

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**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)**

**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 GAS & ELECTRIC COMPANY D/B/A)
VECTREN ENERGY DELIVERY OF INDIANA,)
INC., AND SYCAMORE GAS COMPANY FOR)
(1) AUTHORITY FOR ALL JOINT PETITIONERS) **CAUSE NO. 45377**
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 SUB-)
DOCKETS 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)**

**JOINT MUNICIPAL AND NON-PROFIT UTILITY GROUP'S REPLY TO CITIZEN
ACTION COALITION, INDIANA COMMUNITY ACTION ASSOCIATION AND
SIERRA CLUB'S JUNE 10, 2020 RESPONSES**

The Joint Municipal and Non-Profit Utilities ("Non-Profit Respondents") by counsel, reply to the June 10, 2020 Responses of the Citizen Action Coalition ("CAC"), Indiana Community Action Association ("INCAA") and Sierra Club (together, the "Consumer Group") as follows:

1. The Consumer Group improperly paints "all utilities" with a broad brush, which fails to recognize the jurisdictional limits on the Commission's authority over the Non-Profit Respondents and their distinct regulatory paradigm. As discussed in detail in the Non-Profit Respondents Petition to Intervene and Motion for Alternative Relief, the Commission has limited jurisdiction over municipalities, which does not include the ability to prescribe these utilities' terms and conditions of service (such as policies related to disconnections, reconnections, payment arrangements and the waiver of fees). Thus, the Non-Profit Respondents reiterate their position that, as to municipal utilities, the Commission lacks the statutory basis to order the broad relief that the Consumer Group requests for "all jurisdictional utilities." Accordingly, the Commission should reject the Consumer Group's proposals as they apply to the Non-Profit Respondents.

2. Even if the Commission had jurisdiction to regulate the rules and regulations of the Non-Profit Respondents (which it does not), the Consumer Group's proposal is unreasonable, unnecessary, and unduly burdensome as applied to the Non-Profit Respondents.

3. Among other things, the Consumer Group proposes: (a) to continue the moratorium indefinitely; (b) that all customers have access to default 18-month deferred payment arrangement (24-months for low-income customers); (c) a complete waiver all late fees, penalties, and deposits regardless of circumstance; and (d) the cessation of all collections activity and credit reporting. The Consumer Group also asks that the Commission order all utilities to "reach back" and attempt to reconnect customers who were disconnected prior to the moratorium in March, whose reasons for disconnection likely had nothing at all to do with the later economic impacts of the pandemic.

These proposals will be harmful to the Non-Profit Respondents, who are subject to a different regulatory scheme than investor-owned utilities and operate on a smaller scale with significantly fewer financial resources both in terms of rate base and access to capital. The Consumer Group's proposals go much farther than the Governor's Executive Orders ever did, even at the height of the COVID-19 pandemic. This is the wrong public policy direction, given that the State of Indiana is progressing well and in the midst of the fourth of five stages of reopening.

4. The Non-Profit Respondents are appropriately adjusting their disconnection, deposit and late fee policies as needed to address the requests of customers with demonstrated financial needs while upholding their obligation to collect sufficient authorized revenues to furnish reasonably adequate service to all customers. The Non-Profit Respondents established their net revenue requirement in recognition that they will be able to eventually disconnect customers who do not pay (or make any reasonable arrangement to pay) for service, receive deposits and late fees, and allow customers to enter into payment arrangements with reasonable terms. If the moratorium is extended and these fees are waived indefinitely, then by definition, the Non-Profit Respondents will not meet their Commission-approved revenue requirements and, absent other offsets, will not have sufficient funds to operate and maintain their systems as originally intended. Also, some of the Non-Profit Respondents are experiencing a reduced load, which will further put revenue pressure on the utilities.

5. Unlike investor-owned utilities, ratepayers elect the leaders of the Non-Profit Respondents, and the Indiana General Assembly has entrusted the Non-Profit Respondents to properly balance and apply their rules to protect the interests of vulnerable customers while maintaining the financial integrity of the utility. As applied to the Non-Profit Respondents, the

Consumer Group's requested relief exceeds the Commission's authority and could very well result in the Non-Profit Respondents having insufficient revenue to maintain safe and reliable service.

6. The Commission should also reject the Consumer Group's broad and burdensome request that the Non-Profit Respondents collect and report extensive data to the Commission on an indefinite basis, and as frequently as weekly. Unlike the investor-owned utilities, the Non-Profit Respondents do not have staff whose full-time jobs are dedicated to regulatory compliance and reporting. In order to respond to these data requests, the relatively small staffs of the Non-Profit Respondents would have to step away from their normal duties, thereby adding operational expense to maintain and file all of the proposed reporting requirements. This is overly burdensome, particularly given these utilities have not sought any relief in this proceeding at all, and have already indicated the desire to work with their customers to avoid disconnection and keep them eligible for continued service.

7. Unlike the investor-owned utilities, none of the Non-Profit Respondents have requested ratemaking treatment in this proceeding. Should they later determine to do so, they reserve the right to include a request in a subsequent proceeding, including but not limited to a base rate case.

8. Should the Commission determine that it has jurisdiction to apply any of the Consumer Group's proposals to the Non-Profit Respondents, the Commission should not order any relief in the absence of sworn testimony and an evidentiary hearing that includes an opportunity for cross-examination. The Consumer Group argues that there is "no evidence to support ending the disconnection moratorium, the required waiver of certain utility fees, or the availability of expanded customer payment arrangements at this time or any set date in the near future." Response at 3. While the Non-Profit Respondents disagree with this characterization, it

is correct in one respect— there has not been sufficient due process in this proceeding for the Commission to determine whether and to what extent any evidence supports an Order granting relief. It is important to recognize that bad public policy created in a rush can do more harm than good. This consolidated proceeding has not, thus far, been handled in a traditional manner by the Commission. *Mathews v. Eldridge* is commonly cited by the Indiana Supreme Court as the “gold standard” for determining appropriate administrative procedural due process. 424 U.S. 319 (1976). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Many of the comments submitted were not in the form of sworn testimony, no party has submitted a traditional prefiled "case in chief", there is no hearing presently calendared in this proceeding, and as a result, there has been no opportunity for cross-examination. While the Commission has some flexibility in times of emergency under IC 8-1-2-113, it is unclear whether a true regulatory emergency exists here for all aspects of the relief being requested. What the Consumer Group did successfully show is that most state regulatory commissions are not providing the type of swift and comprehensive regulatory relief that the Joint Utility Petitioners and the Office of the Utility Consumer Counselor are requesting. Should the Commission decline to dismiss the Consumer Group’s requested relief as applied to the Non-Profit Respondents, the Commission should decline the Consumer Group’s invitation to hastily address all of these issues without affording appropriate due process for all parties.

WHEREFORE, the Non-Profit Respondents respectfully request that the Commission reject the Consumer Group’s proposals as applied to the Non-Profit Respondents and for all other appropriate relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by electronic transmission, this 18th day of June, 2020, upon:

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