

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF DUKE ENERGY INDIANA,)
LLC, INDIANA GAS COMPANY D/B/A VECTREN ENERGY)
DELIVERY OF INDIANA, INC., INDIANA MICHIGAN POWER)
COMPANY, INDIANA NATURAL GAS CORPORATION,)
INDIANAPOLIS POWER & LIGHT COMPANY, MIDWEST)
NATURAL GAS CORPORATION, NORTHERN INDIANA)
PUBLIC SERVICE COMPANY, LLC, OHIO VALLEY GAS)
CORP. AND OHIO VALLEY GAS, INC., SOUTHERN INDIANA) CAUSE NO. 45377
GAS & ELECTRIC COMPANY D/B/A VECTREN ENERGY)
DELIVERY OF INDIANA, INC., AND SYCAMORE GAS)
COMPANYFOR (1) AUTHORITY FOR ALL JOINT)
PETITIONERS TO DEFER AS A REGULATORY ASSET)
CERTAIN INCREMENTAL EXPENSE INCREASES AND)
REVENUE REDUCTIONS OF THE UTILITY ATTRIBUTABLE)
TO COVID-19; AND (2) THE ESTABLISHMENT OF)
SUBDOCKETS FOR EACH JOINT PETITIONER IN WHICH)
EACH JOINT PETITIONER MAY ADDRESS REPAYMENT)
PROGRAMS FOR PAST DUE CUSTOMER ACCOUNTS,)
APPROVAL OF NEW BAD DEBT TRACKERS, AND/OR)
DETAILS CONCERNING THE FUTURE RECOVERY OF THE)
COVID-19 REGULATORY ASSET)

PETITION OF INDIANA OFFICE OF UTILITY)
CONSUMER COUNSELOR FOR GENERIC)
INVESTIGATION INTO COVID-19 IMPACTS)
TO BE CONDUCTED OVER TWO PHASES;)
EMERGENCY RELIEF PURSUANT TO IND.) CAUSE NO. 45380
CODE § 8-1-2-113 TO RELIEVE INDIANA)
RATEPAYERS OF THE THREAT OF UTILITY)
SERVICE DISCONNECTION AND PAYMENT)
ARREARAGES DURING GLOBAL HEALTH)
AND ECONOMIC CRISIS.)

LAPORTE COUNTY’S INITIAL RESPONSE TO PHASE 1 ISSUES

The **Board of Commissioners of LaPorte County**, Indiana ("LaPorte County"), by and through the undersigned counsel, files its initial responses and comments related to the Phase 1 requests of the Office of Utility Consumer Counselor ("OUCC") and Joint Utility Petitioners¹ for

¹ The following ten Indiana jurisdictional utilities comprise the entities referred to as the Joint Utility Petitioners: Duke Energy Indiana, LLC, Indiana Gas Company, Inc., Indiana Natural Gas Corporation, Indiana Michigan Power Company, Indianapolis

consideration by the Indiana Utility Regulatory Commission “(IURC” or “Commission”) of those issues set forth in the Commission’s May 27, 2020 Order.

In response, LaPorte County states as follows:

I. Background

In its May 27, 2020 Order the Commission asserts its jurisdiction over the issues raised in both the OUCC and Joint Utility Petitioners May 8, 2020 petitions² which have been consolidated in this docket. The Commission has bifurcated the proceedings into two phases. The May 27th Order identifies the issues and categories to be considered in the Phase 1 portion of the consolidated docket that should be discussed and addressed by the parties through a briefing process on the following two subtopics raised in the OUCC and/or Joint Utility Petitioners petitions:

A. Disconnections, Utility Fees, and Customer Payment Arrangements;

and

B. Regulatory Accounting.

The Commission’s Order indicates that the briefings received will allow for consideration of the issues and issuance of an Order on these matters prior to the current June 30, 2020 expiration of the executive disconnection moratorium³. In response, LaPorte County will first provide a general response and reaction to the relief sought by the Joint Utility Petitioners in their May 8, 2020 Petition which was filed in Cause No. 45377; and then provide its specific comments and response to the subtopic Order Paragraphs 3.A and 3.B categories as noted above.

Power & Light Company, Midwest Natural Gas Corporation, Northern Indiana Public Service Company, LLC, Ohio Valley Gas Corp. and Ohio Valley Gas, Inc., Southern Indiana Gas & Electric Co., and Sycamore Gas Company.

