Members

Sen. Edward Charbonneau, Chairperson
Sen. Jean Breaux
Sen. James Buck
Sen. Mark Stoops
Rep. David Wolkins
Rep. James Baird
Rep. Sue Errington
Rep. Matt Pierce
Doug Meyer
Dave Wyeth
John Hardwick
Calvin Davidson
Thomas Easterly
Heather Hill
Kyle Hannon

ENVIRONMENTAL QUALITY SERVICE COUNCIL

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Craig Mortell, Attorney for the Council
Jessica Harmon, Fiscal Analyst for the Council

Authority: IC 13-13-7

MEETING MINUTES[1]

Meeting Date:	**October 11, 2013**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 431**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**3**

Members Present: **Sen. Edward Charbonneau, Chairperson; Sen. James Buck; Sen. Mark Stoops; Rep. James Baird; Rep. Sue Errington; John Hardwick; Thomas Easterly; Kyle Hannon.**

Members Absent: **Sen. Jean Breaux; Rep. David Wolkins; Rep. Matt Pierce; Doug Meyer; Dave Wyeth; Calvin Davidson; Heather Hill.**

Senator Charbonneau called the meeting to order at 10:06 a.m..

Issues Involving Utilities and Local Government: Local Government Perspective

The first speaker was **Rhonda Cook** of the Indiana Association of Cities and Towns, who made a presentation on "Rates and Charges for Water and Wastewater Services to Users Outside of Municipal Corporate Boundaries" (see Exhibit 1). Ms. Cook's presentation included the following points:

---

[1] 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.

- Some municipal utilities are subject to the jurisdiction of the Indiana Utility Regulatory Commission (IURC), but many municipal utilities have "opted out" of IURC jurisdiction.

- For a municipal utility that is subject to IURC jurisdiction, the rate approval process includes formal legal proceedings in Indianapolis, specialized legal representation, and a process taking at least six months.

- For a municipal utility that has opted out of IURC jurisdiction, the rate approval process is conducted before a local court and takes only around three months.

- Under House Enrolled Act (HEA) 1126-2012, "outside users" of water or wastewater service (those whose property lies outside the corporate boundaries of the municipality) can petition the IURC to review and possibly adjust their new rate if it will be at least 15% higher than the inside users' rate (see IC 8-1.5-3-8.3).

- Under HEA 1307-2013, outside users can petition the IURC to review and possibly adjust their new or existing rate if it is more than 50% higher than the rate of any inside user (see IC 8-1.5-3-8.3).

- IC 36-4-3-21 provides that a municipality may enter into a contract in lieu of annexation with the area's property owners under which the property owners will pay money to the municipality for services received from the municipality.

- A contract in lieu of annexation is limited to 15 years in the case of Indianapolis or a second class city or 4 years in the case of any other municipality.

The EQSC discussed with Ms. Cook the terms of IC 36-4-3-21, contracts in lieu of annexation, and the waiving of the outside users' rights to contest future annexations. In response to a question from Kyle Hannon, Ms. Cook said that bringing municipal utilities further under the regulatory authority of the IURC might deter economic development in affected municipalities.

The next speaker was **Gary Malone**, CPA, of H. J. Umbaugh & Associates, who presented an "Overview of the Ratemaking Process for Indiana Municipal Utilities" (see Exhibit 2).

Senator Buck questioned Mr. Malone about the relationship between the bonds issued to pay for the infrastructure needed to extend a municipal utility's service and contracts in lieu of annexation. Senator Charbonneau asked whether a municipal utility not subject to IURC jurisdiction might encounter a lack of ratemaking expertise when it seeks approval for a rate increase locally.

The EQSC next heard from **David B. Nutty**, the Manager of Water Treatment for Connersville, Indiana, who noted that Connersville first extended water and sewer service outside the city limits at the request of outside users and began collecting a surcharge from outside users in 1997. Following the passage of HEA 1126-2012, Connersville petitioned for and received the IURC's approval of the difference between its rate for inside users and its rate and surcharge for outside users. Mr. Nutty testified that Connersville is less likely to extend utility services outside the city limits in the future because of the risk that further extensions of service to outside users would expose the city to legal and administrative expenses that would have to be paid by city taxpayers.

In reply to a question from Senator Buck, Mr. Nutty said that Connersville extended service

to the outside users without entering into a contract in lieu of annexation. Senator Stoops and Senator Buck discussed the fairness of imposing the cost of extending utility service to outside users upon all of a municipal utility's users.

Next to address the EQSC were **Dick Moore**, the Mayor of Elkhart, Indiana, and **Maggie Marnocha**, Utility Attorney for the City of Elkhart, who described Elkhart's experience in extending utility service to outside users pursuant to 15-year contracts in lieu of annexation.

The EQSC discussed with Mayor Moore and Ms. Marnocha Elkhart's contracts in lieu of annexation and the city's use of revenue from payments made under those contracts.

