage of Wages**

UTILITY	WAGES	BENEFITS	PERCENTAGE
Water	\$1,310,000	\$689,232	<b>52.6%</b>
Sewer	\$273,505	\$92,468	<b>33.8%</b>
Electric	\$1,544,220	---	<b>0%</b>
Storm	---	---	---

## Wages plus Benefits as a Percentage of Disbursements

UTILITY	DISBURSEMENTS	WAGES PLUS BENEFITS	PERCENTAGE
Water	\$8,213,949	\$1,999,232	24.3%
Sewer	\$2,652,619	\$365,973	13.8%
Electric	\$7,192,097	\$1,555,220	21.6%
Storm	\$359,144	---	---

The observations that are drawn from this data are:

(i) There are no reported employee wage or benefit expenditures for the storm water utility. It would appear there are no employees assigned to that utility, although there is a Storm Water Utility secretary and a Board. In Council meetings, discussions are conducted relative to services the storm water utility provides to the Town such as street sweeping. Personnel providing these services must be compensated in a manner that is not reflected in the CTAR report. The question is posed; are these employees compensated from another utility revenue? This appears possible in view of the Council reversal in policy for the collection of storm water fees. This occurred after protest from the town residents.

(ii) The percent of benefits with respect to wages that are reported for the water utility is found to be 52.6%. That is significantly more than the 33.8% for the sewer utility. The question is posed: Why are the benefit expenses for the water utility so large, and out of proportion to the sewer utility? One would expect equivalent benefit packages for all town utility enterprises.

(iii) There are no benefit expenses reported for the electric utility. Because the percentage wages and benefits with respect to disbursements is nearly the same for the water and electric utility (in the low 20% range), it may be that benefits are not isolated in the CTAR report forms for electric utility, but are summed with the wages. Whatever the justification, it is obvious that different utilities are being financially managed in different manners with regards to these parameters.

b. Water Utility Salaries and Benefits:

Because the water utility benefits with respect to wages was found to be significantly more than the other utilities, it was examined over a period of seven years starting in 2005. Using a variety of sources, the sum of wages and benefits over the years from 2005 to 2010 appears in the table below along with the year-to-year percentage increase. The year-to-year percentage increase of the Consumer Price Index (U.S. City Average, All Urban Consumers) is presented for those same years.

## Water Utility Wages and Benefits VS. CPI

YEAR	SOURCE	WAG.+BEN.	% INC.	CPI	%INC.
2005	SBA audit	\$1,517,800	----	195.3	3.4%
2006	SBA audit	\$1,643,835	8.3%	201.6	3.2%
2007	Umbaugh rate study	\$2,100,335	27.8%	207.3	2.8%
2008	Umbaugh rate study	\$2,254,688	7.3%	215.3	3.8%
2009	Umbaugh rate study	\$2,201,680	-2.4%	214.3	-0.4%
2009	CTAR-1 for 2009	\$1,810,120			
2010	CTAR-1 for 2010	\$1,999,232	10.4%	218.8	1.6%

The observations that are drawn from this data are:

(i) Each annual increase in Wages and Benefits exceeds the annual rise in the Consumer Price Index. In 2007, the water utility wages and benefits increased by a factor of 27.8% that of the previous year. This occurred in a year when the CPI increased a meager 2.8%. This suggests a utility management policy relative to wages and benefits that has no constraints or economic guidelines.

(ii) Two different sources for the year 2009 wages and benefits data (the Umbaugh rate study and the CTAR-1 report) are compared in the table above. They are found to vary considerable from each other. The data used to calculate the new water rates by Umbaugh is 22% higher than the data submitted to the State Board of Accounts. This biases the new water rates to a level higher than perhaps it should be, if one considers the data submitted to SBA to be the more accurate.

(iii) The SBA web site does not contain copies of Bargersville CTAR-1 reports for any year prior to 2009. It is therefore not possible to expand the comparison of data sources for other years such as 2008 and 2007. The table above does suggest that perhaps the Umbaugh data for 2007,8,and 9 has a consistent bias towards the high end. This further supports the concern that data of this origin biases the current rate increase towards the high end. It also raises the question of; Why does the Umbaugh data contain this bias when the origin of numbers for entry in both reports would have come from the books kept by the Town of Bargersville?

c. The Water utility SDC fund was reported in the 2009 CTAR-1 report to have a cash and investment balance of \$529,277.03 as of 12/31/2009. However, we are told that the Water utility had to borrow \$524,000 from the Wastewater utility in order to pay for the relocation of water mains in conjunction with the INDOT State Road 135 expansion project of 2010/2011. That loan appears as a line item in the project cost sheet for the proposed new water plant. What happened to the Water Utility SDC funds of \$530K ?

