

COPY

FILED

STATE OF INDIANA
BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION

JUN 14 2004

INDIANA UTILITY
REGULATORY COMMISSION

VERIFIED JOINT PETITION OF INDIANA GAS)
COMPANY, INC., SOUTHERN INDIANA GAS)
AND ELECTRIC COMPANY AND THE BOARD)
OF DIRECTORS FOR UTILITIES OF THE)
DEPARTMENT OF PUBLIC UTILITIES OF THE)
CITY OF INDIANAPOLIS, AS SUCCESSOR)
TRUSTEE OF A PUBLIC CHARITABLE TRUST,)
d/b/a CITIZENS GAS & COKE UTILITY,)
PURSUANT TO IND. CODE § 8-1-2.5 et. seq.)
FOR APPROVAL OF AN ALTERNATIVE)
REGULATORY PLAN WHICH WOULD)
ESTABLISH A PILOT UNIVERSAL SERVICE)
PROGRAM)

CAUSE NO. 42590

**OBJECTION TO CERTAIN PORTIONS OF THE
DIRECT TESTIMONY OF MANUFACTURING AND
HEALTH PROVIDING CUSTOMERS' WITNESS
NICHOLAS PHILLIPS, JR.**

Joint Petitioners, Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. ("IGC"), Southern Indiana Gas & Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc. ("SIGECO") and the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as Successor Trustee of a Public Charitable Trust, d/b/a Citizens Gas & Coke Utility ("Citizens"), by counsel, respectfully object to, and move the Commission to strike, the following specified portions of the direct testimony of Nicholas Phillips, Jr. filed on behalf of Intervenor, Manufacturing and Health Providing Customers. In support thereof, Joint Petitioners state as follows:

1. The text on page 3, lines 14 through 21 and identified as bullet point number 2 should be stricken on the grounds that it is not relevant to the subject matter of this proceeding. Evidence which is not relevant is not admissible. Indiana Rule of Evidence 402. The fact that

IGC and SIGECO (collectively “Vectren”) recently each have filed Petitions with the Commission requesting approval of a rate increase has no bearing on whether the proposed Universal Service Program (“Program”) is in the public interest. The cases are unrelated, involve different issues and should be considered separately.

Even if such testimony were relevant, it should be excluded because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues among different cases pending before the Commission and needless presentation of cumulative evidence. If Mr. Phillips has an opinion regarding Vectren’s proposed rate increase, that opinion can be expressed in those cases, but should be excluded from the body of evidence in this proceeding.

The propriety of a rate increase is something which typically is the subject of voluminous testimony by expert witnesses and detailed rate analyses and reports. This is not the proper proceeding for such evidence to be introduced. In fact, to the extent any issues related to those separate cases are allowed to be litigated in an alternative regulatory proceeding regarding the merits of the proposed Program, well established principles of administrative process will be violated. For example, if parties are allowed in one proceeding to create, on the record, contested issues and presumably seek findings regarding issues pending in a separate proceeding, administrative notice will be undercut and the ability to orderly and efficiently try cases will be undermined because parties will need to be on guard in every proceeding to assure that opposing parties do not raise issues that should properly be heard elsewhere. Here, Mr. Phillip’s unsupported characterization of equity issues in another case that has not gone to public hearing are inflammatory, improper and outside the scope of this case. Vectren’s rights to a fair hearing of its pending rate case petitions and due process would be in jeopardy if Intervenors are

permitted to introduce into evidence conclusions regarding relief Vectren is seeking in separate, unrelated proceedings.

2. The text on page 3, lines 22 through 25 and identified as bullet point number 3 should be stricken on the grounds that it is not relevant to the issues in this proceeding and because the witness has set forth no underlying factual basis or foundation for his conclusory opinion. The same reasoning set forth above in paragraph 1 also applies. Further, Mr. Phillips offers no evidence supporting his assertion that transportation customers of Joint Petitioners are currently paying rates significantly in excess of cost. Mr. Phillips' unfounded conclusory statement regarding the cost to serve transportation customers could be appropriately rebutted by Joint Petitioners' cost-of-service experts. However, given the subject matter of this proceeding (i.e., whether the proposed USF Program is in the public interest), it would not make sense for Joint Petitioners to present the testimony of cost-of-service experts when that is not an issue in this proceeding.

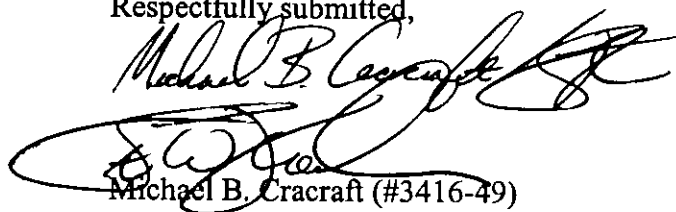
3. The questions and responses thereto beginning on page 6, line 11 and ending on page 7, line 21 should be stricken on the grounds that this testimony is not relevant to the issues involved in this proceeding. As reflected in paragraph 1 above, the fact that IGC and SIGECO have each filed a rate case has no bearing on whether the proposed Program is in the public interest. Testimony that Vectren's proposed rate increase in another docketed proceeding is "extremely excessive," can properly be introduced and countered only in the pending rate case and such testimony is inadmissible in this proceeding. The same is true for Mr. Phillips' cursory analysis of Vectren's cost-of-service study, which is not part of Joint Petitioners' case-in-chief.

4. For the reasons set forth in paragraphs 1 and 3 above, the following sentence on page 9, lines 15 through 16 should be stricken on the grounds that it is not relevant to the issues involved in this proceeding:

Meanwhile, Vectren requests high returns on equity for shareholders at the expense of their customers.

WHEREFORE, Joint Petitioners object to and respectfully request that the Commission strike the designated portions of the direct testimony of Nicholas Phillips, Jr.

Respectfully submitted,



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CERTIFICATE OF SERVICE

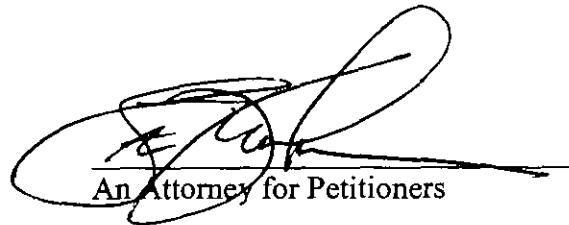
I hereby certify that on this 14th day of June, 2004 a copy of the foregoing "Motion to Strike Certain Portions of the Direct Testimony of Manufacturing and Health Providing Customers' Witness Nicholas Phillips, Jr." has been served by U. S. Mail or personal delivery to:

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