Issues Involving Utilities and Local Government: IURC Perspective

The next speaker was **Danielle McGrath**, Executive Director of External Affairs of the IURC, who made a presentation on "An Overview of Rules, Rates, and Regulations for Municipal Water Utilities" (see Exhibit 4).

Receiving the Indiana Department of Environmental Management Annual Reports was postponed until the EQSC's final 2013 meeting.

Senator Charbonneau adjourned the meeting at 1:03 p.m.

Rates and Charges for Water and Wastewater Services to Users Outside of Municipal Corporate Boundaries

A Perspective From the Indiana Association of Cities and Towns

Environmental Quality Service Council
October 11, 2013

IURC Regulation

- **Municipal Water Utilities**
  - The IURC regulates municipal water utilities unless the municipality has "opted out" of the IURC jurisdiction following voter approval.
- **Municipal Sewer or Wastewater**
  - The IURC has never regulated municipal sewer or wastewater until:
    - HEA 1126-2012 / HEA 1137-2013 (corrected drafting errors)
      - Allows extraterritorial users to petition the IURC
    - SEA 385 – 2013
      - Allows wholesale sewer contracts to be reviewed by the IURC

2

What are the Benefits of Opting Out of the IURC

Two reasons: Cost and Delay

- If a municipality is under the IURC jurisdiction, rates and bonds are regulated
- Most municipalities opted out of the IURC jurisdiction in the 1980s when IURC proceedings became more complex. IURC proceedings are much like a courtroom atmosphere.
- Time and expense for outside professionals – Requires hiring a lawyer who specializes in IURC proceedings and generally requires expert testimony from an engineer and an accountant or rate consultant.
- Legal fees alone start at around $25,000
- The IURC approval process takes a minimum of six months
- The local approval process for those that have opted out involves the same general steps, but the process takes only around three months
- With proper planning, you can build the IURC process into your project timetable, however, if your municipality has opted out of the IURC, you can respond to unexpected needs more quickly such as floods, a major user leaving, a major user needing to hook on to the system.

3

Trends at the General Assembly

- The past two years, the General Assembly has considered and passed legislation which addresses rates and charges (both water and sewer) that are paid by outside users.
- Even if your municipality has "opted out" of the IURC for water, you can now be brought back under IURC regulation if outside users petition for an IURC review. For sewer, which was never under IURC regulatory control, there is new regulatory authority for the IURC to step in following an outside user petition.
- This legislation is causing a policy shift at the local level – municipalities are now more wary about extending water and sewer lines outside of their boundaries due to increased exposure to *costs and delay*.

4

Outside Users

- Outside users = water and/or sewer ratepayers whose property lies outside of the corporate boundaries of the municipality which provides the service.
- **These connections are almost always made at the request of the property owner (voluntary)**
  - They want the service because it is cheaper/more beneficial (i.e. a developer can build more homes on smaller lot sizes)
  - Exception: the Indiana Department of Environmental Management (IDEM) can mandate that property owners with failing septics in the unincorporated area of a county hook on to a sewer system
  - Sometimes it is a municipal sewer system that is the closest in proximity, so the city or town may be required to allow these outside users to hook on to sewer.
    - Sewer annexation waivers.
- Outside users do not pay city/town taxes

5

Inside Users

- Inside users = water and/or sewer ratepayers whose property lies inside the corporate boundaries of the municipality which provides the service.
- Inside users also pay city/town taxes, some of which may go to pay for resources that benefit the water or sewer utilities.

6

Benefits to Outside Users Connecting to Municipal Water/Sewer

- Environmental benefit: Sewers are safer and preferred to septic systems.
- Indiana has clay-like soil in many areas, therefore, septic systems are not an option. Land would not otherwise be developable without sewers and not at all feasible for commercial properties.
- Septic systems require larger lot sizes. From a developer's standpoint, having the availability of sewer allows more homes to be built on smaller parcels.
- Large companies, particularly manufacturing companies, usually require municipal water and sewer systems to handle the capacity.
- Water quality is constantly monitored by municipal water department employees.

7

Municipalities must now be more cautious with their decision to extend water/sewer service beyond municipal boundaries without first requiring annexation

8

What are the New Increased Risks of Expanding Water/Sewer Service to Outside Users?

HEA 1126-2012

- At the time of a proposed rate increase, outside users can petition the IURC for a review of their rates if rates are 15% or more than that which inside users pay.
  - Rate differentials between 15% and 50% were given an opportunity for grandfathering by the by the IURC.

HEA 1307-2013

- Between July 1, 2013 and December 31, 2014, outside users can petition the IURC at any time (not just when a rate increase is being proposed) to have rates reviewed when rates are 50% or more than *any* inside user.

