FILED
July 15, 2020
INDIANA UTILITY
REGULATORY COMMISSION

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 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	**CAUSE NO. 45377** **(Consolidated under Cause No. 45380)**
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. 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	**CAUSE NO. 45380**

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S JULY 15, 2020 RESPONSE TO COMMISSION'S INFORMATION REQUEST

Pursuant to Paragraph 4 of the Indiana Utility Regulatory Commission's ("Commission") May 27, 2020 Order in consolidated Cause Nos. 45380/45377, the Indiana Office of Utility Consumer Counselor ("OUCC"), by counsel, submits this Response ("July 15 Response") to the Commission's information request in this Cause.

I. INTRODUCTION

The Commission requested the Joint Utility Petitioners, the OUCC, and any other party wishing to do so, provide four specific responses to requests for information, enumerated below, as well as "any other information they believe would be helpful to our consideration of the issues." (Cause No. 45380/45377, May 27, 2020, Order at 4.) At the outset, the OUCC notes that the items detailed in this Response are not and cannot be exhaustive; no discovery in this Cause has been issued or responded to, and the issues present in this Cause are constantly developing and evolving. The OUCC reserves the right to address potential cost savings and revenues issues within the utility-specific sub-dockets contemplated in the Commission's Phase 2 of this investigation.

II. COMMISSION INFORMATION REQUESTS

A. Programs Intended to Assist Utility Customers in the Payment of Utility Bills

The Commission's May 27, 2020 Order requested that the OUCC provide "a description of any federal or state legislation as well as any government, government-funded, or community programs that are intended to assist utility customers in the payment of utility bills. Include the classes of customers affected and an analysis of any impact on utility bill payments."

The OUCC's Response focuses on government-funded programs; community programs, which could exist in a less formal manner are thus more difficult to identify. The first such government program is related to funding for low income customers to pay their energy utility bills.

Among other things, Title VIII of the CARES Act provides additional appropriations for Administration for Children and Families for Low Income Home Energy Assistance ("LIHEAP"). (Pub. L. No. 116-136 (Mar. 27, 2020.)) The supplemental gross combined release to Indiana under this Act was $16,991,924.[1] The Indiana Housing and Community Development Authority administers LIHEAP through its Energy Assistance Program ("EAP"), and the deadline for applications has been extended to July 31, 2020.[2]

The CARES Act Title II–Assistance for American Workers, Families, and Businesses Subtitle B, Sec.6428.2020 Recovery Rebates for Individuals allows for a one-time tax credit of $1,200 for individuals and $2,400 for those filing joint returns, plus $500 per qualifying child. (Pub. L. No. 116-136 (Mar. 27, 2020.)) Once an individual's adjusted gross income exceeds $75,000 ($112,500 for head of household and $150,000 for joint returns), the rebate is reduced by five percent. (*Id.*) On April 20, 2020, the Indiana Supreme Court published an order for emergency rulemaking that said that creditors shall not hold, attach, or garnish funds from the CARES Act recovery rebates, with the exception of child support payments. (In re: Petition to the Indiana Supreme Court to Engage in Emergency Rulemaking to Protect CARES Act Stimulus Payments from Attachment or Garnishment from Creditors, 20S-MS-258 and 20S-CB-123 (Apr. 20, 2020.)) The average credit under this program in Indiana was $1,768.[3]

A second government program pertains to small business funding. Small businesses in Indiana may be eligible for assistance through Title I: Keeping American Workers Paid and Employed Act of the CARES Act, which "provides emergency economic relief for small businesses to meet their payroll and expenses and to receive education and assistance throughout the COVID-19 pandemic" through expanded access to the Small Business Administration's ("SBA") Paycheck Protection Program ("PPP"). (Pub. L. No. 116-136 (Mar. 27, 2020)) Section 1102 expanded

[1] Office of Community Services, LIHEAP-DCL-2020-10, CARES Act Supplemental FY 2020 LIHEAP Funding Release (May 8, 2020), Attachment 1: FY2020 Supplemental Funding Release of LIHEAP Block Grant Funds to States and Territories.
[2] IHCDA, Low Income Home Energy Assistance Program (LIHEAP), https://www.in.gov/ihcda/4067.htm.
[3] https://www.cnbc.com/2020/05/22/this-is-the-average-coronavirus-stimulus-payment-in-your-state.html.

