

44-1843(1)  
44-1843(5)

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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
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June 17, 1991

Ms. Joan S. Vander Linde  
Schiff Hardin & Waite  
7200 Sears Tower  
Chicago IL 60606-6473


RE: Jasper County, Indiana Pollution Control Revenue  
Refunding Bonds  
A.R.S. § 44-1843(1) and 44-1843(5)

Dear Ms. Vander Linde:

On the basis of the facts set forth in your letter of May 23, 1991, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,  
  
DEE RIDDELL HARRIS  
Director of Securities

DRH:MB:wjw

Attachment

# SCHIFF HARDIN & WAITE

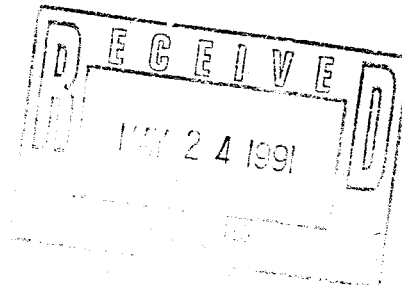
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May 23, 1991



## VIA FEDERAL EXPRESS

Dee R. Harris  
Director  
Corporation Commission,  
Securities Division  
1200 W. Washington Street  
Suite 201  
Phoenix, Arizona 85007

**Re: \$55,000,000 Jasper County, Indiana, Collateralized or Variable Rate Demand Pollution Control Refunding Revenue Bonds (Northern Indiana Public Service Company Project) Series 1991**

Dear Ms. Harris:

We are acting as counsel for the Underwriters in connection with the proposed issuance and sale of the above-captioned bonds (the "Bonds"). The Bonds will be issued either as fixed rate bonds (the "Fixed Rate Bonds") or variable rate multi-modal bonds (the "Variable Rate Bonds"). A final decision as to the structure of the transaction will be made by Northern Indiana Public Service Company (the "Company") on or about June 18, 1991 (at which time a resolution of the County Council of Jasper County, Indiana will approve the transaction).

For the reasons discussed in this letter, we believe that the Bonds, if issued as Fixed Rate Bonds or Variable Rate Bonds, are exempt from registration pursuant to Section 44-1843(1) and Section 44-1843(5) of the Securities Act of Arizona, and we wish to obtain your confirmation of that view. For your review, we have enclosed a drafts of the Preliminary Official Statements for the Fixed Rate Bonds and the Variable Rate Bonds prepared in connection with the offering of the Bonds.

Jasper County, Indiana (the "County") is a political subdivision of the State of Indiana. The County will issue the Bonds and will loan the proceeds to the Company, an Indiana public utility, pursuant to a Financing Agreement between the County and the Company to be dated as of July 1, 1991 (the "Financing Agreement"). The proceeds of the Bonds, together with certain money to be provided by the Company, will be used to refund the \$55,000,000 aggregate principal amount of 14% Collateralized Pollution Control Revenue Bonds, Series 1981 (Northern Indiana Public Service Company Project) of the County (the "Prior Bonds"). The proceeds of the Prior Bonds were loaned to the Company to finance a portion of the cost of certain air and water pollution control, and sewage and solid waste disposal, facilities of the Company located in Jasper County, Indiana.

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Both the Fixed Rate Bonds and the Variable Rate Bonds are a limited obligation of the County. Importantly, however, the security for the Fixed Rate Bonds and the Variable Rate Bonds differ.

Security for Fixed Rate Bonds. The Fixed Rate Bonds, except to the extent payable out of the proceeds of such Bonds, or income from temporary investment of such Bond proceeds, are payable solely from revenues to be derived by the County under the Financing Agreement and payments to be made on a related issue of First Mortgage Bonds of the Company. Such revenues will be pledged to the Trustee by the County pursuant to the Indenture of Trust to be dated as of July 1, 1991, (the "Indenture") between the County and Merchants National Bank & Trust Company of Indianapolis, as trustee (the "Trustee"). Such payments are designed to be sufficient in an amount to pay when due the principal of, premium, if any, and interest on the Fixed Rate Bonds. To evidence and secure its obligation under the Financing Agreement, the Company will deliver to the Trustee, concurrently with the issuance of the Fixed Rate Bonds, its First Mortgage Bonds in the aggregate principal amount of \$55,000,000 (the "Series 1991 First Mortgage Bonds"). The Series 1991 First Mortgage Bonds will be issued pursuant to the Company's Indenture of Mortgage or Deed of Trust with Harris Trust & Savings Bank and R.G. Mason, Trustees (the "Mortgage Trustees").