9

Greater Risk of Unknown Costs and Delay

- Municipalities that have chosen to serve or are required by IDEM to serve outside users are now exposed to the risk of a costly challenge by outside users at the IURC (which is more expensive than a challenge in local court).
  - Venue - If your municipality is not in central Indiana, it more expensive to send your lawyers, staff and elected officials to Indianapolis to defend a case at the IURC versus a challenge filed in local court.
  - Specialty lawyers who commonly practice before the IURC are hired in Indianapolis.
- Water and sewer projects are now subject to extended delay (based on whether an outside user chooses to petition for a review at the IURC).
  - DELAY costs money:
    - Need to rebid projects
    - Need to push a project into the next construction season
    - Cost of materials can increase
    - Professional consultants are put on hold, so cost increases
  - The IURC is permitted 180 days to review a challenge and with the passage of HEA 1137-2013, there is now the potential for another 60 days of additional time

10

Annexation – Not always feasible

- Not always possible if there is not contiguity.
- Not always possible if the municipality cannot also provide all the other services that come with being a city/town taxpayer.
  - Example: Police and fire services, trash pick-up, snow removal
- Not always possible if the outside users are already within the corporate boundaries of another municipality.

11

Payments in Lieu of Annexation

IC 36-4-3-21
Contracts with owners or lessees of designated properties in lieu of annexation
Sec. 21. (a) In lieu of annexing contiguous territory or in cases not involving annexation, the executive and the proper administrative agency of a municipality, with the consent of the municipal legislative body, may enter into contracts with the owners or lessees of designated property in the vicinity of the municipality, providing for the payment or contribution of money to the municipality for municipal or public purposes specified in the contract. The payments under the contract may be:

(1) related to or in consideration of municipal services or benefits received or to be received by the property owners or lessees;

(2) in lieu of taxes that might be levied on annexation of the designated property; or

(3) wholly unrelated to municipal services or benefits to or potential tax impositions on the designated property.

(b) Any other political subdivision that has taxing power in respect to the designated property or is entitled to share in the property taxes assessed and collected by the municipality may:

(1) join in a contract under this section; or

(2) enter into a separate agreement with the municipality, providing for the division and distribution of contract payments made under this section and for the receipt of a share of those payments by the municipal authority.

12

Payments in Lieu of Annexation

(c) A contract under this section may be entered into for the term agreed to by the municipality and the property owners or lessees, but that term may not exceed:

(1) **fifteen (15) continuous years** under one (1) contract if the municipality is a consolidated or second class city; or

(2) **four (4) continuous years** under one (1) contract if the municipality is not a consolidated or second class city.

(d) A contract under this section continues in effect for its full term unless it is:

(1) induced by fraud of the property owners or lessees;

(2) grossly and corruptly improvident on the part of the municipality; or

(3) terminated or reduced in duration by agreement of the municipality and the property owners or lessees.

(e) A contract under this section may provide that during its effective term, the designated property of the contracting owners or lessees is not subject to annexation by the municipality.

As added by Acts 1980, P.L.212, SEC.3. Amended by Acts 1981, P.L.11, SEC.162.

13

Examples

City of Washington

- Contract with Wal-mart located 1.5 miles south of the city. The contract calls for the city to provide police and fire protection. The payment to the city is the difference between their county taxes and city taxes.

City of Goshen

- Has used PILOA for years. The property is not contiguous otherwise the city would annex. The PILOA is 50% of the city tax that would be paid if the property was in the city. Water and sewer is provided and there is no surcharge.

Town of Syracuse

- Subdivision developers requested water and sewer for a non-contiguous area with ten lots. An in-lieu of annexation agreement was signed for payments of 50% of the towns taxes. The developers inform buyers of the in lieu of annexation requirement upon purchase.

City of Elkhart

- Provide sewer service to non-contiguous properties. Currently renegotiating their contract. Call their PILOA "compact fees."

14

Questions?

15

Overview of Ratemaking Process for Indiana Municipal Utilities

Gary Malone, CPA
H.J.Umbaugh & Associates
October 11, 2013

UMBAUGH

How are municipal utility rates determined?

- Municipal water, electric and gas rates and charges are determined in accordance with I.C. 8-1.5-3-8
- Municipal wastewater rates are determined in accordance with I.C. 36-9-23-25

UMBAUGH

UMBAUGH

How are municipal utility rates determined?

- Both statutes list the revenue requirements that can be considered in developing rates, including;
  - Operating and maintenance expenses
  - Debt service obligations
  - Allowances for ongoing replacements and improvements to plant and equipment
  - Working capital
  - Taxes and payments in lieu of taxes
  - Return on utility plant

It's all about experience.

UMBAUGH

How are municipal utility rates determined?

- The statutes require that the rates be fair, just and non-discriminatory to all ratepayers

It's all about experience.

What is the process to establish municipal utility rates?

- The process varies depending upon whether the utility is regulated by the Indiana Utility Regulatory Commission (IURC)
  - Municipal wastewater utilities have never been regulated by the IURC
  - Since the 1980's most municipally-owned water, gas and electric utilities have been removed from IURC jurisdiction by local council approval or voter referendum

UMBAUGH

What is the process to establish municipal utility rates?

