

PROPOSED UTILITY LEGISLATION

The following issues require legislative action and will, upon passing, thereafter provide the Indiana Utility Regulatory Commission the necessary tools and guidance to provide a more balanced oversight of the state's utilities.

1) Since only a small portion (25 of 124) of Indiana's Utilities are under the Jurisdiction of the IURC, to insure equal justice for all Hoosiers, a simple statement borrowed from Illinois statutes requiring all utilities to respect the property rights of all property owners is necessary to prevent both discrimination between rural property owners and urban property owners and to insure that property rights are applied equally to all property owners statewide.

Possible Solution #1 The Illinois statute is as follows:

“Vegetation management activities by an electric public utility shall not alter, trespass upon, or limit the rights of any property owner.”

To those utilities who insist they already respect a property owners rights, the above language should not be of concern; however, those utilities that tend to skirt around these basic principles may think twice before violating the law.

2) Whenever a State Trooper stops a motorist for excessive speed, he or she has the choice to give that motorist a ticket and require him or her to appear in court, where a judge can fine or revoke a motorist's license. In effect there exists a form of enforcement powers to insure compliance with the rules of the road.

If a utility commits a serious vegetation management error, or even an intentional wrong, or a series of wrongs, the IURC does not have the authority to even levy a small fine or award damages to the wronged party. This lack of enforcement powers substantially limits the respect for the authority of the IURC. The very fact that approximately ninety-nine (99) smaller rural/municipal utilities have chosen to opt out of the IURC indicates or suggests, at the very least, a feeling by these smaller utilities that they can do a better job by themselves. Despite this exodus from the IURC, investor owned utilities represent 85-90% of all customers in Indiana. These smaller rural utilities do not seem to have the number of disputes that we have seen or heard of in the larger utilities, perhaps because customers in the smaller utilities seem to have quicker access to senior managers who seem to be care more as

they, too, are a part of the same community.

Laws need to apply to all utilities equally least we create the situation where serious violations by a larger investor owned utility are thrown out by the courts because they have a different set of rules than the smaller utilities.

FERC has adopted the idea of fines, not to punish a utility, but to motivate all utilities under their jurisdiction to achieve a higher level of corporate responsibility. Only three fines have been levied by FERC and only on those utilities who reported on themselves a serious breach of the rules. Each fine was less than \$300,000.00 It is not the amount of the fine that is important, but the knowledge that serious violations can result in a substantial penalty. The IURC would not be required to fine anyone. However, the ability to fine provides enforcement powers now lacking.

The IURC does not have adequate enforcement powers as noted in their Decision of 11-30-2010. See page 103, third paragraph from top, and sub- note #14

Possible solutions to # 2 : Legislative action is required

The Indiana Utility Regulatory Commission (IURC) shall have the final authority to resolve disputes between property owners and a utility over vegetation management issues and/or any other issue under its jurisdiction. The IURC shall have the authority to levy fines up to one million dollars per incident, when, in its judgment, the utilities' actions were seriously detrimental to the ratepayer(s) and/or the community at large.

Based upon current fair market values, the IURC may award damages to a property owner when, in its judgment, the utility ignored IURC utility vegetation management (UVM) rules and/or dispute resolution procedures, causing irreparable damage to a customer's property.

Cities, towns, and counties are strongly encouraged to form local Tree Boards who shall have the authority to enforce or to delegate enforcement of local ordinances, as directed by their local elected officials. Such local ordinances may be more strict, but not less strict, than State or IURC rules. Tree Boards are further empowered to hear appeals of disputes between local utilities and local property owners. Opinions rendered by these Tree Boards are advisory opinions intended to help both the utility and the property owner reach an amicable solution to their dispute .These opinions shall carry substantial weight should either party choose to appeal their dispute to the IURC, whose findings shall be final.

The Office of the Utility Consumer shall represent any and all property owners whose disputes are appealed to the IURC for a final resolution. The OUC shall represent the interests of the property owner, and is not a mediator. That job shall fall to the IURC. Utilities shall make a strong good faith effort to resolve 99.9% of all vegetation management disputes at their level before appealing first to a tree board (if applicable) and then to the IURC. Until a dispute is amicably resolved or a decision has been rendered by the IURC, the utility shall not begin any vegetation management work.

3) Substantial evidence has emerged that Title Insurance companies do not do the same in-depth research on residential properties as they do on commercial properties. As a result a property owner is not informed of the degree of restrictions that are imposed upon his or her property by utilities

Some of these restrictions are significant and, in the case of major gas transmission lines, the lack of full disclosure could result in substantial property damage and even loss of life.