d. The disbursement from the Council of Governments Fund for Personal Services is recorded as \$96,378.20. Since there are five members on the Town Council, this would imply that each council member was paid \$19, 275.64 in 2009. That seems excessive. The utility funds do not reveal if these same council members, who act as Board members to the utilities, are also paid for their services from the utility operating funds.

e. Debt to Asset Ratio: The Water Utility is currently obligated to a debt of approximately \$12M. Umbaugh records the December 31, 2009 asset value of the water utility to be \$34.7M. Upon issuance of the project bonds for \$20M, the utility will be obligated to a debt of \$35M (includes interest), causing the total debt to rise to \$47M. Upon completion of the new water system, the asset value of the utility would increase by \$20M to be \$54.7M. The debt to asset ratio would then be \$47M/ \$54.7M, or 86%. With such a high debt ratio, the financial stability of the utility is questionable.

f. Servicing City Streets: The Bargersville Fiscal Plan for the 135/Whiteland Road voluntary Annexation area, dated November 13, 2006, and the Fiscal Plan for North SR135 consensual Annexation, dated June 10, 2008 both contain references to the fact that the Town of Bargersville uses Utility employees and equipment to provide Street Department services to the Town streets and roads. In the second fiscal plan above, the following statement is contained; "Bargersville Utility employees are diverted to street department duties when circumstances dictate, such as for minor road repairs or snow removal". There is no indication in the Town financial reports reviewed to date that there is "job level" accounting being practiced so that water customers who do not live in the Town of Bargersville, and don't receive the benefits of these services, are not paying for them through their water bills. In the CTAR report for 2009, there is no evidence of the water utility being compensated from the town by a transfer of funds to pay for these services. Just the opposite occurs. A receipt of \$131,600 into the town occurs into the "In lieu of taxes" account. Without full disclosure, the assurance of fairness in allocating these expenses back to the town cannot be established. A written request to the President of the Town Council in March 2011, requesting accountability of water utility compensation for these types of services has not been fully answered.

## F. CONFLICT OF INTEREST

Mr. Welch, who is a full time employee of the Water Utility, also serves as a Councilman on the Town council. In that capacity, unless he removes himself from a vote regarding the water utility operation, he is in a position to vote on issues in which he may personally benefit. On September 9, 2010, when the vote was taken on the water rate increase ordinance, Mr. Welch did not excuse himself from the vote as would be expected under the circumstances. Of the five Council members eligible to vote on the ordinance, one was opposed, one was not present, three voted in favor, including Mr. Welch. In so doing, it can be considered that he cast the deciding vote on an ordinance that will benefit his future employment with the water utility. This is a

glaring injustice to the more than 7700 utility customers who live outside the corporate boundaries and cannot express their concerns for his actions through the power of political representation.

## IV. A Utility Expert Opinion

The utility expert, Mr. Mike Gorman, who would have testified in a courtroom hearing had the petition against the water rate increase ordinance been allowed to proceed, was contacted by a group of concerned citizens via telephone on November 18, 2010. It was the objective of that conversation to obtain his expert opinion of the facts surrounding the Bargersville Water Utility operations and actions that he may have formed as a result of his preliminary review of the documentation sent to him. The following are his opinions as expressed in that telephone conversation:

1. It is highly unusual for a utility to subsidize its revenue through the collection of property taxes. (This refers to the residents of Bargersville paying the fire protection fee via their property taxes while non-town residents pay it as a monthly fee.)
2. It is unusual for such a high percentage of municipal utility customers to not be represented in the governance of the utility.
3. A water utility employee (Mr. Steve Welch, member of the Town Council) having authority to approve a major expansion project is clearly a “conflict of interest”.
4. From the review of documentation supplied, Mr. Gorman felt there was very limited justification provided by the Bargersville utility for their actions. He was unable to find any additional information via an Internet search. In particular, the “cost of services” analysis was very weak.
5. It is not normal for the utility to include line (mains) extensions costs in a capital project. These are facilities normally paid for by the developers requiring water service to their properties.
6. It is not normal to have a residential declining water rate schedule. Conservation is promoted in other utilities by an inclining rate schedule.
7. It is not normal that there were no alternative plans for the capital expansion. If performed, they would have evaluated alternative choices, which would meet the utility service and quality standards, at the least possible cost.
8. Mr. Gorman has no documentation of his analysis efforts to date, which could be used to support our efforts with the Legislature. He was in the initial phases of his preparation for testimony, when the court ruled against WRCU.
9. He could provide an estimate of the discriminatory billing and/or economic injury to Bargersville utility customers if he were authorized to continue. When presented with the conclusion that wages and benefits had increased annually at a large rate, he suggested that from his experience utilities were experiencing large increases in retirement benefits because of the financial market down turn, but further

investigation would be required. He did however support the concern about the excessive increases in wages.