eligibility for PPP loans beyond the current definitions of small businesses to include "any business, nonprofit organization, veterans organization, or tribal business [that] employs fewer than 500 employees or the applicable SBA size standard for the relevant industry. In addition, individuals who operate as sole proprietors or independent contractors, as well as certain self-employed individuals, are eligible[.]" Section 1106 states that PPP loan recipients are eligible for forgiveness for "payroll costs and payments of interest on mortgage obligations, rent, or utilities during the eight-week period" of the loan.

The Small Business Administration Disaster Loans Program Account received two increases in funding as a result of the COVID-19 pandemic. Funding for this program was increased by $20,000,000 in Title II of the Coronavirus Preparedness and Response Supplemental Appropriations Act Title II which increased funding for SBA Economic Injury Disaster Loans ("EIDL"). (Pub. L. 116-123 (Mar. 6, 2020.)) Funding for the EIDL was also increased in Title I, Sec. 1110(e)(7) of the CARES Act by $10,000,000,000. This loan program was made available to Indiana small businesses or non-profits for up to $2 million per qualifying applicant. The EIDL can be "used to pay fixed debts, payroll, accounts payable, and other bills that can't be paid because of the disaster's impact."[4]

B. Programs Designed to Assist Utilities in Their Ongoing Operations and Obligations

The Commission's May 27, 2020 Order requested the OUCC provide "a description of any federal legislation and government, government-funded, or community programs that are designed to assist utilities in their ongoing operations and obligations under the current COVID-19 pandemic." The OUCC has identified existing government and community programs that are

---

[4] SBA, COVID-19 Indiana Disaster Declaration Declared: Frequently Asked Questions (Mar. 19, 2020.)

responsive to the Commission's information request; however, utilities are in the best position to know about these programs.

The OUCC is aware that the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, enacted on March 27, 2020, accelerated the return of receivable income tax under the Tax Cuts and Jobs Act of 2017 ("TCJA"), allowing eligible companies to claim credits for either 2018 or 2019. As referenced in the OUCC's June 10 Response in this Cause, it was reported in March that Duke's parent company received $572 million in such credits.[5] The OUCC expects other Indiana utilities are eligible for such income tax credits and may have received them.

Further, Title IV: Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy of the CARES Act provides for loans to be made to "businesses critical to maintaining national security," which could include utilities. The definition of an Approved Program under 15 CFR § 700.8 includes programs determined necessary by "the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of […] Executive Order 13603." Executive Order 13603: National Defense Resources Preparedness Sec. 202(b) states that the Secretary of Energy may determine programs to promote the national defense "with respect to energy production and construction, distribution and use, and directly related activities." (Mar. 16, 2012.) The United States Senate Committee on Banking, Housing, and Urban Affairs reported that $17 billion would be made available to businesses critical to maintaining national security.[6]

Smaller Indiana utilities may also be eligible for assistance through Title I: Keeping American

---

[5] https://www.utilitydive.com/news/duke-ceo-decries-assault-on-natural-gas-as-shareholders-others-blast-com/577815/

[6] CARES Act, Title IV Summary (Prepared by Majority Staff), United States Senate Committee on Banking, Housing, and Urban Affairs (March 27, 2020), https://www.banking.senate.gov/newsroom/press/cares-act-title-iv-summary.

Workers Paid and Employed Act of the CARES Act, which "provides emergency economic relief for small businesses to meet their payroll and expenses and to receive education and assistance throughout the COVID-19 pandemic" through expanded access to the Small Business Administration's ("SBA") Paycheck Protection Program ("PPP"). Within the utility industry, businesses were eligible to apply for PPP loans if their numbers of employees were below the applicable threshold. The size standard for Fossil Fuel Electric Power Generation is 750 employees, and the size standard for Electric Power Distribution is 1,000 employees.[7] Within Indiana, 67,747 PPP loans totaling $9,551,448,752 have been issued.[8]