- For all utilities
  - Process begins with a financial analysis to determine the needs for revenue, often referred to as a "rate study"
  - New rates are determined either increasing all rates by the same percentage to generate the additional revenues ("across-the-board"); or adjusted to generate revenue proportionate to the costs of providing service
  - These studies typically are completed within 30 to 60 days

UMBAUGH

What is the process to establish municipal utility rates?

- For non-regulated utilities
  - New rates and charges are incorporated into a local ordinance or resolution for consideration by the Town / City Council
  - A public hearing is conducted following statutory notice requirements
  - After receiving public input, the Town / City Council takes action to approve, amend or reject the proposed ordinance
  - Approval process typically requires 60 to 90 days

UMBAUGH

It's all about experience.

What is the process to establish municipal utility rates?

- For regulated utilities
  - New rates and charges are incorporated into a local ordinance or resolution for consideration and approval by the Town / City Council
  - A petition is prepared and filed with the IURC
  - The IURC conducts a prehearing to establish rules relating to evidence, dates for filing of testimony and exhibits, dates for responses to filings and the date of the hearing.

UMBAUGH

It's all about experience.

What is the process to establish municipal utility rates?

- For regulated utilities
  - The municipal utility prepares formal reports and written testimony in support of its request for new rates and files for filing with the IURC
  - The IURC may hold field hearings to gather testimony from ratepayers within the community
  - The Office of the Utility Consumer Counselor (OUCC) reviews the reports and testimony, gathers its own evidence, then prepares written testimony and exhibits in response to the municipal utility's filing

UMBAUGH

It's all about experience.

What is the process to establish municipal utility rates?

- For regulated utilities
  - Intervening parties may also prepare written testimony and exhibits in response to the municipal utility's filing
  - The municipal utility then has an opportunity to prepare and file a written response to the OUCC and Interveners reports and testimony
  - The IURC holds a hearing in Indianapolis to allow the examination of witnesses and introduce additional evidence
  - The municipal utility, the OUCC and any interveners submit proposed orders for consideration by the IURC
  - The IURC issues an order, based upon the evidence submitted by all parties, either approving, amending or rejecting the requested rates

UMBAUGH

It's all about experience.

What is the process to establish municipal utility rates?

- For regulated utilities
  - The local Town/City council then amends its rate ordinance and adopts the final rates as approved by the IURC
  - The regulatory process from the date of the filing of the petition with the IURC to receipt of the final order often requires 8 to 12 months

UMBAUGH

It's all about experience.

What is the process to establish municipal utility rates?

- For small regulated utilities
  - For utility systems with less than 5,000 users, the IURC does provide an opportunity for rates to be approved without written testimony or a formal hearing
  - If there are no objections to the proposed increase, this small utility method can be completed within 8 to 12 months, without the additional legal costs associated with a formal hearing

UMBAUGH

It's all about experience.

Why communities chose to remove their municipal utilities from IURC regulation?

- Cost
  - The added costs of legal, financial and regulatory costs often double the costs to communities to change utility rates
- Time
  - The time required to implement new rates increases by eight to twelve months for a regulated utility

UMBAUGH

It's all about experience.

Illustrative Time Table for IURC Approval of Municipal Rates

- *Petersburg Water Rate and Financing Case – Cause No. 43757*

- Petition filed: 8/7/09
- Prehearing conference date: 9/10/09
- Petitioner files testimony and exhibits: 10/7/09
- OUCC files testimony and exhibits: 1/6/10
- Settlement agreement: 1/28/10
- Evidentiary hearing: 2/3/10
- Order issued: 5/11/10

UMBAUGH

Illustrative Cost for IURC Approval of Municipal Rates

- *Petersburg Water Rate Case*
  - Additional legal fees: $30,000
  - Additional accounting fees: $20,000
  - IURC regulatory rate case fees: $3,135
  - IURC bond issue fee: $3,500 (based on size of issue)
- Total additional costs for Petersburg case: $56,635

UMBAUGH

Illustrative Time Table for IURC Approval of Municipal Rates

- *Evansville Water Rate and Financing Case – Cause No. 44137*
- Petition filed: 12/29/11
- Prehearing conference date: 1/25/12
- Petitioner files testimony and exhibits: 5/18/12
- OUCC files testimony and exhibits: 8/16/12
- Petitioner files rebuttal testimony: 9/5/12
- Evidentiary hearing: 9/18/12
- Order issued: 2/13/13

UMBAUGH

Illustrative Cost for IURC Approval of Municipal Rates

- *Evansville Water Rate Case*
  - Additional legal fees: $80,000
  - Additional accounting fees: $130,000
  - IURC regulatory rate case fees: $33,500
  - IURC bond issue fee: $72,650 (based on size of issue)

- Total additional costs for Evansville case: $316,150

UMBAUGH

EXHIBIT 3

EQSC meeting of 10/11/2013

10/10/2013

City of Elkhart, Indiana
the city with a heart

The City of Elkhart and its use of Indiana Code § 36-4-3-21 to extend sewer utility services outside of the City boundaries.

