

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)
COMPANY FOR (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 REPLY

TO PHASE 1 ISSUES

The Board of Commissioners of LaPorte County, Indiana ("LaPorte County"), by and through the undersigned counsel, files its Reply to certain of the responses filed by others related to the Phase 1 issues set forth in the Indiana Utility Regulatory Commission’s (“IURC” or

“Commission”) May 27, 2020 Order, Paragraph 3. The fact that the following Reply comments address only limited statements, issues, or positions should not be interpreted or considered support or agreement by LaPorte County with other positions, statements, or assertions made by any Joint Utility Petitioner or any other filing entity in this proceeding.

I. OUCC’s Request for Customer Assistance

Like most of the parties and even many non-participating utilities¹, municipal and non-profit entities who have filed comments in this docket, LaPorte County likewise sees merit and a desperate need for the customer assistance relief requested by the OUCC and the issuance of an order from this Commission to identify and ensure reasonable and appropriate protections and parameters are followed. With continuing high unemployment and financially stressed households and business throughout the state, extending the disconnection moratorium, waiving the specified fees, and creating a basic obligation that utilities must make available and use expanded payment arrangements to assist customers through these difficult times, are all reasonable and appropriate steps to help assist Indiana customers impacted financially by the COVID-19 Pandemic.

The Joint Utility Petitioners note in their June 10, 2020 Response Comments that:

“...Joint Utilities are agreeable to staying residential utility disconnections for nonpayment (beyond the Executive Orders); waiving on a prospective basis, for residential customers, late fees, convenience fees (including credit/debit card fees), and reconnection fees; and offering extended residential customer payment arrangements.”

(at 4).

¹ See, for example, the June 15, 2020 Submission by: the Citizens Energy Group Jurisdictional Utilities; Joint Municipal and Non-Profit Utility Respondents June 10, 2020 comments, p. 3-4; and several smaller, non-participating utilities.

This seemingly benevolent statement was, however, made with three key caveats: (1) that these measure only apply to residential customers; (2) that it be done "...within certain reasonable and well-defined parameters..."; and (3) most critically and greedily that these "...utilities should be made whole for staying utility disconnects and waiving such fees..." (emphasis added) (*Id.*)

This self-serving utility proposal flies in the face of the very type of fair and balanced approach the Commission must employ under these extraordinary circumstances as suggested by LaPorte County in its June 10, 2020 Response comments. More directly, just because you can ask for such regulatory relief does not mean you should; and these regulated utilities should not be granted an unfair advantage through the regulatory process that suffering residential customers and private sector businesses do not have. Every filing made in this docket has in some way recognized that this COVID-19 Pandemic has caused irreparable harm across the board – through no fault of anyone, utility and its customers alike. This is no time to seek and attempt to secure a special guaranteed "make whole" utility "FastPass" regulatory relief advantage.

Furthermore, this make the utilities "whole" request is at odds with past regulatory practice and policy. As noted in our initial comments and further supported in the Indiana Industrial Group ("IIG") June 10, 2020 Brief, these utilities are not guaranteed a return or profit under Indiana's regulatory construct and the "...provision of utility service is not supposed to be a risk-free venture." See IIG Brief, at 13. "Utilities are regulated in order to protect the consumers from the abuses of monopoly i.e. artificially high prices." *Northern Indiana Public Service Co. v. Citizens Action Coalition*, 548 N.E.2d 153, 159 (Ind. 1989). Our courts have addressed these types of "make whole" provisions when monopoly utilities seek to over-reach and demand unreasonable and unfair regulatory advantage. As succinctly stated by IIG in its Brief: "...it is not the purpose of regulation to compel consumers to act as insurers against risk of

loss by a utility.” See *Indiana Gas Co. v. Office of Utility Consumer Counselor*, 675 N.E.2d 739, 744 (Ind. App.), transfer denied, 690 N.E.2d 1180 (Ind. 1997) (holding it is “untenable” to “put ratepayers in the position of being insurers”); *CAC*, 485 N.E.2d at 615 (holding consumers cannot “be required to act in aid and support of the utility as an insurer of the investor’s risk”). Accordingly, this entitlement attitude by the Joint Utility Petitioners believing they should somehow be made “whole” as a condition to reasonable customer assistance initiative must be quashed from the outset.

II. Regulatory Accounting.

LaPorte County reiterates its general response and reaction to the lost revenue relief sought by the Joint Utility Petitioners discussed in our June 10, 2020 filing. It is of critical important to continue to ensure and maintain some stability by assisting Indiana residents and businesses through reasonable regulatory relief and steps, without forcing those same struggling customers to effectively write these self-interested utilities “regulatory IOUs” for vaguely described and unclear amounts of expenses *allegedly* incurred as a result of COVID-19 pandemic. As properly pointed out by IIG in its Brief, granting such deferred regulatory accounting treatment is both premature and, with the evidence presented to-date, is wholly inappropriate. This is hypothetical ratemaking at its worst which is unquestionably prohibited under Indiana law. LaPorte County joins in those positions, arguments and practical reasoning set forth in IIG’s June 10, 2020 Brief related to the Commission’s Phase 1 Order Section 3(B). These costs are not yet fixed, fully known or completely measurable – the standards upon which appropriate ratemaking is founded. Further, there are several utilities² who have indicated they do not intend to pursue these types of costs at this time. Finally, there are also offsetting utility

² See Footnote 1, above.

cost savings that likely have or should have decreased over the same time-period. Only when those actual additional costs *and* additional savings become appropriately fixed, known and properly measurable can an adequate review be made to determine the reasonableness, prudence and need for expending such costs – including what steps were taken to mitigate other practical expenses – i.e. management actions and prudence, over the same effected period of time. Accordingly, LaPorte County agrees that any limited relief granted, based on this thin record should: “(1) have a clear picture of the monetary scope of the request; (2) establish clear criteria as costs that may, or may not, be included; and (3) ensure that the costs included in the request are reasonable as to their size, impact on future customers, and subject to a clear connection to the COVID-19 Pandemic.” (IIG Brief, at 27-28). It also 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 *must* remain on each utility seeking recovery to provide sufficient evidentiary support.

III. Conclusion

LaPorte County reiterates that 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. Further, the Utilities should be required to reasonably extend the stay of all utility service disconnections, waive 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, as outlined herein above, the Commission should only grant the requesting Joint Utility Petitioners a limited scope of deferred accounting and the concurrent tracking requirement of any claimed added costs of implementing the customer assistance programs provided, however, 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 later seek to recovery any such Commission identified amounts through customer rates.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2020, a copy of LaPorte County's Phase 1 Reply has been served via electronic mail delivery to the following counsel of record:

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