Eligible utilities may also be able to take advantage of the SBA Economic Injury Disaster Loans ("EIDL") through the Small Business Administration Disaster Loans Program Account discussed above. This program received two increases in funding as a result of the COVID-19 pandemic. Funding for this program was increased by $20,000,000 in Title II of the Coronavirus Preparedness and Response Supplemental Appropriations Act Title II which increased funding for SBA Economic Injury Disaster Loans ("EIDL"). (Pub. L. 116-123 (Mar. 6, 2020.)) Funding for the EIDL was also increased in Title I, Sec. 1110(e)(7) of the CARES Act by $10,000,000,000. This loan program was made available to Indiana small businesses or non-profits for up to $2 million per qualifying applicant. The EIDL can be "used to pay fixed debts, payroll, accounts payable, and other bills that can't be paid because of the disaster's impact."[9]

C. Actual and/or Potential Cost Savings Associated with COVID-19 Impacts

The Commission's May 27, 2020 Order requested the OUCC provide "actual and/or potential

[7] Morgan Lewis, CARES Act: Key Takeaways for Energy Companies, JDSupra (Apr. 3, 2020), https://www.jdsupra.com/legalnews/cares-act-key-takeaways-for-energy-78680/.

[8] https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sbas-great-lakes-region-has-nearly-308000-loans-totaling-228-billion-approved-paycheck-protection

[9] SBA, COVID-19 Indiana Disaster Declaration Declared: Frequently Asked Questions (Mar. 19, 2020.)

cost savings associated with the impacts due to COVID-19." As only the utilities can quantify "actual" cost savings experienced due to COVID-19, the OUCC can offer only areas of potential cost savings at this time. Recent announced increases in utility dividends indicate Indiana utilities continue to remain confident in their financial health.[10]

Some potential cost savings should be automatically passed back to customers through various tracker proceedings. For example, cost savings through reduced fuel costs are passed back to customers through the Fuel Adjustment Clause ("FAC") and Gas Cost Adjustment ("GCA") with each filing through variance calculations. It should be noted that the delay in implementing an FAC or GCA credit as a result of reduced fuel costs provides a source of utility working capital.

The Commission should expect utilities will evaluate or act upon potential opportunities for refinancing existing debt due to historically low interest rates brought on by the Federal Reserve's response to the COVID-19 pandemic. Utility filings should discuss these evaluations and utility decisions to refinance or not. Between rate cases, consumers benefit from debt refinancing only in small part through adjustments to the weighted cost of capital in tracker proceedings; the bulk of such benefits accrue to the utility until its next base rate case. Thus to the extent utilities are obtaining extraordinary relief related to the pandemic, the Commission must not only ensure that utilities have evaluated opportunities for refinancing debt but also account for these utility savings as an offset to increased COVID-related costs.[11]

Indiana utilities could also reduce costs by delaying or deferring capital projects not necessary

---

[10] Duke North America, https://finance.yahoo.com/news/duke-energy-announces-dividend-payments-164500907.html and American Water, https://ir.amwater.com/financial-release/2665.

[11] Duke Energy Indiana (Cause No. 45147) and Vectren South (Cause No. 45170) have submitted compliance reports. Duke's report, filed on March 26, 2020, states that it issued $550 million in debt at 2.750% to replace a prior $500 million issuance at 3.75% due on July 15, 2020. Vectren South's report in Cause No. 45170, filed on May 6, 2020, states that it issued $175 million at 3.92% to replace a prior $100 million issuance at 6.28%. The OUCC expects these refinancings would result in reduced interest expense than the revenue requirement set in each utility's base rates.

for the immediate reliability or safety of its system. Utility filings in Phase 2 should detail how utilities have evaluated contracts and projects for deferral in order to save costs without harming their service quality. Many utility TDSIC projects are intended to address long-term upgrades to utility infrastructure instead of immediate reliability needs and thus represent prime candidates for deferral.