In the case of electric lines, particularly transmission lines where utilities are resorting to old easement language, and the expansion of prescriptive easements, we have a very serious problem. Legislative action versus an administrative rule appears necessary if we are to overcome an existing statute. Prescriptive Easements (See Ind. Code 32-23-1-1 et seq.) A party acquires a prescriptive easement over land owned by another person if it shows evidence of “an actual, hostile, open, notorious, continuous, uninterrupted adverse use for twenty years under a claim of right” A utility must be able to prove all elements of the above or they would lose this easement right. Expansion of this type of easement would seriously erode property rights!

Possible Solution to # 3: Legislative action is required.

If we required all utilities to adhere to UVM standards and rules of the IURC, regardless of whether the easement is old, current or future, we may be able to circumvent the need to overhaul title insurance laws as they affect electric lines. Full disclosure, I feel, is clearly needed on any gas transmission line to prevent accidents which could cause a loss of life. Remember the huge gas explosion in California and the one on Indy's north side from just a few years ago caused by digging? To modify easement language, especially existing easements, I have been advised that using an administrative ruling is not likely to overcome laws (easement laws) already on the books. Legislation is required. This is another reason why we must have legislative hearings now! The suggested fix for electric lines is fairly simple: new UVM standards by the IURC shall apply to all types of easements....old, current and future.

We need to remember that abuses are still ongoing today and will likely continue unless we act now. Clearly, if we can find a way to correct these abuses without overhauling title insurance laws, then everyone would be a winner. For any utility to use any kind of easement to get around the expected rules of the IURC, returns us to square one. In fact we may be much worse off today than when this review first started.

This is a very serious issue and every legal expert I have spoken to feels legislative action is the only solution...prescriptive easements may represent the greatest threat to the basic rights of all property owners and their use to acquire additional land by the utilities for UVM work should be completely banned. Taking a person's property without consent or payment defies the very essence of fairness and should sound an alarm with every elected official. While prescriptive easements have been used, I am unaware of their wide spread use; however, no data was required during this investigation to verify how often this type of easement has been used.

- 4)** New route control...this simply brings back S/B 2, from two years ago, by Senator Merritt, who attempted to establish rules and procedures whenever a utility decides they need a new transmission line or decides to up-grade an existing line to a higher voltage line. Many factors need to be reviewed before the IURC and the local authorities can approve the proposed route.

- SUCH AS:
- 1) Does the proposed route provide enough room/land to accommodate the new line with adequate space for vegetation management?
 - 2) Does the new line go through an area which contains 50% (or greater) residential homes? Is there enough land without creating an undue economic or aesthetic impact?
 - 3) Has the route received local approval? Have there been any public hearings? How was each property owner notified of these public hearings? What were their concerns?
 - 4) Are there any environment problems?
 - 5) Are there any historical landmarks or pioneer cemeteries which need to be protected? What is the plan for their protection? Can the line be buried to protect these landmarks?

There may be many additional questions or issues which could be uncovered by public input, which should be reviewed for specific areas.

Possible Solution # 4... Legislative Action is required

Return to S/B 2 and complete the committee process addressing the above issues.

- 5)** The IURC has again sided with utilities and banned well qualified companies from trimming trees near lines . This action violates the rights of property owners and the rights of well qualified companies.

NOTE WELL: Some of these companies have been hired by the utilities, themselves, to do work for them. Yet a home owner can not hire the same companies. The utilities and the IURC are both violating the concept of free commerce. If a company is qualified to do work for the utilities why not for property owners?

Legislation here is a must!

Possible Solution # 5..Legislative Action is required

Pass language attached to the same Utility Bill overcoming this violation of the homeowners property rights, and the rights of these well qualified companies, to exercise their rights under the law. Such companies must adhere to the same OSHA, IEEE, and ANSI standards and shall carry the necessary business insurance to insure the utilities are protect.

- 6)** Burying electric lines.....this requires much more discussion.

Evidence shows that the decision by the IURC is very short-sighted and should be reviewed by the legislature itself to better address the future here in Indiana. The decision by the IURC was way off base, especially when it comes to new construction.

**Possible Solution # 6.Legislative Action is required:
New construction line burying should be approved now...
while a Summer study committee for older communities
should explore the future use of burying lines in selected
areas, as is already done by many communities across
the U.S.**

IURC reform.....