10. The state of Wisconsin has a “streamlined” system of regulatory oversight. He would recommend it as a model for Indiana to consider. The analysis on proposed rate increases is performed by the state using standard forms and methodology.

11. In the past, the IURC has done a fairly reasonable job of reviewing municipal utility actions. Their ability to withdraw from the IURC has diluted that regulatory action.

## V. Conclusions

Indiana Statutes now allows municipal utilities to withdraw from the Indiana Utility Regulatory Commission. Bargersville Water utility did so in 2008. The supposition that the utility will then be “self regulating” by virtue of the local political process is flawed. Residential utility customers outside the corporate limits are not represented, and in this case they constitute a large majority (82%) of the water utility residential customers. Decisions makers are not required to respond to inquires from these utility customers, and suffer no consequences politically.

Local political office holders, such as Town council members and Town Clerk/Treasurer, do not have any requirements to possess the necessary skills required to manage and operate a utility. These skills include, long range system planning compatible with the anticipated community growth, technology alternatives, fiscal management of all revenues, expenses and capital investments, and human resource management. By its nature, this political system (or popularity contest) produces a rotating set of ordinary citizens into these offices, with the inherent loss in continuity of any of the necessary utility management skills acquired during the “on the job” training provided by the previous term of office. The functional efficiency of the utility is further at risk when they are permitted to do so without the benefits of a competent oversight organization such as the IURC. The risk is further compounded when the political organization is allowed to operate a total of **four** such utilities.

It is the conclusion of this report that the passage of the Bargersville Water utility rate ordinance of September 2010 is unreasonable and unfair. Each of those categories is detailed below:

### UNREASONABLE:

- A. There has been no substantive justification for the size of the \$20M capital expansion.
- B. There has been no consideration of alternatives that could be more cost effective in serving the needs of the customers, both existing and future.
- C. The 2002 Master Plan has not been revised to reflect current and local anticipated growth. There is no published substantive data supporting a growth in demand. There has been no substantive system study published defining the current and future demand of existing customers. Commitments for future customers have been alluded to, but not made public in the form of a study. The customers are asked to accept without adequate justification that the \$20M project is needed. Without that justification, one can only assume that the projects objective, as defined in the 2002 Master Plan, is providing future water customers of Trafalgar and Brown County.
- D. The Fire Protection fee is excessive when compared to other local communities.
- E. The debt to asset ratio that results from this project places the utility in a dangerous financial position.

UNFAIR:

A. Bargersville residents are billed for Fire Protection Fee through their property tax. The amount a resident pays is dependent on the assessed value of their property, and not based on the value of the service.

B. Only Bargersville residents have the benefit of utility resources being allocated to perform street maintenance services.

C. The decision to charge in ground water sprinkler users a premium meter rate is based on flawed cost of service analysis dating back to IURC cause # 40187. There has been no effort to apply a current cost of services model to the new rate structure.

D. The “Base Extra Capacity” cost allocation model established in IURC Cause #40187 of 1995 has a math error. Since 1995, any rate increase has been based on that model instead of establishing a new cost of service model. There has therefore been a continuous propagation of this error in any rate structure, including the rate increase of September 2010.

F. The cost of the new water facilities is placed on existing customers only. The philosophy supported by the IURC that “Growth should support Growth” has been ignored. Since there is no substantiated growth projection study, there is no basis upon which the sharing of the project financial burden can be accurately allocated to those who will benefit.

G. A utility employee was permitted to cast the deciding vote on the ordinance. A very glaring “Conflict of Interest”.

H. The majority of utility customers are not represented politically in the decision making process.

I. There has been an excessive rate of increase in wages and benefits for the utility employees. There is evidence to suggest that the electric and storm water utility employees are being compensated from the water utility. There is no task oriented cost accounting procedures which would fairly allocate employee wages and benefits to any of the four utilities where the employee could be assigned for a task.

