

Regulatory Flexibility Committee

September 28, 2011

White River Citizens United

White River Township, Johnson County

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.

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.

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.

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 Bartersville Town Council meetings and submitted questions in writing - Answers not forthcoming.

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).

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.

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

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.

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?

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

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

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” .**

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.

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.

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

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

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

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

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

Questions?