

# THE DOCKET

A DISCUSSION OF BUSINESS ACTIONS AND LEGAL ISSUES FROM THE UTILITY BUSINESS ATTORNEYS AT PARR RICHEY OBREMSKEY & MORTON

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## BUSINESS & UTILITY LAW ATTORNEYS

Don F. Morton  
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Jeremy R. Comeau  
Michael L. Schultz  
Jeremy L. Fetty  
Timothy L. Karns

## PARR RICHEY FORMS RENEWABLE AND WIND ENERGY TEAM TO ADDRESS EMERGING ENERGY POLICIES

Parr Richey is setting sail in an exciting new energy direction: renewable energy and wind generation. The firm's rich history of representing electric, gas, telecommunications, water and sewer utilities in innovative projects fits well with Parr Richey's business law, real estate and land use law expertise. Parr Richey has worked on cutting-edge and renewable energy and utility service projects, including wetland sanitary treatment facilities, development and sale of landfill methane gas, coal gasification, wind generation development, solar energy projects, and various telecommunications projects. Parr Richey, of course, was at the forefront of bringing electricity to rural areas in Indiana, and looks forward to having an impact on wind generation and other renewable energy in Indiana. Recently, Parr Richey prepared the organizational documents of the National Renewable Cooperative Organization (NRCO), cooperatives that banded together to develop new renewable energy projects. Parr Richey currently serves as board counsel to NRCO.

With new emphasis on renewable energy, especially wind generation, developers are looking to several rural areas in Indiana to develop wind farms — and many landowners have interests in dealing with developers

or starting a community wind farm. Several states in the Midwest, including Iowa, Minnesota and Illinois have already experienced a significant influx of wind generation development. Studies suggest that some areas of



Indiana are wind rich, and favorable for development of wind generation because of access to transmission facilities. In fact, several wind projects in Indiana have already been announced. And Parr Richey lawyers were involved in a project that recently went operational in Benton County.

Parr Richey's lawyers are prepared to advise wind industry participants and participants in other renewable energy projects, including landowners, developers, utilities, lenders, and others, on issues that will arise in wind generation projects, particularly real estate, contract, construction, finance, and utility regulation issues.

Parr Richey's renewable and wind energy team includes Don Morton, Kent Frandsen, Jim Buddenbaum, Jeremy Fetty, and Tim Karns.

Don Morton has been general counsel for Wabash Valley Power Association, Inc., a generation and transmission utility, for 32 years. As a farmer of over 2,000 acres, Mr. Morton also understands the unique issues in agriculture that may arise. Further, he has represented utilities in several matters concerning renewable energy.

Kent Frandsen has substantial experience in real estate, zoning and land use issues. He represented dozens of Benton County landowners in lease negotiations on wind development projects.

Jim Buddenbaum is experienced in business transactions, utility, real estate, zoning, and land use. He has negotiated real estate transactions and provided

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land use advice for more than 100 “cellular” tower sites, for electric generation as well as water and sanitary sewer utility projects. He recently completed the negotiation and documentation for acquisition of 1,100 acres to be used by a large coal gasification producer.

Jeremy Fetty has experience representing utilities, and in business and real estate law. Mr. Fetty has addressed renewable energy issues, including power purchase agreements and wind farm station power connected to the Midwest Independent System Operator, and regulatory issues related to solar power and landfill generation. He has also represented clients before the Federal Energy Regulatory Commission and the Midwest ISO on issues related to transmission.

Tim Karns, with a biology degree from Purdue University, is skilled in the areas of emerging technologies for alternative energy and “green power.”

Parr Richey’s team is dedicated to providing high-quality service to developers, land owners and utilities interested in wind generation and other forms of renewable energy. ■

For more information on our lawyers and Parr Richey’s Renewable and Wind Energy Team, please visit [www.parrlaw.com](http://www.parrlaw.com).