It is recognized that correction of these conditions requires a change in the Indiana Statutes. An attempt to do so has been made in the past legislative session by the introduction of HB 1072. The provisions of this bill, if passed, would have corrected a substantial number of the unreasonable and unfair issues listed above. It is recommended that a new bill be written for consideration by the 2011/2012 legislative session, that it contain the provisions of HB 1072 as stated in item 1 below, and the additions of items 2 and 3:

**1. A review by the Indiana Utility Regulatory Commission can be initiated by petition if the proposed rate structure for users outside the corporate boundaries exceeds by more than 10% of the rates for users within the corporate boundaries**

**2. A review by the Indiana Utility Regulatory Commission can be initiated by a petition if the proposed rate structure increases by more than 10%, or is occurring in less than two years since the last increase.**

**3. A review by the Indiana Utility Regulatory Commission will be initiated if the proposed rate structure includes a rate increase to finance a capital improvement that exceeds 20% the current system capitalization.**

We ask the legislature to also consider the merits of the following possible provisions:

**4. The operations of a utility as an enterprise of a civil government shall be isolated from the civil operations by assurance that no utility assets (either personnel, equipment, or revenue) are used for civil purposes without compensation to the utility. The converse of this shall also be true; no civil unit assets shall be used for utility purposes. The State Board of Accounts shall be required to define those operational features and accounting practices that will insure that isolation. If required, the SBA audit authority shall be expanded to permit verification.**

**5. No part of municipal utility enterprise operations is to be financed with property tax or other taxing revenue dollars.**

## VI. References:

This list has been prepared as an aid to anyone wishing to familiarize themselves with the issues and facts relative to the proposed \$20M expansion project planned by the Bargersville Water Utility.

1. Cause 40187: This is an IURC set of documents relative to a rate increase request in 1995. There are two specific documents that are relevant:
  - a. The Supplemental Accounting Report by Umbaugh, dated Oct 9, 1995; provides a past accounting basis for the Bargersville Utility, and the establishment of the 1995 water rates.
  - b. Report on Technical Phase of Cost of Service & Related Work for Bargersville Utility; this report by SIECO, dated July 1995, contains the basis of a “Base Extra Capacity Method” of establishing cost of services. There are mathematical errors in this derivation related to rounding of numbers. The consideration of correcting peak hour demand numbers with storage tank draw down, is mentioned as a needed correction, but is not applied.
2. Cause 42555: This is an IURC set of documents relative to a rate increase request in 2004. There are four specific documents that are relevant:
  - a. Testimony by G.E. Tinkle (PE) describing the utility system and its capacities.
  - b. Water Utility Master Planning Report (Executive Summary) by Commonwealth Engineers, Inc., dated November 2002; an overview of the utilities master plan including plans for providing service to Trafalgar and Brown County.
  - c. Testimony of J.F. Doninger (CPA) describing the financial plan associated with planned expansions.
  - d. Accounting Report of Proposed Project and Bond Issue, Proposed Increase in Charges and Rates and Proposed System Development Charge, by Umbaugh, dated February 10, 2004.
3. Current Water Rates schedule from Bargersville Utility web site in 2009. It includes a System Development Charge, while some of the following documents fails to include it.
4. Letter from Umbaugh to Town Council dated August 5, 2010. It discusses the history of rates, contains a water usage graph emphasizing the peak demand problem, a summary of customer water usage, and proposed monthly bill quantities.
5. Rate study by Umbaugh dated Aug. 17, 2010. This presents the project cost and the rate study to substantiate financing the bond issue required. It comes in two parts because of file size.
6. Letter from Town of Bargersville dated Aug 9, 2010 announcing rate increase proposal. It contains current and proposed rates.

7. A series of documents prepared by representatives of White River Citizens United in which questions are posed, and data from the above documents is analyzed.
  - a. Bargersville Water Utility Expansion Questions dated July 28, 2010
  - b. Water Rate Increase Issues dated Aug. 20, 2010.
  - c. WRCU Concerns List dated Aug. 14, 2010
  - d. System map (simplified) demonstrating the geography of the water system in blue, the expansion in red, and the associated debt on each.
  - e. Water Billing Survey
  - f. Monthly Water Bill Differences, Sep. 8, 2010.
  - g. 2009 Water Usage Summary
  - h. 2009 Water Revenue Summary
  - i. Project Cost Sheet revised
  
8. Water Utility Master Plan: A “D” size drawing of the service area with topology and water main details. The drawing was created by Commonwealth Engineers Inc., and is dated July 2002. The end point of water mains is indicated by yellow markings on the original. Some main sizes have been written in by hand. Road and street names have also been entered by hand. The contrast ratio is limited, therefore it requires careful study to distinguish water mains from streets and roads. Not all existing water tanks are included. Those have been hand entered as well.
  
