

FILED

MAR 06 2012

IN THE INDIANA COURT OF APPEALS  
CAUSE NO. 93A02-1112-EX-01141

INDIANA UTILITY  
REGULATORY COMMISSION

INDIANA GAS COMPANY, et al.,	)	
Appellants (Respondents Below),	)	
	)	
v.	)	Indiana Utility Regulatory Commission
	)	Cause No. 43976
	)	
INDIANA FINANCE AUTHORITY, AND	)	
INDIANA GASIFICATION LLC, et al.,	)	
Appellees (Petitioners Below).	)	

**MOTION TO RECONSIDER GRANTING OF STAY**

Come now the Indiana Finance Authority (“IFA”) and Indiana Gasification, LLC (“Indiana Gasification”), (collectively Joint Petitioners) by counsel and file this Motion to Reconsider Granting of Stay and Remand to Commission. At this point in time by the Indiana Utility Regulatory Commission’s (“IURC”) own rules, the Petition for Reconsideration of the IURC’s November 22, 2011 Order has been deemed denied. Thus, remand to the IURC for a ruling on the Petition for Reconsideration should not have been granted. The Joint Petitioners would show this Court as follows:

1. On November 22, 2011, the IURC issued a 106-page Order approving a contract entered into between the IFA and Indiana Gasification pursuant to Indiana Code Chapter 4-4-11.6.

2. On December 12, 2011, the Indiana Industrial Group (“IIG”)<sup>1</sup> filed a Petition for Reconsideration before the IURC seeking a change in the definition of Retail End Use Customer as used in the contract.

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<sup>1</sup>The IIG has, at various times, purported to represent different natural gas transportation customers. It is an *ad hoc* group that originally claimed to represent Arcelor Mittal USA,

3. On December 21, 2011, Indiana Gas Company, Inc. and Southern Indiana Gas and Electric Company, both d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren Energy”) initiated an appeal from the IURC order by filing its Notice of Appeal with the IURC. On December 22, 2011, the IIG and several other parties filed their Notices of Appeal.

4. On January 12, 2012, the Joint Petitioners filed their “Verified Motion for Emergency Transfer” requesting that the Supreme Court accept jurisdiction of this appeal and decide it in the first instance.

5. On January 17, 2012, the IIG filed a Motion to Stay and Remand to allow the IURC to rule on its Petition for Reconsideration.

6. The Appellants separately opposed transfer of the case, and variously noted that the IIG’s Motion to Reconsider filed before the IURC was still pending.

7. On January 20, 2012, the Clerk of the IURC issued the Notice of Completion of Clerk’s Record.

8. On February 13, 2012, Joint Petitioners filed a Notice and Renewed Motion for Emergency Transfer in both this Court and the Supreme Court wherein it noted that the stay and remand issue had essentially become moot because by specific rule of the

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Eli Lilly and Company and United States Steel Corporation. By the time of its petition for reconsideration, it claimed to represent only Arcelor Mittal USA. After the Petition for Reconsideration the “Industrial Group” sought to add more parties: Haynes International, Inc., Rochester Metals Products Corporation, and Vertellus Specialties, Inc., Countrymark Refining & Logistics, LLC, and Corn Products International, Inc.

IURC, the sixty-day period to rule had expired and the reconsideration of the Order approving the Contract in this case was deemed denied.

9. A party to an IURC proceeding may file a petition for rehearing before the IURC. Pursuant to the Indiana Administrative Code, 170 IAC 1-1.1-22(e)(5), a motion or petition for rehearing or to reconsider is deemed denied if not acted upon within 60 days.<sup>2</sup>

10. The sixtieth (60<sup>th</sup>) day for ruling on the Petition for Reconsideration expired on February 12, 2012, without action by the IURC. As a consequence, the IIG's Petition for Reconsideration was deemed denied on February 12, 2012, and remand at this point is inappropriate. Moreover, because this case involves a matter of public importance its consideration should now be expedited on appeal. Respectfully, this Court's March 5, 2012 Order granting a remand to the IURC to rule on the Petition for Reconsideration should not have been granted because reconsideration has already been deemed denied.

11. On February 22, 2012, the Clerk of the IURC issued the Notice of Completion of Transcript with the Clerk of this Court. Because the Motion for Reconsideration has been deemed denied by the rules of the IURC, the appeal is now ripe for briefing and decision.

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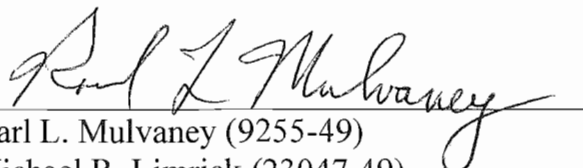
<sup>2</sup> (e) Following a final order, any party to a proceeding may file with the commission and serve upon all parties of record a petition for rehearing and reconsideration within twenty (20) days of the entry of the final order, unless an applicable statute shall specifically fix a longer period. . . .

**(5) A petition for reconsideration shall be deemed denied if not ruled upon or otherwise addressed within sixty (60) days following its filing.**  
(Emphasis added.)

12. As a matter of full disclosure, Joint Petitioners filed a Motion for Expedited Consideration on February 24, 2012. As to the parties, the Motion for Expedited Consideration merely requested that no extensions be granted on briefing. On March 2, 2012, Appellants filed a Verified Response In Opposition to Appellees' Motion for Expedited Consideration, and a Verified Motion for Extension of Time to File Appellant's Brief and Appendix."

WHEREFORE, Joint Petitioners-Appellees IFA and Indiana Gasification respectfully request that this Court vacate its order granting a stay and remanding to the IURC because the IIG's Petition for Reconsideration was deemed denied on or about February 12, 2012. Respectfully, the briefing period in this case has commenced.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by prepaid U.S. first-class mail this 5th day of March, 2012:

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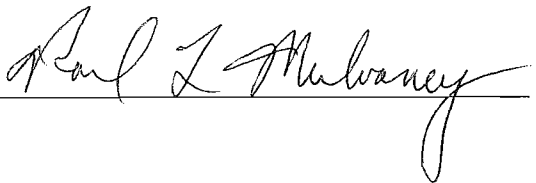
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A handwritten signature in cursive script, reading "Paul L. Mulvaney", is written over a horizontal line.