Security for Variable Rate Bonds. The Variable Rate Bonds are payable by the County solely from payments and other amount due under the Financing Agreement. The Financing Agreement provides that the Company will pay to the Trustee for the account of the County the amounts due on the Variable Rate Bonds. Concurrently with the issuance of the Variable Rate Bonds, however, the Company will deliver to the Trustee a Letter of Credit issued by a domestic bank or a domestic branch of a foreign bank (the "Letter of Credit"). The Letter of Credit may be replaced by an Alternative Credit Facility. The Company's obligation to make any payment under the Financing Agreement will be deemed to be satisfied to the extent of any payment made to the Trustee under the Letter of Credit or the Alternative Credit Facility.

Under the Letter of Credit, the Trustee is permitted to draw up to an amount sufficient to pay both the principal of the Variable Rate Bonds when due at maturity or upon redemption and the portion of the purchase price of the Variable Rate Bonds tendered to the Paying Agent, or deemed tendered pursuant to mandatory tender, and not remarketed at a price equal to the principal amount of the Variable Rate Bonds, plus an amount equal to 208 days' interest on the Variable Rate Bonds. The Trustee shall make draws under the Letter of Credit in amounts sufficient to pay the interest, principal and purchase price when due. Moreover, the Letter of Credit may also be drawn upon, if other funds are not available, to purchase the Variable Rate Bonds tendered for purchase.

Provisions of Securities Act of Arizona Applicable to the Bonds. Section 44-1843(1) of the Securities Act of Arizona provides that the following type of security is exempt from the requirements of registration (Section 44-1841):

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Securities issued or guaranteed by the United States, or by any state, territory or insular possession thereof, or by any political subdivision of such state, territory or insular possession, or by the District of Columbia, or by any agency or instrumentality of one or more of the foregoing. This exemption shall not apply to securities regulated pursuant to Section 44-1843.01.

Section 44-1843.01 provides that, notwithstanding the provisions of Section 44-1843(1), the registration requirements apply to the following type of security:

Any obligations or securities which are industrial development bonds as defined in Section 103 of the United States internal revenue code of 1954, as amended, with no exception for the small issue exemptions contained in §103(b)(6) or 103(d), except that the provisions of this paragraph shall not apply to any issue where substantially all the proceeds are to be used to provide . . . air or water pollution control facilities. . . .

We believe that the Bonds, whether issued as Fixed Rate Bonds or Variable Rate Bonds, fall within the Section 44-1843(1) exemption. As noted above, the proceeds of the Bonds are to be used to refund the Prior Bonds. The proceeds of the Prior Bonds were used for air and water pollution control and sewage and solid waste disposal facilities. Accordingly, we believe that substantially all of the proceeds of the Bonds should be deemed to be applied for purposes of Section 44-1843.01 to provide air and water pollution control facilities.

We also believe the Bonds, if issued as Fixed Rate Bonds or Variable Rate Bonds, are also exempt under Section 44-1843(5). Section 44-1843(5) provides that "securities issued or guaranteed either as to principal, interest or dividend by a . . . public utility if the issuance of the securities is regulated by an agency of . . . a state . . . ."

The Company is a public utility. As described above, the Fixed Rate Bonds, except to the extent payable out of proceeds and temporary investment income of the proceeds of such Bonds, are payable solely from revenues to be derived by the County from the Company under the Financing Agreement and the Series 1991 First Mortgage Bonds. Repayment by the Company of the amounts loaned to it pursuant to the Financing Agreement is designed to be sufficient to pay the amounts due on the Fixed Rate Bonds.

Similarly, the Variable Rate Bonds, although secured by a Letter of Credit, also are secured by the Company's obligations under the Financing Agreement.

There is no precise definition of the term "guaranteed" as it is used in Section 44-1843(5). We believe, however, that the Company's obligations under the Financing Agreement, whether the

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Bonds are issued as Fixed Rate Bonds or Variable Rate Bonds, constitute a "de facto" guarantee by a public utility for purposes of Section 44-1843(5).

The second requirement for exemption from regulation contained in Section 44-1843(5), *i.e.* that the issuance of the securities is regulated by an agency of a state, is also met. The issuance of the Company's underlying obligations relating to the Bonds, in either form, (including Financing Agreement, Series 1991 First Mortgage Bonds and Letter of Credit) is regulated by the Indiana Utility Regulatory Commission, which is an agency of the State of Indiana.

If you are in agreement with our view that the Bonds are exempt from registration under the Securities Act of Arizona, please sign and return to us the enclosed copy of this letter. We recognize that such an acknowledgement is based solely on the facts described in this letter and the draft Preliminary Official Statements. We will, of course, welcome any comments you may have concerning this letter.

We intend to send out a Preliminary Official Statement on or about June 10, 1991, and we would appreciate it if you would respond to this letter as quickly as possible. If you have any questions or require any additional information in connection with the foregoing, please call the undersigned, collect, at (312) 258-5609.

Sincerely,

SCHIFF HARDIN & WAITE

By: Joan S. Vander Linde  
Joan S. Vander Linde

JSVL/njk  
Enclosures

Acknowledged by: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_