9. System Capacity Diagram: A hand drawn block diagram of the system indicating average and peak capacity numbers that have been extracted from various documents (primarily Cause #42555). It contains a recommended alternative to system capacity expansion as opposed to the proposed new well field and treatment plant.

## REVISIONS

December 6, 2010	Initial distribution as “Bargersville Water Utility Rate Increase”
December 22, 2010	Minor format corrections, minor content additions, distributed at Dec. 22 meeting
September 2, 2011	Rewritten as "Indiana Regulatory Flex Committee Testimony”

## Regulatory Flexibility Committee

September 28, 2011  
White River Citizens United  
White River Township, Johnson County

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## What Happened---Our Experience

- Bargersville Water Utility imposed a 77% water rate increase to fund a new water plant and distribution system.
- 100% increase in the fire protection fee (hydrant fee).
- Maintained discriminatory meter charges depending on presence of irrigation system.
- Imposed a near \$50 million debt burden.

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## Problems of the Process

- No political input possible---IURC and OUCC predictions have come to pass. 82% of customers live outside the town.
- No meaningful due process for objecting.
- Public hearings permitted questions to but no answers from town council members.
- No "cost of service analysis" performed or presented.

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### Problems of the Process

- No analysis of alternate solutions to stated problems was presented.
- The costs of growth are not supported by fees such as system development charges.
- High debt load for questionable growth assumptions.

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### Efforts to obtain Due Process

- Attended two public hearings, no responses to concerns permitted.
- WRCU filed suit in Johnson Superior Court
- State agencies such as IURC, OUCC, IFA could offer no help.....not empowered.
- Attended Bargersville Town Council meetings and submitted questions in writing - Answers not forthcoming.

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### Issue: Taxation without Representation

- Bargersville withdrew from IURC in 2008.
- Approximately 10,000 customers: 82% outside of municipal boundaries.
- 82% of customers have no vote, no avenue of appeal (except high risk personal legal action).

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### Issue: Discriminatory Rates

- Fire Protection:
  - Bargersville Outside **\$20/month**
  - Bargersville Inside **\$0/month\***
  - Greenwood \$3.80/month
  - Franklin \$2.64/month

\*Bargersville residents pay fire protection through their property taxes . There are Bargersville residents who pay lower **TOTAL** property taxes than all non-Bargersville residents pay for just annual fire protection fee via their water bill.

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### Issue: Discriminatory Rates

- Meter rate:
  - With irrigation system **\$16.42**
  - Without irrigation system **\$6.21**
- Based on 1995 Cost of Service analysis
  - Two very small customer samples used
  - Opposite conclusions present in the sample data
- Current data demonstrates peak hour demand is **twice** as dependent on **non sprinkler** users as it is on sprinkler users

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### Issue: Town Services Discrimination

- Street maintenance (snow removal & paving) uses water utility personnel and equipment.
- That policy is clearly stated in annexation Fiscal Plans
- Only Bargersville residents benefit.
- A written request to the Town Council for evidence the utility is being compensated has been ignored.

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### Issue: Debt

- Prior debt of water utility     \$12.0 million
- New debt from project         \$35.0 million
- **Total debt**                     **\$47.0 million**
- Future Growth?
  - NO growth projection by approved projects
  - “Commitments” referred to, but not defined
  - Linear progression dependent on past interval growth
    - It projects 50% growth from 2009-2031.
    - Only in the 1970-90 period did such growth ever happen
- What if the optimistic vision of growth doesn't happen?

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### Issue: Who is Paying Debt?

#### CURRENT CUSTOMERS

- Only existing customers and their water consumption has been used to calculate the debt burden justifying the rate increase
- IURC's recommendation that "growth should pay for growth" has been ignored in the utility's fiscal plan.
- System Development Charges (new hookups) unchanged since 2004

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### Remedies

- **LEVEL THE PLAYING FIELD**
- **PROVIDE DUE PROCESS**
  - **Utilities are monopolies**
    - No free market influence
    - Indiana laws of little help
      - provide citizens little DUE PROCESS
      - Do not provide for independent expert input
    - Providing for INDEPENDENT oversight only solution to protect customers

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### Remedies

- **Principle: Rates must be “nondiscriminatory, reasonable, and just”.**
  - Case law - City of Clinton Water Works Rate Schedule adopted 9/9/97. 707 N.E.2d 807
  - Judge ruled that when statutes are silent on rate setting of utilities that have withdrawn from IURC jurisdiction, then common law applies. The general standard is that rates must be “nondiscriminatory, reasonable, and just”.