In addition to the above, the OUCC offers the following list of potential O&M savings it expects each utility intending to seek relief in Phase 2 to examine and pursue as applicable:

a. If utility parent company has reduced O&M spending, allocation of overhead costs to the regulated Indiana utility should be reduced commensurately[12];
b. If self-insured, reduced employee insurance expenses due to shutdown of non-essential medical services;
c. Reduced car insurance premiums due to reduced vehicle usage;
d. Savings due to reduced use of fleet vehicles;
e. Reduced travel expenses to conferences/trade events that have been cancelled due to COVID-19 risk;
f. Reduced usage of office space, savings on utility costs/office supplies;
g. Reduced incentive pay or employee bonuses to reflect current economic circumstances;
h. Savings yet to be determined or revealed based on the specific opportunities at each of utility.

D. Actual and/or Potential External Sources of Revenue that May Provide Reimbursement for COVID-19 Expenses

The Commission's May 27, 2020 Order requested that the OUCC provide "actual and/or potential external sources of revenue that may provide reimbursement for COVID-19-related expenses." As noted above, only the utilities can quantify "actual" external revenue sources that have provided reimbursement for COVID-19-related expenses, as the OUCC does not have direct access to that kind of utility-specific data. Therefore, the discussion below focuses on potential

[12] Recent earnings calls indicate that AEP plans to reduce expenses by $100 million; AES by $50 million; CenterPoint by $40 million; Duke by $350-450 million. No discussion on American Water or NiSource earnings calls regarding operating company cost savings.

sources of external revenue that may provide reimbursement to utilities for COVID-19 related expenses.

For electric utilities, reduced kWh sales might, for some utilities, result in large oversupply of coal, resulting in higher fuel costs through either the cost of storage or uneconomic commitment and dispatch of generating units. To mitigate these efforts, utilities should closely examine the extent to which the COVID-19 pandemic constitutes a force majeure event under its existing coal contracts, and pursue remedies to reduce its contractual obligations to purchase coal at pre-determined amounts based on pre-COVID-19 levels of demand. Because fuel costs are passed on to the customer, utilities do not have sufficient economic incentive to challenge such contract language. Thus, regulatory oversight is needed concerning utility determinations pertaining to force majeure provisions in their fuel supply contracts.

In addition to the above, the OUCC offers the following list of potential sources of external revenue it expects each utility intending to seek relief in Phase 2 to examine and pursue as applicable:

a. For water utilities, potential increases in residential water usage may lead to increased purchases from wholesale customers;
b. While the moratorium on disconnections for non-payment leads to increased incremental bad debt expense, the effect of such a moratorium on increased sales should also be recognized. Absent the disconnection moratorium, customers in arrears would not be receiving utility service. Thus, utilities are making continued sales, which they may collect on in the future;
c. Proceeds from Business Interruption Insurance;
d. Any as-yet-to-be-determined legislative action or federal grants designed to reimburse utilities for COVID 19 related expenses. If resulting in double recovery, dollars received should be returned to customers.

III. OTHER INFORMATION FOR COMMISSION CONSIDERATION

In addition to the items enumerated above, the Commission's May 27, 2020 Order requested that the OUCC offer "any other information they believe would be helpful to our consideration of the issues." The discussion below responds to this request:

A. DSM Program Lost Revenue

Directives to electric utilities for recording DSM-related data is necessary to prevent future double-counting related to reduced sales during the pandemic. Indiana electric utilities should be directed to record customer-specific data concerning DSM measures incentivized or directly installed for commercial/industrial customers beginning January 1, 2020 and thereafter. These customers should be verified at the end of each year thereafter to determine whether the customers are still active, and the DSM measures are still producing savings. If not, the lost revenues associated with those customers should be removed from recovery of lost revenues in future DSM tracker proceedings.

B. Cause No. 45380 Monthly Utility Reports

If a utility submitting a monthly report has combined gas and electric operations, it should, to the extent possible, identify the information requested by the Commission in its May 27, 2020 Order for its gas and electric operations separately. Comingling data obscures the impact of the pandemic on accounts in arrears, for example, as demand for gas and electric service peaks at different times in the year. Moreover, comingled data does not provide for a clear picture of trends over time.