² On May 27, 2020 the OUCC filed its Amended Petition (“Amended Petition”) which expanded on the basis of the Commission’s jurisdiction and the potential scope of the proceedings. The Commission May 27, 2020 Order does not reference the OUCC Amended Petition and thus the extent to which the OUCC Amended Petition is or should be considered herein is unclear. Accordingly, the comments and response provided herein are based on the original May 8, 2020 OUCC Petition and relief requested therein and the categories identified in Paragraph 3 A. and B. of the Commission May 27, 2020 Order.

³ See Indiana Governor Holcomb’s Executive Order 20-28.

II. Overview

Indiana, like every other state in the United States is grappling with the unprecedented devastating circumstances resulting from the impacts of the coronavirus (COVID-19) pandemic that continues to threaten human health and safety and is causing widespread disruptions to the economy. Many states have already proactively found and determined that extraordinary action was warranted due to the across-the-board detrimental impacts of the COVID-19 pandemic. For example, in Wisconsin the Public Service Commission on March 24, 2020 issued a preliminary order that found, in part, as follows:

The Commission finds that the continued availability of and access to electric, gas, and water service in the home is essential for enabling residential utility customers to abide by guidelines issued by DHS and other public health agencies relating to personal hygiene and “social distancing” by remaining in the home to the fullest extent possible. Furthermore, the Commission finds that the economic impacts of social distancing and restrictions during the public health emergency may result in commercial operations being unable to afford the service needed for their continued operations, which would pose a risk to public health by impeding the availability of products and services. These economic impacts also place residential, commercial, industrial, and farm customers at risk of being unable to make payments and deposits that would otherwise be necessary in order to prevent disconnection, avoid the accumulation of late fees, and obtain needed reconnection. (WI PSC Order in Cause No. 5-UI-120, March 24, 2020, p. 3).

The observations, practical opinions and findings by the Wisconsin PSC are equally applicable to the circumstances we are experiencing here in Indiana.

Indiana is just now beginning to ease out from the necessary limitations and restrictions imposed under the series of Indiana Governor Holcomb's Executive Orders that were issued to curb the effects of this health crisis in an attempt to limit the spread of COVID-19 and save and protect life. Balanced against these practical governmental directives to protect the health and safety of its residents, there was also the recognition in the same series of Executive Orders of the need to maintain basic utility services and assure customers continued access to those services. During this tumultuous time, it is of utmost importance – where practical and possible, to maintain some semblance of stability by assisting Indiana residents and businesses alike with reasonable access to critical utility services especially as they were required to comply with stay-at-home directives and as we begin the process of reopening the economy.. All of these unprecedented events have led to a number of unique regulatory issues that have been raised or implicated in the two petitions that make up the present consolidated docket.

The Commission consolidated these two sets of petition requests into this combined docket and through its March 27, 2020 Order it created the Phase 1 portion requesting parties to file comments on the relief requested by the OUCC in its May 8, 2020 Petition. The Commission did specifically recognize that the scope of the regulatory accounting relief sought is broad, and thus suggested parties distinguish between the COVID-19 related expenses and the lost revenue due to load reductions as distinct requests to help provide the Commission with additional clarity. (See Order in Consolidated Cause Nos. 45377-45380, March 27, 2020, p. 4, n. 2). Accordingly, LaPorte County files the following general comments in Section III below related to the Joint Utility Parties' request for the lost revenue due to foregone expenses and for load reductions. As noted above, more specific comments on service disconnections, utility fees, and payment arrangements as well as the request for regulatory accounting authority for actual COVID-19 related expenses will be provided below under Section IV A & B

III. COVID-19 Related Expenses and Lost Revenue Recovery

A. Just because you can do something does not mean you should. The COVID-19 related expenses⁴ and lost revenue recovery relief sought by the Joint Utility Petitioners can arguably be said to fall within the more usual and typical parameters of the utility regulatory construct that we operate under in Indiana. But unquestionably that same regulatory construct was not designed to accommodate the extraordinary, far-reaching impacts that this COVID-19 pandemic has created. Just because you can ask for such regulatory relief does not mean you should. It is telling to note that during the Great Recession of 2008-09, many of the same Joint Utility Petitioner's weathered a very serious downturn in their revenues due to a significant recession and corresponding sizable unemployment levels and customer load and revenue declines. Yet even then, none of the Joint Utility Petitioners made any extraordinary filings or sought any unusual regulatory relief beyond typical rate proceedings.