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### Remedies

Provide Citizen Customers Ability to Petition for IURC Review of Proposed Rate Increases

Trigger points **for IURC review** could be:

- **#1: If discriminatory rates exceed 10%**
  - IURC evaluation of validity of difference
  - Must be supported by an IURC approved cost of service analysis.

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### Remedies

Trigger points **for IURC review (continued)**;

- **#2: If overall rate increase exceeds 10%**
  - IURC review of justification for rate increase
  - Must be supported by an IURC approved cost of service analysis.
  - Such increases must be spaced by 2 or more years
    - This is necessary to prevent a series of annual 9.9% increases.

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### Remedies

Trigger points for IURC review continued;

- #3 Significant capital improvements and expansions
    - IURC review of need for, size of and reasonableness of costs, including financing
    - Projects that represent 20% or more of the existing capitalized system costs.
    - Should not include normal maintenance costs
- Note: Decisions of great magnitude have long term consequences and demand independent expert review

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### Benefits of Oversight

- Elimination/mitigation of arbitrary discrimination - Rates charged to customer groups (inside & outside town limits, current & future customers) would be more appropriate based on the costs of providing services to each group per IURC expert review
- Rates based on appropriate costs of service - Rates charged to all customers would be based on the appropriate costs of providing services per IURC expert review

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### Benefits of Oversight

- Size and costs of major construction projects appropriate and reasonable – Projected need evaluated and rates charged to customers would be for appropriate size projects and project costs reasonable and appropriate per IURC expert review

Note: On 9/4/11 the Daily Journal reported a 2000 home, 5000 resident project to be supported by this water project has been significantly downsized

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### Benefits of Oversight

- **Funding of unrelated civil government activities from utility revenues would be identified and prohibited.**
  - Road maintenance and snow removal
- **Inappropriate funding of utility activities from civil government revenues would be identified and evaluated**
  - Fire Protection Fee paid from property tax

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**Thank you very much for your time and attention**

**Questions?**

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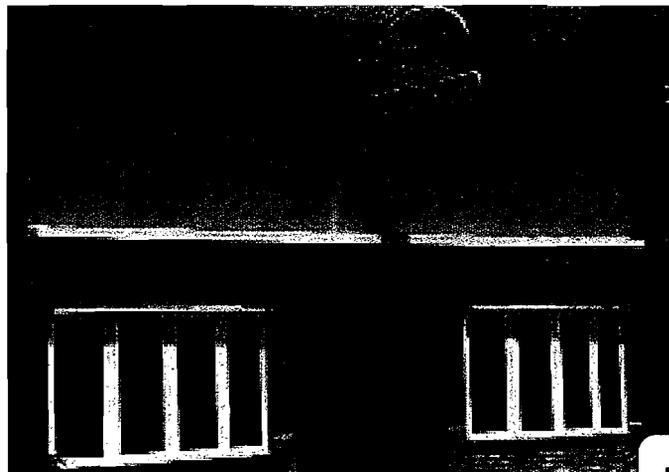
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# **Town of Owensville, IN Municipal Water Utility**

**Information for the Indiana  
Regulatory Flexibility  
Committee Hearing  
September 28, 2011**



**Exhibit N  
Regulatory Flexibility Committee  
Meeting #2 Sept. 28, 2011**



# **Owensville Municipal Water Utility**

- **\$50 monthly bill for rural water service is a bargain when compared with the cost of hauling water or maintaining individual wells**
- **Out of Town Rate Differential was agreed to at the time that the rural users “requested” service from the Town (1988)**
- **All rate changes since that time have been on an “across-the-board” basis (everyone received proportional rate adjustments)**
- **Customer density of In Town customers is 9 times the density of the Out of Town customers (per lineal foot of distribution main)**

# Owensville Municipal Water Utility

	<u>Inside</u>	<u>Outside</u>	<u>Total</u>
<b>Customers</b>	<b>548</b>	<b>281</b>	<b>829</b>
<b>Lineal Ft - Water Mains</b>	<b>38,733.6</b>	<b>179,050.0</b>	<b>217,783.6</b>
<b>L.F. / Customer</b>	<b>70.7</b>	<b>637.2</b>	<b>Density Ratio</b>
<b>L.F. of Dist. Mains Outside vs. Inside Town</b>			<b>9 to 1</b>
<b>Dist. Sys. Allocations:</b>	<u>Inside</u>	<u>Outside</u>	
38,733.6	46.7	46.7	<b>In Town Mains</b>
179,050.0		637.2	<b>Rural Mains</b>
<b>L.F. / Customer</b>	<b>46.7</b>	<b>683.9</b>	<b>Dist. Sys. Ratio</b>
<b>AWWA Dist. Cost Differential Outside vs Inside</b>			<b>15 to 1</b>