There is a fact that cannot be denied by anyone. The scandal which hit the IURC this past year has hurt the image and credibility of the IURC. A lesser known fact is the damage done to the public during this tree trimming investigation by the unhealthy relationship between the utilities and the IURC. There are several critical factors which come into play when judging the performance of the individual participants.

A) This investigation by the IURC and the OUCG was the first of its kind in our state's history. Because of this fact many personnel have, and had, little experience or expertise in this area. This lack of expertise created the need for the IURC to not only ask all parties to submit issues which should be studied during the course of this investigation, but also to substantially rely upon the input of the utilities at the expense of the OUCG and myself, Charles H. Goodman. The request for input from all parties was not out of line considering that this was the IURC's first effort to review this subject matter, however when the IURC chose to pick 19 of the 35 final issues from those submitted by the utilities and ignored the core issues that we submitted, we knew we faced an uphill battle. We submitted 27 questions and only three were chosen. (IURC docket entry of 6-17-2009) The OUCG submitted 15 questions and only six were chosen. (IURC docket entry of 6-17-2009) The Utility Group submitted 19 questions, of which 6 questions contained multiple questions, for a total of 31 questions; 19 of these were chosen by the IURC (Docket entry 6-17-2009). Again, it was not the numbers chosen from each participant, but what was left out that hurt this investigation. Such as: What law supported their actions....What are the cutting distances for each voltage line.

I had turned to experts from around the country and members of the community in order to submit credible and realistic questions, in order to do a comparative analysis so that from such an analysis, a better set of guidelines and rules could then emerge. The IURC picked 35 questions as their final issues to be reviewed by this investigation; but they ignored key questions unfavorable to the utilities.

Consider these critical facts which are a part of the record and can be easily proven. One critical example illustrates the problems we faced. During a hearing by a joint committee of the House and Senate on Oct.9th 2008, the utilities blamed their change to more aggressive tree trimming on the

changes in the law by the Federal Energy Regulatory Commission (FERC);
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members of both the House and Senate were witnesses and can verify this statement. Following this joint meeting, I was asked to submit my review in writing. I, therefore, submitted a 67 page investigative report to all members of the legislature and the Governor which contained a letter from FERC proving that FERC's change in their rules applied to less than 2% of all electrical lines in Indiana. As confirmed by FERC, their jurisdiction for UVM applies only to lines that carry 200,000 volts or higher. Below that the state's transmission and distribution systems are the responsibility of the IURC. While some utilities argue that they may be required to report outages for lines over 100,000 volts, FERC has again stated each state is responsible to oversee UVM Management programs for all lines under 200,00 Volts.

There is no question that maintaining a safe and reliable electrical distribution system is very important.

How we achieve those goals is what triggered this investigation!
It does not need to be achieved at the expense of the rights of property owners. We can and must learn to work together. A little bit of common sense and simple courtesy and this investigation could have been avoided. The goal of the utilities appears to be cost cutting at our expense. PURE AND SIMPLE!!!

Considering the history of how the utilities misled the legislature, I submitted a basic question: What state or federal rules, policies or laws govern tree trimming practicesa fair and reasonable question. Agreed? Twenty-five additional questions were submitted but this one touched on the core of the investigation. Like most of our questions it too was ignored, protecting only the utilities.

How the reader can verify our statements.....go to.....

www.in.gov/iurc click on electronic document systems on the right side then click on "cases" in the upper left side, then in the next screen next to docket number add "43663", then on the bottom of that screen click on search--then on the next screen click on filings/docket entries on the next screen.. moving down... you will find each docket entry in date order then simply click on the icon on the far left side which shows a document and a pencil. In this manner you can read the responses from each participant and verify the accuracy of this memo as well as auditing the entire history of this investigation. Review the appeals (Docket Entries 12-20&22-10) to evaluate how the utilities wish to control and influence future vegetation policies. These facts are alarming!

The reader can judge for themselves the bias that is reflected in the selection of issues. These problems were just the beginning for us. Besides being admonished for not knowing and following the correct typing format, it became clear we needed legal help, if for no other reason than to submit responses correctly formatted.

Help came when the business community and a utility trust foundation provided the funds to hire an attorney skilled in utility matters.

- B)** Before that miracle occurred, we made a motion to require all utilities to notify each of their customers, via their monthly billing statements, that the IURC was undertaking a statewide investigation into tree trimming policies and practices. Each month each of us receive some kind of billing insert informing us of a matter important to the utility or we may see some kind of computerized memo at the bottom of our bills. Easy to do and not that expensive. Since only the utilities have a complete data base of the names and addresses of their customers, what better method could exist to insure that all property owners statewide were properly notified of this investigation. The utilities opposed this motion as too costly and too much of a burden. A response not surprising, as the least number of folks who knew about this investigation, the better it would be for the utilities.