In the instant situation, the Joint Utility Petitioners now seek to compound the suffering being placed upon Indiana residents and businesses by requesting the authority to collect lost revenues the utilities have suffered as a result of the pandemic. Adding insult to injury, most every one of the business customers and individuals served by these Utilities are confronted with similar challenges of their own lost revenues and added expenses and are trying to figure out how to survive. These business and residential customers have no regulatory safety net to be able to recover these unexpected costs or seek special treatment for adverse COVID-19 related impacts similar to what the regulated monopoly utilities now believe they have the right to request from the Commission. This regulatory "safety net" is not available to the average

⁴ The expenses addressed herein are those being sought by the Joint Utility Petitioners for the additional costs and expenses specifically related to the temporary procedures and needs because of the COVID-19 outbreak.

Indiana utility customer and should not be used now as a way to create an added tax or hurdle to the many Indiana residents and businesses trying now to restart their businesses and lives.

To maintain the proper perspective, the regulatory process is supposed to be the proxy for the competitive marketplace. (See Bonbright's *Principles of Public Utility Rates* (1961), p. 372). The entire economy is suffering through this uncertainty and has endured irreparable harms. Regulated utilities should not be given an unfair advantage through the regulatory process that other private sector businesses and entities do not have – especially at the expense of its customers and the very private sector business who do not have a similar governmentally provided safety nets. It is not only appropriate but essential for regulators to examine these particular self-serving utility lost revenue requests through the lens of the average utility customers who have to operate in competitive markets where they try to recover – *or not be able to recover*, their costs, including any added costs that result from the COVID-19 outbreak. As is often recognized in Indiana, regulated for-profit utilities are not guaranteed a profit or level of return, they are just provided an opportunity to achieve it. Accordingly, the relief Joint Utility Petitioners seek for alleged lost revenues due to declining sales and reduced load, as well as “foregone revenues” due to various waived fees should be denied.

B. Loss of Revenues. The devastating impacts of the COVID-19 pandemic has resulted in a significant number of losses over the last several months. The most significant of these losses are the real loss of human life. Hoosiers have also suffered the loss of personal liberties for the benefit of the greater good and protection of our friends and neighbors. Many have suffered job losses or business closures which have created immediate and longer-term financial uncertainty and instability. The entire list of losses that have or still may occur is yet to be fully understood or determined. To now add on to the long “List of Losses” a new category of “Lost Utility Revenues or Expenses” – as the Joint Utility Petitioners request the Commission to do, is

both greedy and offensive. Many across the country have encouraged one another by acknowledging that we will all get through this together. Apparently the 10 Utility Petitioners believe that we will get through this provided we make them whole including their lost revenues and expenses that they have incurred during the entirety of this pandemic.

C. FastPass Relief. Through the May 8, 2020 Petition, the Joint Utility Petitioners, like Disney FastPass holders, seek to step-to-the-front-of-the-line to not only obtain advance accounting treatment to seek special treatment in the future, but to also seek the authority to track and recover costs and expenses associated with the impacts of the COVID-19 virus including their lost revenues and expenses. The relief Joint Petitioners seek is, for the most part, a request for expedited findings allowing them to seek future recovery of alleged lost revenues due to declining sales and reduced load, *and* “foregone revenues” due to various waived⁵ fees. On a more practical side, the OUCC’s petition and request focuses on continuity of consumer services and a reasonable method to *later* address potential financial impacts of just those special customer connection and payment procedures as determined appropriate by the Commission. This would allow us all to *get through* these very difficult times and then later examine what if anything is needed and reasonable when times are better. This is no time to ask for and secure a special “FastPass” regulatory relief advantage.

We are all in this together and to survive we all must help one another out – our regulated utilities as well. If the individuals and businesses in the Joint Utility Petitioners’ respective service territories do not survive, then neither will these utilities. Heaping unnecessary, additional costs and burdens on utility customers that they themselves cannot recoup is like throwing an anchor to an already drowning customer. For all of the foregoing reasons the Joint

⁵ It should be noted that some Indiana utilities have voluntarily waived certain fees and likely will stand by such decisions to truly help out their customers in these difficult times. At this early stage of the proceedings it is not entirely clear which of the 10 Joint Utility Petitioners have initially claimed to “voluntarily” waive such fees, but now through this request seek to reverse course on those positions and attempt to obtain retroactive recovery.