**Based upon the above-noted customer density Considerations and analysis of the Distribution System map, it is relatively easy to conclude that There are significant cost of service differentials Between the In Town and Out of Town customers.**

# **Owensville Municipal Water Utility**

- **AWWA Water Rates Manual (M1) sets forth principles in support of Out of Town vs In Town rate differentials (see attached pages - excerpts of AWWA M1)**
- **Allocation of distribution costs, under the AWWA ratemaking standards, results in a 15 to 1 ratio for Out of Town customers**
- **Presumption of fairness in rate structures when increasing rates on an “across-the-board” basis (per Terre Haute Water case law)**

# **Owensville Municipal Water Utility**

- **The Town is responsible for the operation, maintenance, repair & ultimately the replacement of the Out of Town distribution system when necessary.**
- **The out of town customers put in the least expensive (cheapest) system that they could back in 1988 before dedicating those mains to the Town.**
- **These Rural distribution main costs require more maintenance and will also need to be upsized (replaced) by the Town in order for further customer additions to occur.**

# **Owensville Municipal Water Utility**

- **The Town has the right to establish higher rates Outside the Town vs. Inside the Town – per AWWA M1 Rate Making Manual**

O.W. Krohn  
Financial manager, Town of Owensville

**BARGERSVILLE ORDINANCE NO. 2010-15  
AS AMENDED**

**ORDINANCE ESTABLISHING WATER RATES AND CHARGES FOR  
THE USE OF SERVICES RENDERED BY THE MUNICIPAL WATER  
UTILITY OF THE TOWN OF BARGERSVILLE, INDIANA**

WHEREAS, the Town of Bargersville (the "Town") owns and operates a Municipal Water Utility for the purpose of providing a sufficient supply of water at a proper quality and pressure to the inhabitants of the Town, and properly protecting the health, well-being and property of the Town and its inhabitants; and

WHEREAS, the Town's water utility also serves substantial areas outside the corporate limits; and

WHEREAS, the Town Council of the Town of Bargersville, Indiana has separately determined that capital improvements are needed for the waterworks utility for which additional long-term debt should be issued and additional debt service and debt service reserve will be incurred; and

WHEREAS, the Town Council has caused a financial study of the municipal water works to be made by H. J. Umbaugh & Associates (the "Rate Study"); and

WHEREAS, the Rate Study indicates that the current rates and charges will be insufficient to meet the reasonable financial requirements and the necessary capital improvements to the utility and the water rates and charges should be increased; and

WHEREAS, the Town Council now finds the existing rates and charges for the use of and service rendered by the waterworks system of the Town will be too low and are insufficient to pay all the necessary expenses incident to the operation of said waterworks, including maintenance costs, operation charges, upkeep, repairs, depreciation, debt service and debt service reserve on existing and planned obligations of the waterworks, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to make extensions and replacements, and to make payments in lieu of taxes, and that accordingly, such existing rates and charges will not produce income sufficient to maintain the waterworks property in sound physical and financial condition to render adequate and efficient service, all as provided in Indiana Code 8-1.5-3-8, and that the existing rates and charges should be increased; and

WHEREAS, the rates adopted herein are nondiscriminatory, reasonable and just; and

WHEREAS, it is necessary and desirable that the rates and charges be sufficient to provide revenues to compensate the Town for taxes that would be due on the utility property were it privately owned.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARGERSVILLE, INDIANA as follows:

Sec. 1. There shall be and there are hereby established for the use of and the service rendered by the Water Utility of the Town of Bargersville, Indiana, the following rates and charges:

(A) For customers without In-Ground Water Sprinkling

Metered Rates, per month

Per 1,000 gallons

First	20,000 gallons	\$5.25
Over	20,000 gallons	3.59

Base charge, per month

5/8 – 3/4	inch meter	\$6.21
1	inch meter	8.58
1 1/2	inch meter	10.97
2	inch meter	17.55
3	inch meter	66.02
4	inch meter	84.07
6	inch meter	125.94
8	inch meter	173.85
10	inch meter	227.75

(B) For customers with In-Ground Water Sprinkling

Metered Rates, per month

Per 1,000 gallons	\$5.25
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Base charge, per month

5/8 – 3/4	inch meter	\$16.42
1	inch meter	18.81
1 1/2	inch meter	21.18
2	inch meter	27.76
3	inch meter	76.21
4	inch meter	94.26
6	inch meter	136.15
8	inch meter	184.04
10	inch meter	237.94

