

**Purdue Road School  
March 26-27, 2002  
West Lafayette, Indiana**

**Public Utilities' Use of the Right-of-Way  
(Protecting the Public Right-of-Way . . . Whose Job Is It Anyway?)**

March 26, 2002  
1:30 - 3:00 PM

**Top 10 reasons public utilities balk at local right of way ordinances  
(with apologies to David Letterman):**

10. Utilities don't lay free golden eggs.

- Utility installations are not a source of revenue for the city or county.
- The Indiana statute permits recovery of actually incurred management costs only - I.C. 8-1-2-101 (b):
  - Registering occupants.
  - Verifying public right-of-way occupation.
  - Inspecting job sites and restoration projects.
  - Restoring work inadequately performed after providing notice and the opportunity to correct the work.
  - Administering a reasonable restoration ordinance that ensures that a public utility or department of public utilities adequately restores the right-of-way as near as is reasonably possible to the right of way's original condition.
  - Management costs associated with the implementation of an ordinance under this section.
- Fees which are imposed on permit applications and which go beyond recovery of direct management costs are not permitted under the statute.

9. It's not a good idea to run a pipe line through the butt of a pole.

- Some local ordinances attempt to specify the physical location of facilities.
- Micro-management/design is unwise and often impractical, if not downright impossible.

8. Not all utility companies are created equal.

- Ordinances adopted in response to a bad experience with one type of utility may place unreasonable burdens on others.
- Ordinances must set reasonable standards.

7. Our customers are your voters.

- Delays in providing service to our customers make the customer/voter/taxpayer mad.
- Improper repairs to roads make the motorist mad.
- We have to remember that these are all the same person.

6. We're gonna' need a piece of the Rock.

- Provisions we'll find in utility ordinances, applications and permits:
  - Requirement that utility fund the political jurisdiction if the jurisdiction sues the utility over the ordinance.
  - Indemnification of the jurisdiction if the jurisdiction damages the utility's facilities.
  - Bonding and insurance requirements, no matter what the nature of the installation.

5. Width is in the eye of the beholder.

- Determining right of way width is a big problem.
- If the local jurisdiction knows what the specified width is, share the information with us.

4. Times a'wastin'!

- Applications for service are often made by a customer as an afterthought.
- Short lead times for utilities to provide service are aggravated by drawn-out review processes.
- Statute permits appeal to IURC if petition not approved within 30 days, but with the required notices and hearings, an appeal can drag out for months.

### 3. "Red Tape Holds Up Bridge" (*Columbia Journalism Review*)

- It is not in anyone's interest to create so many obstacles that a petition or an entire ordinance must be reviewed by the IURC.
- GTE North Inc. vs. City of Fort Wayne complaint not resolved for over a year (Cause No. 41396), and that complaint only concerned a small part of the Fort Wayne ordinance.
- Meanwhile, customer waits for utility service.

### 2. Did the Statute really say we have to do that?

- Unreasonable bells and whistles in local ordinances don't contribute to utilities providing service or deal with the jurisdiction's core concerns.
- Repaving and restoration requirements that go beyond reasonable repair can be challenged.
- The authority to require a utility to notify adjoining property owners prior to use of public right of way is not granted to cities and counties in the statute.
- There is no provision in the statute for requiring a public utility to sign a local permit.
- Requirements that a public utility do something outside the public right of way in exchange for authority to construct within the public right of way are likely illegal.
- Requirement to submit a utility plan showing the entire facilities located within the jurisdiction.
- Requiring a utility to be a member of the Indiana Underground Plant Protection system.
- Requirement to remove facilities from public right of way at wish of the political jurisdiction at utility's expense.
- Prohibiting utilities from installing any facilities above ground.
- The statute says a public utility must petition the political subdivision (if it has adopted an ordinance) to construct, maintain and operate additional construction, equipment or facilities necessary to conduct the utility's business and if authority or permission is not granted within 30 days, the utility may file a petition with the Indiana Utility Regulatory Commission to have such right or permission granted. The statute further says that a municipality or county may not unreasonably delay a public utility's access to or use of public right of way.

1. This land is your land, this land is my land.

- Utilities have a statutory right to occupy public right of way (I.C. 8-20-1-28).
- Local jurisdictions have a statutory right to review a utility's construction plans.
- Complete local control was not granted by the legislature.
- Local utilities do not wish to develop a reputation as lousy street repairers.
- Local jurisdictions don't wish to develop a reputation for delaying utility service to customers.
- Our mission, should we choose to accept it, will be to find the right balance between the increased cost on ratepayers (taxpayers and voters, remember?) for complying with local specifications and the reasonable way to repair excavations.
- "Can't we all just get along here?" (Rodney King).

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