Utility Petitioners' request for "FastPass" treatment and future recovery of alleged lost revenues due to declining sales and reduced load, as well as "foregone revenues" due to various waived fees must be summarily denied from the outset.

IV. Specific Responses

A. Disconnections, Utility Fees, and Customer Payment Arrangement

The Commission has been presented with two requests for how to address and balance the many issues the COVID-19 pandemic has created under our regulated utility paradigm. At the core of both requests is the desire to ensure that Indiana utilities have the basic resources, authorizations, and guidance to operate effectively and be able to continue to provide reasonably adequate service *at a reasonable price* to the residents and businesses of Indiana. This is a fundamental principle for ratemaking and utility regulation in Indiana. The challenge is how to best deal with the simultaneous impact the pandemic has had on most every utility *customer* across the State, through no fault of their own, who have been thrown into a situation of economic and financial crisis and uncertainty. Thus, extraordinary action and regulatory relief is both warranted and necessary for the protection of customers as well. The challenge therefore is balancing these competing needs of utilities and their customers and applying reasoned and practical judgment.

Some of the limited extraordinary financial requests by the Joint Utilities may make some sense at this early stage of the economic and financial stages of the pandemic, such as the delayed ratemaking treatment discussed further under Section IV(B) below. However, the additional burdens such relief will place on the households and businesses across the state will serve to provide additional stress to customers struggling right now. These same struggles are being felt by local governments who likewise have limited resources and are also utility customers and may need special considerations as well. Thus, extraordinary continuing action

and regulatory relief as outlined by the OUCC is both warranted and necessary for customers. There is no doubt that the Commission should and must exercise its authority to allow for special arrangements and protections for customers to ensure continued access utility services and to assist those struggling to pay their utility bills. Therefore, it is appropriate to establish reasonable qualifying parameters and continue to stay all utility service disconnections, waive the existing late fees, convenience fees, deposits, and reconnection fees, and expand the use of reasonable customer payment plans and arrangements to aid Indiana utility customers in need (herein after collectively referred to as COVID-related Customer Payment Programs, or “CCPP”).

B. Regulatory Accounting

Indiana currently has thousands of vulnerable households and businesses that are straining to stay afloat due to the present economic impacts and uncertainty caused by COVID-19. For both residential and business customers facing these combined unprecedented health and financial hardships there is an immediate need to address affordability and payment flexibility options to ensure they continue to have access to safe, reliable energy at reasonable rates. It is also vitally important to take a comprehensive approach to reviewing what has been made available through federal and state programs to the Joint Utilities to offset the economic impacts of the pandemic including what supplemental funding for energy and utility assistance programs that have been made available to help utility customers impacted by the COVID-19 crisis. The encouraging statement echoing across the county these days that “we will get through this crisis together by making sure we are looking out for each other” equally applies here as well. It is not unreasonable to grant these utilities a defined type of deferred accounting and tracking requirement of the added CCPP costs for customers who need such assistance, as well as the tracking of all CCPP costs already identified in the Commission’s May 27, 2020 Order to

determine the true, actual impacts to these utilities to be reviewed and scrutinized at some defined future point-in-time. However, it must be clear that the grant of any special regulatory treatment or deferred accounting authority does not contain any presumptions of reasonableness and the burden of proof remains on each utility to provide such evidentiary support if they seek to recover any such amounts through rates.

V. Conclusion

The Joint Utility Petitioners request for any current or future recovery of alleged lost revenues due to declining sales and reduced load, as well as “foregone revenues” due to various waived fees through a reasonable period determined by this Commission should be summarily denied. The Utilities should be required stay all utility service disconnections, waive the existing late fees, convenience fees, deposits, and reconnection fees, and expand the use of reasonable customer payment plans and arrangements to aid Indiana utility customers in need. Finally, the Commission should grant the utilities a defined type of deferred accounting and tracking requirement of the added costs of implementing the special CCPP payment and financing arrangements for customers who need such assistance provided there are no stated presumptions of reasonableness and a clear statement that the burden of proof remains on each utility to provide such sufficient evidentiary support if they seek to recovery any such CCPP customer related amounts through customer rates.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June 2020, a copy of LaPorte County's Phase 1 Response has been served via electronic mail delivery to the following counsel of record:

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