(C) Flat Rate – Unmetered customers

Charge per month	\$127.96
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(D) Hydrant rental, per annum

Public hydrant	\$1,535.58
Private hydrant	1,535.58

(E) Private Fire Protection, per annum

2 inch connection	\$99.07
4 inch connection	557.27
6 inch connection	1,535.58
8 inch connection	2,729.95
10 inch connection	4,265.53
12 inch connection	6,142.32

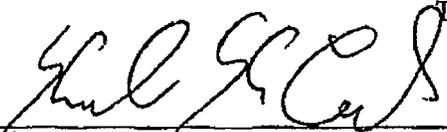
(F) Public Fire Protection Surcharge

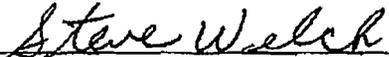
Charge per month \$20.00

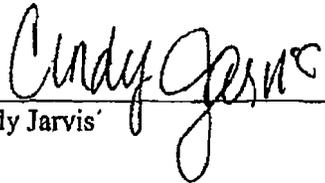
Sec. 2. All rates and charges not specifically amended herein shall not be changed as a result of this ordinance. All schedules of rates and charges in conflict herewith are hereby superseded.

Passed and adopted by the Town Council of the Town of Bargersville, Indiana, this 9<sup>th</sup> day of Sept, 2010 by a vote of 3 ayes and 1 nays.

Town Council

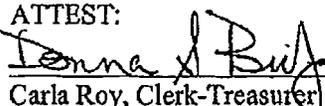
  
Karl Kevin Combs, President

  
Steve Welch

  
Cindy Jarvis

\_\_\_\_\_  
Jim Inabnitt

\_\_\_\_\_  
Lee "Mike" Kehl

ATTEST:  
  
Carla Roy, Clerk-Treasurer

Donna S. Bishop  
Chief Deputy Clerk Treasurer

**Alan DeBoy**  
President of Indiana American Water & Vice Chairman  
of Indiana Chapter of the National Association of Water  
Companies (NAWC)

**Regulatory Flexibility Committee**  
**September 28, 2011**



Existing DSIC



## Distribution System Improvement Charge (DSIC)

- **IC 8-1-31 Provides water utilities an opportunity for more timely recovery of prudent investments in replacing aging distribution system infrastructure**
  - ✓ Replacement of mains, valves, hydrants, service lines and meters
  - ✓ IURC has 60 days to rule on filing
  - ✓ Shows up as a surcharge on customer bills
  - ✓ Can file DSIC case no more frequently than every 12 months
  - ✓ Maximum aggregate increase between general rate cases limited to 5%
- **DSIC is not a tracker**

## Enhanced DSIC



## DSIC Changes being sought



- Opportunity to file every six months instead of every 12 months
- Increase the maximum aggregate increase between general rate cases to 10%
- Expand scope to include waste water collection systems



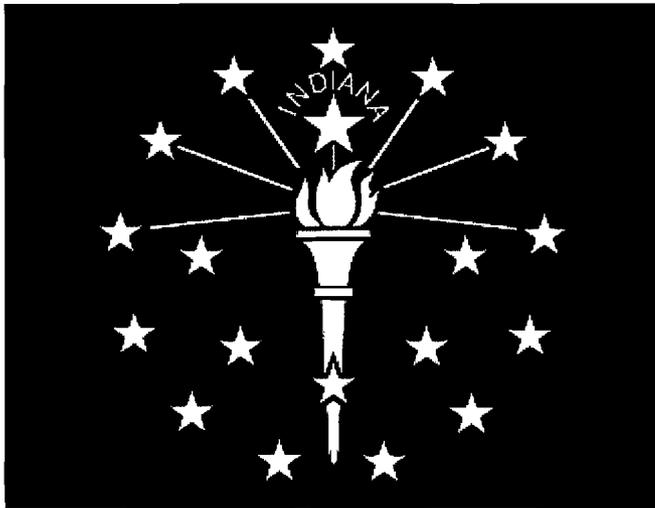
## What's in it for customers?



- **More reliable service – infrastructure replacement**
- **Regulatory oversight assures prudent utility investment**
- **Smaller incremental increases**
- **Could extend time between general rate increases**



## What's in it for the State?



- **Economic growth – attract capital**
- **Purchase of goods and services**
- **Local contractors and employees – employing Indiana citizens**
- **Reliable water utilities are attractive to new business**

Enhanced DSIC

# Questions?