The surprise came when the IURC sided with the utilities and took the position that their normal notification process, as dictated by the law only required them to place a notice in the legal section of the local newspaper and notices on their web sites. Common sense was thrown out in order to accommodate the utilities.

First, millions no longer get the newspaper as they rely upon both the TV and electronic devices, second of those who read the newspaper, most do not bother to read the legal notices. Plus, just how many know who the IURC or the OUC are? How many have computers and know how to access their web-sites? While some in the legislature helped with e-mails, millions of property owners were unaware of this investigation. During the last census Indiana has approximately 6.4 million people. How many actually own property? I'm not sure, but it seems a safe bet that it is in the millions.....agreed?

The IURC's failure to effectively notify all property owners was, and is, shameful, almost criminal. Once again, we are told the law, the statutes which dictate how and when an affected property owner is notified must be changed by the legislature. To deny millions of property owners proper notice so everyone who would like to participate can do so is unforgivable. But again the IURC craved in to wishes of the utilities at the expense of common sense and at the expense of Hoosiers statewide. Was the ability to control what was to be reviewed bias? Was the decision to suppress participation bias?..... You decide.....then factor in this!

- C)** While the case was still active and prior to releasing the IURC's findings, the individual who drafted the IURC final decision-its findings-also was seeking a job

with a major utility while the case was still open.

The question one must ask is, can a person, a judge, even a person we would be proud to call our friend, even our brother or our sister, could such a person really be 100% impartial if he or she feels that their future career is with the very people he or she is now sitting in judgment of.....wouldn't you or I tend to lean in favor of that company which we hope to work for down the road? Even subconsciously we most likely would favor our possible future employer.....that's only human, even with the best of professionals.

Therefore, I ask each of you bias? Even if it was not intended?

Corrective action by the Governor:

The governor has already taken corrective action to prevent future lapses in ethical behavior, but how do we protect this investigation now? The simple answer is to create legislation which protects "all" parties... all constituents.

Should further utility reform take place?

Some groups feel IURC commissioners should be elected while others feel a Senate confirmation process would be best, perhaps there is a third choice which could make everyone happy.....a process similar to that used when selecting a new member of the Indiana Supreme Court.

A bi-partisan group could select x-number of candidates, then in a second round a second group (perhaps the leadership of the House and Senate) would narrow the candidates down to three to five candidates, at which time the Governor would select the final candidate of his choice from this group.

COMMENTARY:

A decade ago property owners here in Indiana and across the United States began to complain about abusive tree trimming policies and practices. Here in Indiana, their voices were often ignored or false promises were made to silence their complaints. The abuses grew in numbers and severity all across the state with some utilities doing a much better job of working with their customers than others. The IURC's standard advice was if you have a problem with a utility which has damaged your property....go to court...today that advice is the same, but who has the economic resources to take on a utility to seek justice in a court? Their pockets are so deep with our own money few could win in court against them. This position is exactly what the utilities want!

Like so many before me, I ,too, became a victim of our local utility, but like so many of my fellow Hoosiers with limited income and, in my case, poor health, I chose to take this issue to the State Legislature instead where I hope Hoosiers will finally get a fair shake. Indiana is decades behind most other states when it comes to (UVM) guidelines.

Maryland passed their first UVM law back in 1914 before most of you were born. Indiana is just a bit slow....well, very slow. The result: Hoosier property owners have lost millions of dollars. I believe if you and I can tell our stories to our State Senators and State Representatives, they can begin to realize that doing right on behalf of their own constituents out weighs the money and influence of the utility industry, which donates hundreds of thousands of dollars to elected officials and spends millions of dollars on lobbying expenses. Despite these facts, I believe most elected officials do care, but we must do a better job of selling our story to them so they can feel our hurt and frustration and then realize that this is a very serious issue.

I hope in time a better marriage built on common sense and mutual respect will occur between the utilities and the rest of us.....thank you all for caring, till later, I hope God keeps each of you safely in the palm of his hands.

Charlie Goodman
Indiana Tree Alliance

Questions?

Charlie Goodman
317-356-2499 or <c-goodman@att.net> or:

Jerry Baker <cjbaker47@comcast.net>

Will you help?

DEFINITIONS: FERC.....means The Federal Energy Regulatory Commission
IURC.....means The Indiana Utility Regulatory Commission
OUCC.....means The Office of the Utility Consumer Counselor