City of Elkhart, Indiana
the city with a heart

History

The history of the City of Elkhart's sewer utility extensions:

Prior to 1998:

A. Charges: a sewer rate multiplier.

B. Contract: a Sewer Service Agreement ("SSA") with a 15-year term.

C. Problems:

1. Gave City services to those residents and businesses not paying City taxes, most just paid a nominal sewer rate surcharge to the utility; and
2. Gave an unfair advantage to businesses choosing to locate outside the City because the operating costs were less due to the businesses not paying City taxes.

D. Results:

1. Encouraged growth outside of the City;
2. Discouraged businesses and residents from locating within the City; and
3. Strong contributor to urban blight.

City of Elkhart, Indiana
the city with a heart

History

1998:

A. Identified the Issue: How could the City "level the playing field" for City residents and businesses while continuing to encourage area economic growth?

B. Fair Solutions:

1. The City honored the terms of the 15-year SSA's and permitted any new customers tapping in to existing (pre-1998) sewer lines to execute an SSA under the same terms as the pre-1998 customers;
2. The City looked to I. C. § 36-4-3-21 for guidance; and
3. Under the authority granted by I. C. § 36-4-3-21, the City had new sewer extension customers execute a 15-year contract ("Compact") that included a payment in lieu of taxes ("PILOT"). The funds were used for economic development and redevelopment.
4. The PILOT, and its calculation, was proposed by area developers as a way to compensate the City for the City benefits received by commercial and residential property owners. Additionally, it would ease the property owner into the payment of City personal and property taxes prior to annexation.

City of Elkhart, Indiana
the city with a heart

History

2008:

A. Elkhart made national news with the highest unemployment rate in the nation which resulted in lost income tax revenue.

B. The City continued to see a loss in property tax revenue due to the vacant and abandoned homes crisis.

2009:

In response to residential customers' economic struggles, the payment in lieu of taxes for residential property was changed to a flat fee of $50 per month. Crowe Horwath report justified the commercial payment in lieu of taxes.

2010:

A. Property tax caps became Indiana law.

B. This resulted in a significant further reduction in property tax revenue to the City; the payments in lieu of taxes had to be used to subsidize essential City services, as well as continuing to fund economic development and redevelopment.

City of Elkhart, Indiana
the city with a heart

History

2012:

A. The General Assembly amended the sewer rate statutes to include a provision that allowed extraterritorial customers to appeal to the IURC if their rate surcharge was in excess of 15%.

B. The City passed a sewer rate ordinance that eliminated the rate surcharge multiplier for customers receiving services pursuant to an SSA. Those customers would then pay the same rate as the residents and businesses located within the City.

C. As authorized by § 36-4-3-21, the City passed a revised Compact ordinance that required each sewer customer with an expired SSA to sign a Compact agreement and begin making a payment in lieu of taxes.

City of Elkhart, Indiana
the city with a heart

History

2013:

A. Many former SSA commercial and residential property owners refused to execute Compact agreements and refused to make payments in lieu of taxes despite continuing to receive sewer service.

B. The Mayor approved a phase-in resolution which the Council passed. This allowed former SSA commercial customers to phase-in the payments in lieu of taxes.

C. The commercial and residential holdouts continued to refuse to execute Compact agreements, but continued receiving services.

D. The Mayor formed a Task Force that considered all options and made recommendations to him. The Mayor considered the Task Force recommendations and presented a new ordinance, with a significantly reduced payment in lieu of taxes, to the Common Council; the new ordinance did not pass the Council.

City of Elkhart, Indiana
the city with a heart

The Present

Today:

The Mayor has introduced a new ordinance which would:

- Reduce the payment in lieu of taxes;
- Phase the payment out altogether, over five years, for commercial property owners; and
- Compel the City to implement an aggressive annexation plan.

The Council has assigned the proposed ordinance to a committee for review.

City of Elkhart, Indiana
the city with a heart

I.C. § 36-4-3-21

36-4-3-21 (in pertinent part)
Contracts with owners or lessees of designated properties in lieu of annexation
Sec. 21. (a) In lieu of annexing contiguous territory or in cases not involving annexation, the executive and the proper administrative agency of a municipality, with the consent of the municipal legislative body, may enter into contracts with the owners or lessees of designated property in the vicinity of the municipality, providing for the payment or contribution of money to the municipality for municipal or public purposes specified in the contract. The payments under the contract may be:
(1) related to or in consideration of municipal services or benefits received or to be received by the property owners or lessees;
(2) in lieu of taxes that might be levied on annexation of the designated property; or
(3) wholly unrelated to municipal services or benefits to or potential tax impositions on the designated property.

City of Elkhart, Indiana
the city with a heart

The Future

The City of Elkhart is committed to:

- Continuing to provide its citizens with a first class environment to live, work, and play.
- Continuing to trim its budget to reflect the reduction in tax revenues.
- Implementing a strategy for supplying utilities to the surrounding areas through annexation.
- Continuing to encourage and aid economic development in and around Elkhart.

