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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF)
DUKE ENERGY INDIANA, LLC AGAINST THE)
TOWN OF AVON, INDIANA CONCERNING A)
DETERMINATION BY THE TOWN OF AVON,)
INDIANA, AVON TOWN ORDINANCE 2015-03)
AND REQUEST FOR RELOCATION OF DUKE)
ENERGY INDIANA'S FACILITIES)

CAUSE NO. 44804

APPROVED: MAR 15 2017

DISMISSAL ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On June 24, 2016, Duke Energy Indiana, LLC ("Duke") filed its Verified Complaint ("Complaint") with the Indiana Utility Regulatory Commission ("Commission") seeking certain determinations from the Commission with respect to the reasonableness of Avon Town Ordinance 2015-03 and the responsibility of relocation expenses associated with Duke's facilities. In its Complaint, Duke stated that the Respondent Town of Avon, Indiana ("Town") had filed its own complaint for declaratory and injunctive relief in Hendricks County ("the Hendricks County Action") on May 23, 2016. The Town's request for relief involves a request for the determination of rights and obligations of Duke and the Town pursuant to Indiana law and Ordinance 2015-03.

On August 2, 2016, the Presiding Officers ordered Duke to file a status report with the Commission concerning the Hendricks County Action on or before December 1, 2016. On August 10, 2016, Duke filed a Motion for Attorneys' Conference ("Motion") and argued that Ind. Code § 8-1-2-101 requires the Commission to hold a hearing on Duke's Complaint. The Town filed its response on August 18, 2016, and Duke filed its reply on August 29, 2016.

On September 30, 2016, the Presiding Officers issued a second Docket Entry reiterating that a hearing before the Commission would not be appropriate because the Hendricks County Action, which included the complaint for declaratory relief, was pending in Hendricks County trial court prior to Duke's initiation of this Cause and that Duke shall update the Commission on the status of the Hendricks County Action on or before December 1, 2016. On October 11, 2016, Duke appealed the September 30, 2016 Docket Entry to the full Commission. On December 1, 2016, Duke filed a status report on the Hendricks County Action stating that there has been "no determination and no trial date set for the remaining issue of which party is responsible for the costs of the relocation."

On February 16, 2017, the Presiding Officers issued a Docket Entry indicating the Commission's intent to dismiss this Cause based on inactivity.

The legality of Avon Town Ordinance 2015-03 is the subject of the Hendricks County Action, and as such, Commission involvement in a pending trial court matter would be inappropriate. Accordingly, we affirm the Presiding Officers' September 30, 2016 Docket Entry. Further, absent an agreement between Duke and the Town, subject to the trial court's approval, to forego further proceedings related to the Town's request for declaratory relief and to transfer the matter to the Commission, it is unnecessary to maintain this Cause on the Commission's docket. Accordingly, this Cause is dismissed without prejudice.

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

1. Cause No. 44804, initiated by the Complaint filed on June 24, 2016, is hereby dismissed without prejudice.
2. This Order shall be effective on and after the date of its approval.

ATTERHOLT, HUSTON, WEBER, AND ZIEGNER CONCUR; FREEMAN ABSENT:

APPROVED: MAR 15 2017

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



Mary M. Becerra
Secretary of the Commission