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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA-AMERICAN WATER)
COMPANY, INC. ("INDIANA AMERICAN") FOR (1))
APPROVAL OF ITS LEAD SERVICE LINE PLAN) CAUSE NO. 45043
PURSUANT TO IND. CODE CHAP. 8-1-31.6 AND (2))
APPROVAL OF ASSOCIATED CHANGES TO) APPROVED: OCT 08 2019
INDIANA AMERICAN'S RULES AND REGULATIONS)
FOR WATER SERVICE.)

ORDER OF THE COMMISSION ON RECONSIDERATION

Presiding Officers:

Sarah E. Freeman, Commissioner

David E. Veleta, Senior Administrative Law Judge

On July 25, 2018, the Indiana Utility Regulatory Commission ("Commission") issued its Order in the above Cause. The Indiana Office of Utility Consumer Counselor ("OUCC") appealed, and on May 10, 2019, the Court of Appeals reversed the Commission's Order and remanded to the Commission. The Court of Appeals held "that the License Agreement and Indemnity Clause were part of the Plan submitted by Indiana-American that, accordingly, the IURC must either approve or disapprove the License Agreement and Indemnity Clause." The Commission issued its Order on Remand on August 7, 2019.

On August 27, 2019, the OUCC filed its *Petition for Reconsideration of Order on Remand* ("Petition for Reconsideration"). The OUCC takes issue with the Commission finding that Indiana American's Indemnification Clause is reasonable under the circumstances. The OUCC argues that Indiana American's Indemnification Clause is transferring an unknown level of risk to its individual customers. The OUCC suggests that the Indemnification Clause is similar to a construction or design contract such as those subject to Ind. Code § 26-2-5-1. The OUCC notes that indemnification provisions in a construction or design contract are declared void by statute. Further, the OUCC argues that there is no evidence in the record to support the Commission's conclusion that Indiana American would choose not to replace customer owned lead service lines if it does not have an indemnification provision that protects its own acts and omissions. Additionally, the OUCC took issue with the Commission's finding that reasonableness extends to future changes to the Indemnification Clause that contain substantially similar language.

On September 4, 2019, Indiana-American Water Company, Inc. ("Indiana American") filed its Response to OUCC's *Petition for Reconsideration of Order on Remand*. Indiana American argues that the Indemnification Clause is not similar to construction or design contract in that Indiana American is proposing to pay the cost of the customer's lead service line replacement as well as offer a limited warranty. Customers are free to refuse to have Indiana American replace the lead service line at Indiana American's cost. Indiana American argues that the allocation of risk under the Indemnification Clause is reasonable and is not the same as that intended to be prevented by the language of Ind. Code § 26-2-5-1. Additionally, Indiana American argues that the OUCC is attempting to add additional layers of process to the replacement of customers' lead service lines.

On September 11, 2019, the OUCC submitted its Reply.

The agreement between Indiana American and its customers is voluntarily negotiated between the two parties, and the customer is not bound to accept the agreement. Furthermore, if the customer does agree to participate, the customers will get thousands of dollars of work and a 12-month warranty to replace an unsafe service line, in exchange for agreeing not to sue Indiana American for replacing the line. Indiana American has no responsibility for customer owned property. In order for Indiana American to take on this new responsibility, and to assist the State in achieving its health based policy, it is necessary for Indiana American to be indemnified. Thus, we find it is a reasonable trade off that in exchange for the thousands of dollars of work that certain Indiana American customers will receive, that the customers receiving the benefit, would indemnify Indiana American.

Accordingly, the OUCC's Petition for Reconsideration is denied.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The OUCC's Petition for Reconsideration is denied.
2. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: OCT 08 2019

**I hereby certify that the above is a true
and correct copy of the Order as approved.**


Mary M. Becerra
Secretary of the Commission