City of Elkhart, Indiana

Sewer Rates differ from PILOT

Sewer Rates:

- Must be established by ordinance.
- Apply to all users.
- Should be determined by Cost-of-Service rate study.
- Cannot go into effect without Notice and Public Hearing.
- Can be appealed to state court or IURC in some cases.
- Based on usage.
- Revenue goes to the Sewer Utility.

Payment in Lieu of Taxes:

- Contractual agreement between the City and private real estate owners.
- Must be beneficial to both parties.
- Based on assessed value as a payment in lieu of taxes.
- Revenue goes to Civil City like tax revenue.

City of Elkhart, Indiana
the city with a heart

Must be Beneficial to Both Parties

For the Property Owner:

- Property owner receives the benefit of City utility service.
- Property owner receives all other benefits that go along with locating in close proximity to a City: available workforce, strong customer base, emergency responders, parks, etc.
- Receipt of benefits without paying real and personal property taxes.
- Real property can be developed where individual septic systems would not be feasible.

For the City:

- Puts much needed funds into the Great Elkhart Fund to be used for essential City services.
- Puts City development in a stronger position.
- Continues area economic growth.

City of Elkhart, Indiana

Common Misconceptions

- The sewer utility needs the money, and more customers means more money for the sewer utility. (Municipal utilities do not make any profit. An increase in the sale of services will not provide any increase in "profit.")
- Adding extraterritorial customers will noticeably lower the sewer rates. (The cost of a new rate study would offset any possible miniscule rate decrease.)
- By charging a sewer rate surcharge of 15%, the City can fund the CSO/LTCP. (The CSO/LTCP is a $154 million project; the surcharge would bring approx. $60,000 to the utility and decrease every year.)
- Taxation without representation. (It is a contractual agreement with a payment in lieu of taxes. All property owners were put on notice of the expiration dates of all SSAs.)
- A fifteen-year contract never expires. (The statutory limit is 15 years; the renewal must be beneficial to the City in order to provide the service.)
- This money goes to the Mayor's slush fund: Great Elkhart Fund. The Great Elkhart Fund is used for essential services and the Common Council approves every appropriation. There is no "slush fund."

City of Elkhart, Indiana
the city with a heart

QUESTIONS?

Thank-you,

Mayor Dick Moore
Utility Services Manager, Laura Kolo
City Engineer, Mike Machlan
City Attorney, Maggie Marnocha

EXHIBIT 4

EQSC meeting of 10/11/2013

10/10/2013

An Overview of Rules, Rates, and Regulations for Municipal Water Utilities

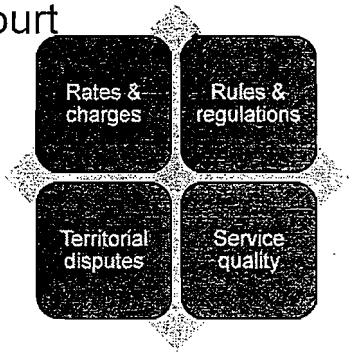
10.11.13

Danielle McGrath
Executive Director of External Affairs
Indiana Utility Regulatory Commission

Celebrating a century of service to the Hoosier state

Overview

- Administrative utility court
- Economic regulator
- Regulated utilities
  - 92 of the 555 water utilities
  - 44 of the 547 wastewater utilities



2

Jurisdiction

Jurisdictional and Withdrawn Water and Wastewater Utilities

Type of Utility	Number of Jurisdictional Utilities	Number of Withdrawn Utilities
Municipal Water	31	363
Not-For-Profit Water	33	58
Investor-Owned Water	7	1
Conservancy District Water	6	1
Not-For-Profit Wastewater	6	12
Investor-Owned Wastewater	23	9
Not-For-Profit Water/Wastewater	2	4
Investor-Owned Water/Wastewater	12	2

Commission Jurisdiction Based on Utility Type

Type of Utility	Rates and Charges	Rules and Regulations	Ability to Withdraw from Jurisdiction	No Jurisdiction	CTA
Investor-Owned Water*	✓	✓	✓		
Investor-Owned Wastewater*	✓	✓	✓		✓
Not-For-Profit Water	✓	✓	✓		
Not-For-Profit Wastewater	✓	✓	✓		✓
Municipal Water	✓		✓		
Municipal Wastewater				✓	
Regional Water District				✓	
Regional Sewer District**				✓	
Conservancy Water District***	✓		✓		
Conservancy Sewer District				✓	

*Investor-owned water and sewer utilities with 300 customers or less can opt out of the IURC's jurisdiction, per IC § 8-1-2.7-1.3.

**Campgrounds served by regional sewer districts have the ability to appeal to the Commission's Consumer Affairs Division for an informal review of a disputed money, per IC §13-26-11-2.1.

***IURC has jurisdiction over conservancy districts that make an election to provide water service under I.C. § 14-33-20 in its District Plan. Water conservancy districts with fewer than 2,000 customers can opt out of the IURC's jurisdiction, per IC § 8-1-2.7-1.3.