## IURC Orders Use of Electronic Service Territory Maps



**Jeremy Comeau**

Clearly understanding exactly where the boundaries are that separate utility service territories is critical for an electric service provider. Having the ability to document those boundaries digitally, using a new Geographical Information System (GIS), not only allows a provider to service its territory more effectively and efficiently, it ensures Indiana electric service providers are compliant with Indiana Utility Regulatory Commission (IURC) requirements established over a quarter century ago.

In 1981, the IURC ordered each electricity supplier to record its assigned service area boundaries on a “Mylar repro-

ducible tracing of the United States Geological Survey 7-minute quadrangle maps (quad maps), with background screen to eliminate forested areas.” Now, nearly 30 years later, the IURC has adopted a new format for service area boundary maps. Last year, the IURC ordered electricity service suppliers to begin the process of using GIS to maintain service area boundary maps.

According to the Indiana Geographic Information Council, “GIS technology works by linking information stored in databases to a place or location. Users can question the data and present the answers in maps, tables and other graphic representations. Since 80% of all information has a geographic component, the power of GIS can be widely used to support decision-making and problem solving across all sectors.”

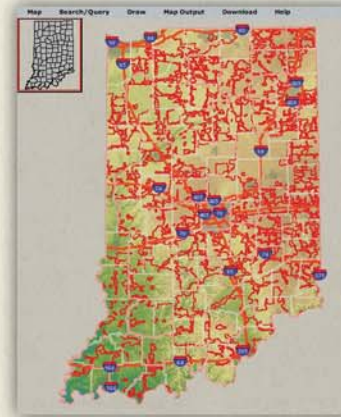
(Information found at <http://www.in.gov/igic/aboutgis/index.html>). The GIS data mapped and compiled by the local electric providers is available to the public in “read only” mode at [http://129.79.145.7/arcims/statewide\\_mxd/viewer.htm](http://129.79.145.7/arcims/statewide_mxd/viewer.htm).

The process for posting data is simple. Observing the IURC order, cooperatives and other utilities use “Access Indiana” passwords to update boundary information. The utilities whose boundaries are affected by a proposed change would first discuss the changes while also considering the GIS mapping system. Before any data is input into the system, a

proposed boundary change “object.” The proposed boundary change is not available for viewing by the public until it has been approved by the IURC. An IURC GIS administrator will make the changes official. Once the changes are made by the IURC, the new data will be made “live” and available on the public GIS system.

The IURC is committed to the GIS system to record and safeguard territory maps. The attorneys at Parr Richey have been involved in both development and implementation of the new system, and stand ready to assist electric service providers. ■

If you have further questions, contact Jeremy Comeau at [jcomeau@parrlaw.com](mailto:jcomeau@parrlaw.com).



Indiana Electric Service Territory Boundaries

petition is filed for a boundary change. Once all of the stakeholders agree, or otherwise, with the changes, a representative from one of the utilities will enter the new data into the GIS system. This creates a

## Indiana Expands Private Property Rights



**Kent Frandsen**

In 2005, the United States Supreme Court issued its controversial decision in *Kelo v. City of New London*. It was a ruling which many felt allowed municipalities too much leeway in allowing private property to be taken as a “public use” in furtherance of economic development. The Court ruled that redevelopment plans for a privately owned area of New London, Connecticut, which had fallen into economic distress, would increase local tax revenues and provide more employment opportunities.

While the narrow majority held New London’s taking to be constitutional, it noted that states and municipalities could enact stricter laws regulating the taking of

private property. Indiana has joined many states in limiting the projects that qualify as “public uses” and has established new procedures for the benefit of property owners.

Indiana still allows the taking of private property for public buildings and grounds, schools, roads, parks, bridges, airports, parks, utility facilities, and other essential services. Property containing a structure that is blighted, is unfit for human habitation, or is otherwise dangerous may be subject to eminent domain. But, in Indiana “public use” may not be satisfied solely by the benefits of economic development, such as an increase in the tax base, expanded tax revenues or employment opportunities, or better economic health.