Further, the monthly utility reports as currently designed do not provide for specific data that would show whether utilities are following the Commission's directive to institute extended payment arrangements in a non-discriminatory manner. Utility reporting requirement should be modified to include data on the length of payment arrangements and any other data points that would provide insight into whether utility payment plan offers are "non-discriminatory between customers and address all arrearages, whether from the winter moratorium or public health emergency, in a single payment plan." (Cause No. 45380/45377, May 27, 2020, Order at 5.)

Respectfully submitted,

Tiffany T. Murray
Attorney No. 28916-49
Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the ***Utility Consumer Counselor's July 15, 2020 Response to Commission Information Request*** has been served upon the following parties of record in the captioned proceeding by electronic service on July 15, 2020.

Duke Energy Indiana:
Kelley A. Karn
Melanie D. Price
DUKE ENERGY BUSINESS SERVICES LLC
kelley.karn@duke-energy.com
melanie.price@duke-energy.com

Industrial Group:
Joseph Rompala
Todd A. Richardson
LEWIS & KAPPES, P.C.
JRompala@lewis-kappes.com
TRichardson@lewis-kappes.com
etennant@lewis-kappes.com
atyler@lewis-kappes.com

Indiana Natural Gas and Midwest Natural Gas:
L. Parvin Price
BARNES & THORNBURG LLP
Parvin.Price@btlaw.com

I&M:
Jeffrey M. Peabody
BARNES & THORNBURG LLP
jpeabody@btlaw.com

Marc Lewis
AEP
melewis@aep.com

IPL:
Teresa Morton Nyhart
BARNES & THORNBURG LLP
tnyhart@btlaw.com

Indiana American Water Co.:
Hillary J. Close
BARNES & THORNBURG LLP
hillary.close@btlaw.com

Indiana Gas and SIGECO:
Jason Stephenson
Heather Watts
Justin Hage
CENTERPOINT ENERGY, INC.
Jason.Stephenson@centerpointenergy.com
Heather.Watts@centerpointenergy.com
Justin.Hage@Centerpointenergy.com

Sycamore Gas:
Kay E. Pashos
ICE MILLER LLP
kay.pashos@icemiller.com

Aqua Indiana
Mark R. Alson
ICE MILLER LLP
mark.alson@icemiller.com

NIPSCO:
Claudia J. Earls
NISOURCE CORPORATE SERVICES – LEGAL
cjearls@nisource.com
demccall@nisource.com

Nicholas K. Kile
BARNES & THORNBURG LLP
Nicholas.kile@btlaw.com

CAC, INCAA:
Jennifer Washburn
CITIZENS ACTION COALITION
jwashburn@citact.org

Sierra Club:
Allison W. Gritton
Allison.Gritton@woodenlawyers.com

OVG:
Clayton C. Miller
STOLL KEENON OGDEN PLLC
clayton.miller@skofirm.com

Jt Intervenors Muni-NFP Utilities:
J. Christopher Janak
Nikki Gray Shoultz
Kristina Kern Wheeler
BOSE MCKINNEY & EVANS LLP
cjanak@boselaw.com
nshoultz@boselaw.com
kwheeler@boselaw.com

LaPorte County:
Shaw R. Friedman
FRIEDMAN & ASSOCIATES, P.C.
sfriedman.associates@frontier.com

Keith L. Beall
CLARK, QUINN, MOSES, SCOTT & GRAHN, LLP
kbeall@clarkquinnlaw.com

Kroger
John P. Cook
John P. Cook & Associates
john.cookassociates@earthlink.net

Kurt J. Boehm, Esq
Jody Kyler Cohn, Esq
Boehm, Kurtz & Lowry
KBoehm@BKLlawfirm.com
JKylerCohn@BKLlawfirm.com

Kevin Higgins
Justin Bieber
Energy Strategies, LLC
khiggins@energystrat.com
jbieber@energystrat.com

Tiffany Murray
Deputy Consumer Counselor

Randall Helmen
Tiffany Murray
Daniel M. Le Vay
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
PNC Center
115 West Washington Street, Suite 1500 South
Indianapolis, IN 46204
rhelmen@oucc.in.gov
timurray@oucc.in.gov
dlevay@oucc.in.gov
infomgt@oucc.in.gov
317/232-2494 – Telephone
317/232-5923 – Facsimile