3

Pace of Withdrawal

1950s	0.3%
1960s	0.0%
1970s	2.5%
1980s	38.4%
1990s	40.5%
2000s	16.4%
2010s	1.9%

78.9%

4

The Impetus

- In the 1980s, laws were enacted that allowed municipal utilities to remove themselves from IURC jurisdiction
- Two separate procedures
  - IC 8-1.5-3-9.1 applies to water utilities that are owned or operated by second class cities, third class cities, and towns
  - IC 8-1.5-3-9 applies under all other circumstances, including utilities that opted out prior to 1987

5

The Tipping Point

"The tipping point is that magic moment when an idea, trend, or social behavior crosses a threshold, tips, and spreads like wildfire."

- Malcolm Gladwell
The Tipping Point: How Little Things Can Make a Big Difference

Cities & Towns

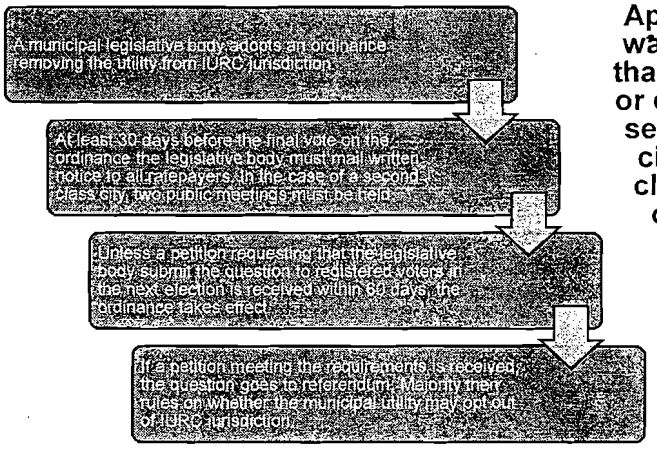
Status & Population	Class	Number
Cities of 250,000 or More	First Class Cities	1
Cities of 35,000 to 249,000	Second Class Cities	19
Cities of Less Than 35,000	Third Class Cities	99
Other Municipalities of Any Population	Towns	447

Source: State Board of Accounts at www.in.gov/sboa/2435.htm

7

Opt Out Process

IC 8-1.5-3-9.1



Applicable to water utilities that are owned or operated by second class cities; third class cities; or towns.

8

Opt Out Process

IC 8-1.5-3-9

A municipal legislative body must submit the referendum question to voters.

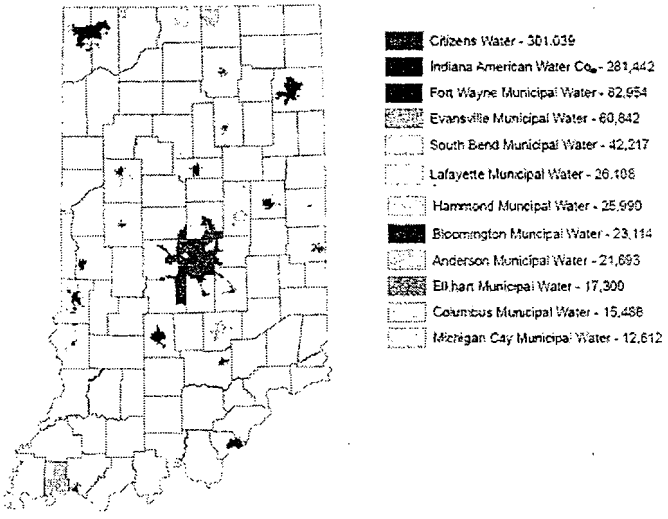
If the majority of those voting favor taking the municipally-owned utility out of the IURC's jurisdiction, the utility is removed.

Written notice of the removal is then mailed to the IURC within 30 days after the utility's withdrawal.

Applicable to all other municipally-owned utilities.

9

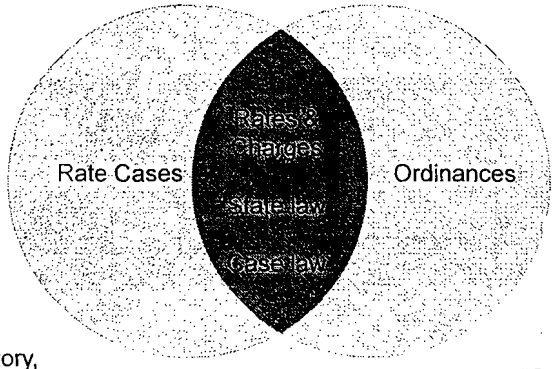
Regulatory Oversight



10

Similarities & Differences

IURC Jurisdiction | **Local Control**



Taxes

Revenue Requirement

Rate Cases

Operating & Maintenance Expenses

"Nondiscriminitory, Reasonable, & Just" Rates

Cost of Service Study

Payment in Lieu of Taxes

Depreciation & Amortization Expenses

Ordinances

Extensions & Replacements

"Cost-Based" Rates

11

IURC Process

1st Step (Petition)