Indiana law requires a condemning authority to make a good-faith offer to purchase the property before initiating condemnation. The offer must be based on a market-value appraisal or other reliable evidence. With the new legislation, residential owners are entitled to compensation measured at 150% of the property’s fair

market value; agricultural owners are to receive at least 125% of the land’s value. Owners are entitled to compensation for the costs of relocating a residence or business lost to eminent domain.

If a trial is held and the court or jury assigns a higher value to the property than the last settlement offer made to the owner, the condemning authority must reimburse the owner for attorney fees and litigation costs up to the lesser of \$25,000 or the fair market value of the property taken. This provides incentives for the condemning authority to be reasonable, and it partially compensates an owner who successfully challenges either the taking of property or the determination of its value.

The opportunity exists for enhancing the property’s value through expert appraisal and evidence presentation. Land-owners should consult with counsel before accepting a municipality’s purchase offer. ■

*If you have any questions or would like more information, please contact Kent Frandsen at [kfrandsen@parrlaw.com](mailto:kfrandsen@parrlaw.com).*

## New Tax Form Increases Scrutiny for Non-Profit Organizations



**Jeremy Fetty**

In December 2007, the Internal Revenue Service released its final 2008 Form 990, Return of Organization Exempt from Income Tax. On April 7, 2008, a comprehensive draft of the instructions for the 2008 Form 990 was issued for public comment. The draft requests more substantial information than in previous years, and requires tax exempt organizations to more comprehensively describe their activities and contributions to the community.

Form 990 includes a summary page, the core form, and 16 schedules. Possibly the most significant schedule requires specific data regarding certain pay practices. Important aspects of Form

990 include reporting compensation for officers, directors, trustees and certain key employees, as well as certain payments made to former officers and executives. Additionally, information regarding the independence of board members, the services and benefits of volunteers, certain travel and membership benefits for executives, and other data regarding related organizations is required.

With these changes, non-profit organizations must immediately focus on their process for approving compensation and organization of governance. Because the 2008 Form 990 is new and requires an examination of policies and procedures, non-profit organizations should become familiar with its necessities, and review relevant policies and procedures early to understand its requirements and to shape activities and information for purposes of reporting. The new Form 990 must be used starting with the 2008 tax year; however, there is a three-year transition period for certain small businesses. ■

*If you have questions regarding the new Form 990, please contact Jeremy Fetty at [jfetty@parrlaw.com](mailto:jfetty@parrlaw.com).*

**NEXT ON THE DOCKET:  
Don Morton**



**Don Morton**

With over 32 years in business and finance counsel, Don Morton concentrates his practice in the electric utility industry. Serving as General Counsel for Wabash Valley Power Association, Mr. Morton's experience includes a Sherman Act Section 2 Antitrust Action against a major utility, and defending Chapter 11 proceedings that ended in the 7th Circuit Court of Appeals. He has filed Friend of the Court briefs in noteworthy Indiana Supreme Court cases affecting the cooperative electric utility industry and has represented public utility clients before several state and federal regulatory agencies. Mr. Morton has assisted in the acquisition of more than 2 billion dollars of assets and the financing for those assets.

Mr. Morton served on the legal committee for the development of organizational documents for the Midwest ISO; as the chairman of the legal committee that developed ACES Power Marketing, acting as counsel to the Board of Managers of ACES Power Cooperative; and he recently prepared organizational documents for the National Renewables Cooperative Organization. ■

*If you would like more information about Mr. Morton, please log onto [www.parrlaw.com](http://www.parrlaw.com) or email him at [dmorton@parrlaw.com](mailto:dmorton@parrlaw.com).*

*Far Left:  
Jeremy Comeau discusses an issue in a case with Larry Wallace and Jim Buddenbaum*

*Far Right:  
Tim Karns, Jeremy Fetty, Kent Frandsen and Chuck Ritz confer with each other regarding a client's case.*



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& MORTON**  
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