

**INDIANA REGULATORY  
FLEXIBILITY COMMITTEE**

**SUPPLEMENT TO TESTIMONY**

September 2011

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

**BARGERSVILLE WATER UTILITY  
RATE INCREASE**

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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 Because the utility had withdrawn itself from oversight by the Indiana Utility Regulatory Commission in November of 2008, this extensive system expansion, which approximately doubles its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 two 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.

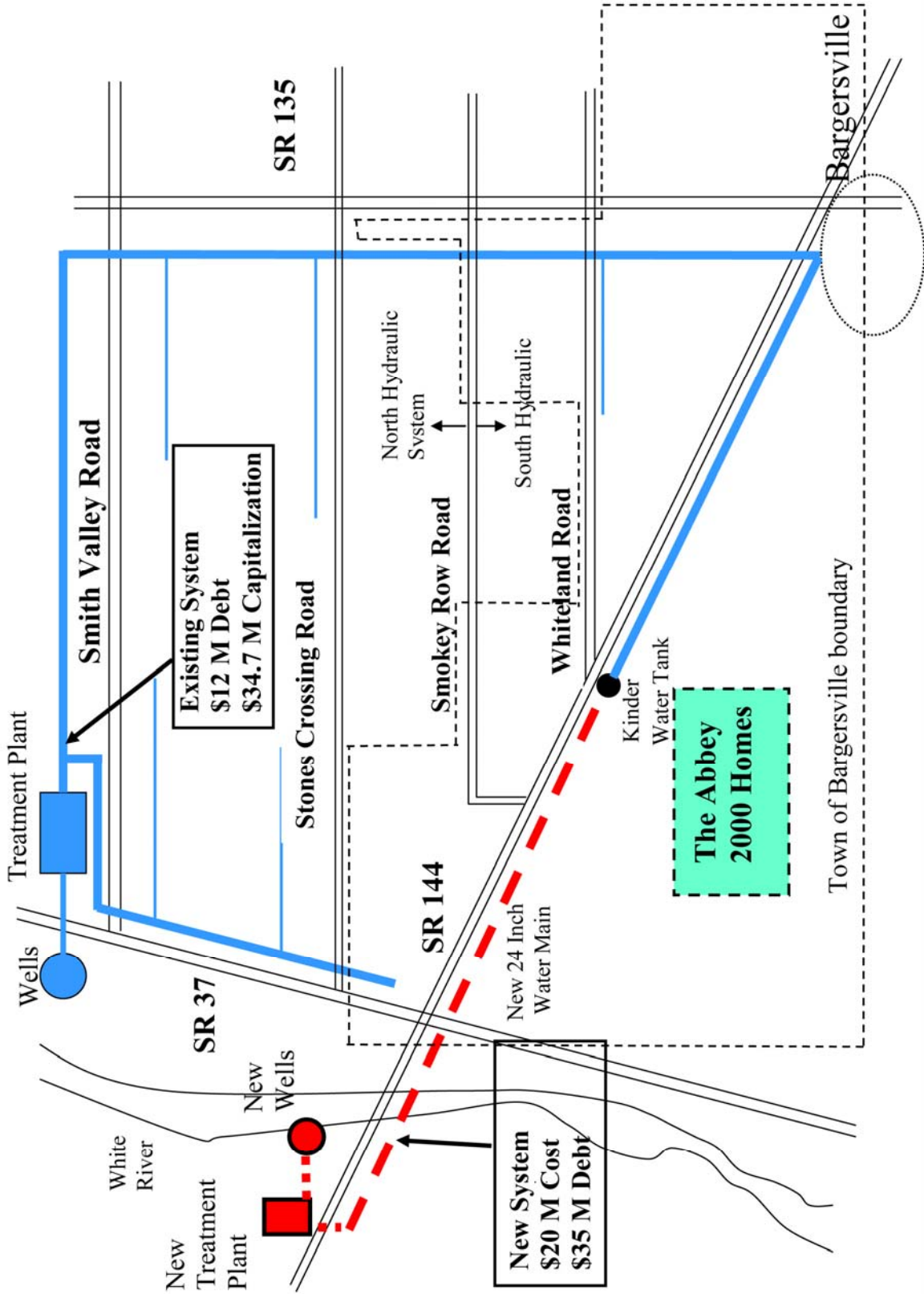
The dotted line on this map indicates the current corporate boundaries of the Town of Bargersville. This represents an expansion from 1 square mile (the oval in the lower right corner as of 2008) to 18.4 square miles in the past two years through annexations. The growth in population has not followed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

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 overstated 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 met 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 Assessed 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 without 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 requests 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 Bartersville 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. Bartersville 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 Bartersville 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 Bartersville 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 Bargarville.

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	<b>24.3%</b>

Sewer	\$2,652,619	\$365,973	<b>13.8%</b>
Electric	\$7,192,097	\$1,555,220	<b>21.6%</b>
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	<b>3.4%</b>
2006	SBA audit	\$1,643,835	<b>8.3%</b>	201.6	<b>3.2%</b>
2007	Umbaugh rate study	\$2,100,335	<b>27.8%</b>	207.3	<b>2.8%</b>

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 7900 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 concerns 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”