

CONFIDENTIAL

INDIANA UTILITY REGULATORY COMMISSION

Final Rulemaking

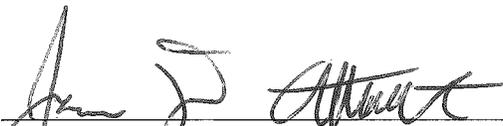
IURC RM #12-06

LSA #12-442(F)

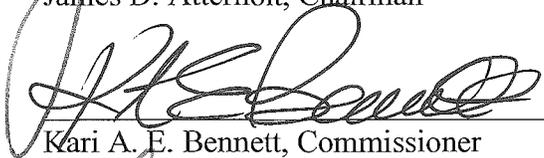
Adds 170 IAC 1-7 to establish procedures by which a municipality or users of the works whose property is located outside the corporate boundaries of the municipality may file a petition regarding certain rates and charges.

Upon prior publication of notice and a public hearing held on October 25, 2011, at 2:00 p.m., EDT in Judicial Courtroom 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana, as required by the provisions of I.C. 4-22-2-1, *et seq.*, the Indiana Utility Regulatory Commission, on November 7, 2012, at 3:00 p.m. EST in Judicial Courtroom 222, PNC Center, Indianapolis, Indiana at which time a majority of members of said Commission were present, adopted the foregoing rule.

The Secretary is hereby directed to submit the aforesaid rule to the Attorney General and Governor of Indiana, for their approval of same, and thereafter to submit the aforesaid rule to the publisher, Indiana Register.



 James D. Atterholt, Chairman



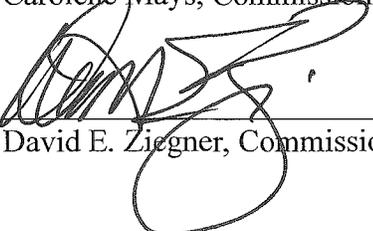
 Kari A. E. Bennett, Commissioner



 Larry S. Landis, Commissioner



 Carolene Mays, Commissioner



 David E. Ziegner, Commissioner

ATTEST:


 Shala M. Coe, Acting Secretary to the Commission

Date: NOV 7 2012

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Final Rule LSA Document #12-442

DIGEST

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

170 IAC 1-7

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

Rule 7. Commission Review of Municipal Utility Rates and Charges

170 IAC 1-7-1 Policy and scope

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

Affected: IC 8-1.5-3-8.3

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

(1) a municipality; or

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

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

170 IAC 1-7-2 Definitions

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

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

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

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

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

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

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

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

(6) "Municipality" means a:

(A) city; or

(b) town.

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

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

(9) "Petition" means a petition meeting the form and manner prescribed by the commission as defined in section 4(c) of this rule.

(10) "Working papers" means documents that were relied upon to support a party's position. Working papers:

(A) may be provided in paper or electronic format; and

(B) must be:

(i) legible;

(ii) paginated; and

(iii) specifically identified.

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

170 IAC 1-7-3 Time frames and procedures

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

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

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

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

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

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

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

(1) testimony;

(2) revenue requirements;

(3) cost of service studies;

(4) related work papers; and

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

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

(1) The OUCC.

- (2) The municipality.
- (3) A party to the proceeding.

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

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

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

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

170 IAC 1-7-4 Petitions and notice requirements

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

Affected: IC 8-1.5-3-8.3

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

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

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

(c) Petitions shall be submitted in substantial compliance with the following forms:

- (1) Form A Sample Customers' Petition:

Form A Sample Customers' Petition

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

PETITION FOR COMMISSION REVIEW)
AND ADJUSTMENT, IF NECESSARY,)
OF RATE AND CHARGE DIFFERENCE)

BETWEEN PROPERTY WITHIN AND)
PROPERTY OUTSIDE THE CORPORATE)
BOUNDARIES OF _____)
(MUNICIPALITY))

CAUSE NO.

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

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

7. Other facts or information petitioner believes to be relevant for the commission to consider: _____.
8. Petitioners consider IC 8-1.5-3-8.3(d) and IC 8-1.5-3-8.3(e), and (identify any other statutes determined to be relevant) to be applicable to the relief requested by this Petition.
9. _____ is counsel of record for Petitioners in this matter and is duly authorized to accept service of papers in this cause on behalf of Petitioners.

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

Respectfully submitted,

Attorney for Petitioners

Verification

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

Signed _____ (Representative of the Ratepayers/Petitioners)

Attorney Contact Information

(2) Form B Sample Municipality's Petition:

Form B Sample Municipality's Petition

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

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

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

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

municipality and to property located within the corporate boundaries
is _____.

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

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

Respectfully submitted,

Attorney for Petitioner

Verification

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

Signed _____ (Representative of the Municipality)

Attorney Contact Information

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

170 IAC 1-7-5 Commission determination and order

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

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

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

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

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

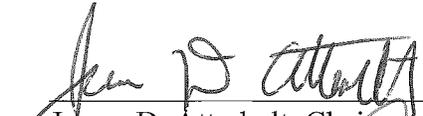
Rule Signature Page

Rule #: LSA # 12-442(F)
Agency: Indiana Utility Regulatory Commission
Subject: Final Rule #12-06, which establishes procedures by which a municipality or users of the works whose property is located outside the corporate boundaries of the municipality may file a petition under IC §8-1.5-3-8.3 (d) and (e).

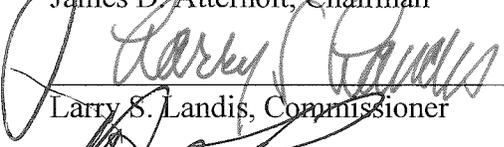
ADOPTED:

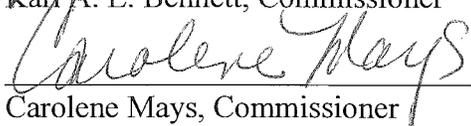
By the Indiana Utility Regulatory Commission

Date: _____


James D. Atterholt, Chairman


Kari A. E. Bennett, Commissioner


Larry S. Landis, Commissioner


Carolene Mays, Commissioner


David E. Ziegner, Commissioner

APPROVED AS TO FORM AND LEGALITY:

By: _____
Gregory F. Zoeller
Attorney General, State of Indiana

Date: _____

APPROVED:

By: _____
Mitchell E. Daniels, Jr.
Governor, State of Indiana

Date: _____

ACCEPTED FOR FILING:

By: _____
Indiana Register
Legislative Services Agency

Date: _____