- Utility files a petition with the IURC
- Prehearing conference is held to establish the filing and hearing dates

2nd Step (Discovery)

- Utility prefiles its testimony
- OUCC and intervenors prefile testimony
- Utility files rebuttal testimony

3rd Step (Hearings)

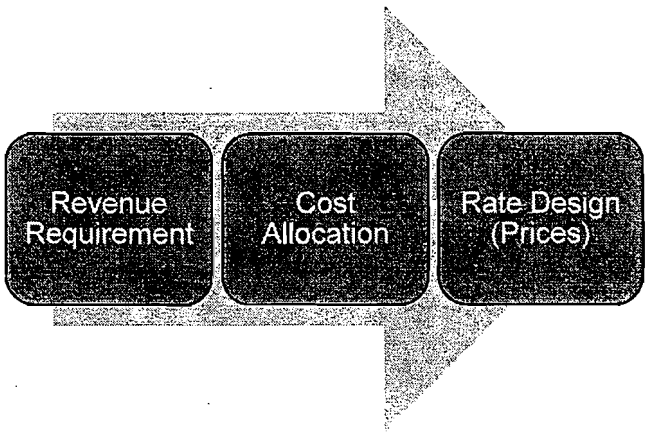
- Evidentiary hearing(s)
- Possible field hearing to gather public testimony

4th Step (Decision)

- Final filings made by the parties
- IURC reviews evidence filed by all parties, including the public
- IURC Order (decision) is issued at Conference

12

Setting Rates



13

Revenue Requirements

- The amount of money the utility will need to deliver an expected volume of safe and reliable service
- For municipal utilities, the revenue requirement isn't generally based on a fair return; however, the revenue requirements generated does include the following: maintenance costs, operating charges, upkeep, repairs, depreciation, interest charges on bonds, extensions and replacements, etc., which can lead to a profit, per 8-1.5-3-8

14

Cost of Service

- A cost of service study takes the various types of costs the utility incurs and allocates them to each customer class based on cost causation
- Regardless of whether a utility is jurisdictional or not, these studies should be conducted periodically

15

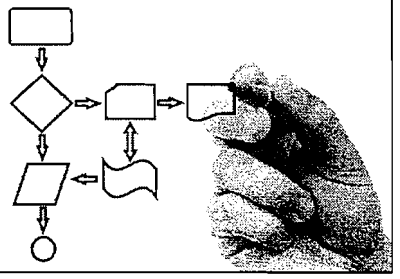
Rate Design

- This involves determining how customers in each class will be allocated costs and charged for their consumption so that the revenue requirement can be met

16

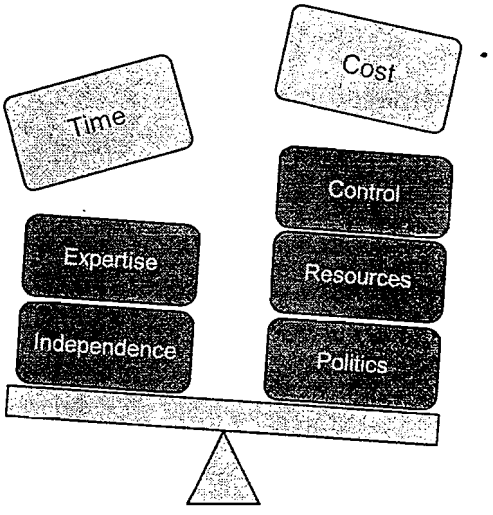
Municipal Rate Setting Process

- Regulation and review
  - State law (8-1.5-3-8)
  - Case law
  - Local entity
  - Accountants and consultants
- Streamlined process
- Cost control



17

Cost/Benefit Analysis



18

Outside City Rates

- In some instances, an outside city rate differential may be justified and cost-based
  - There are some jurisdictional and non-jurisdictional utilities that have a differential
  - This is because each utility and the territory it serves is unique
  - Reasons for the differential may include: hydrant fees/fire protection, area-specific improvements due to a troubled utility takeover, or geographical barriers
- Legislation has been passed in recent years to address this issue
  - 2012 → HEA 1126
  - 2013 → HEA 1137 & HEA 1307

19

HEA 1126

- Indiana Code § 8-1.5-3-8.3
- Grandfathering → GAO 2012 - 2
  - www.in.gov/iurc/2447.htm
- Rate Challenges → 170 IAC 1-7
  - www.in.gov/iurc/2658.htm

20

HEA 1126 Statistics

- Grandfathering petitions
  - 53 filed (objections filed in 2 cases)
    - All were ultimately approved
- Rate challenges
  - 1 filed (rates were upheld)

21

HEA 1137 & HEA 1307

- HEA 1137 – Refines the existing law
  - IURC required to issue an order
  - Timeframe extension now allowed
- HEA 1307 - Allows ratepayers to challenge rates with a differential greater than 50% until December 31, 2013
  - No petitions have been filed to date
  - Parties must attempt to resolve disputes before coming to the IURC

22

Questions?