BEFORE THE

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 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.	)	**CAUSE NO. 45377**
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 INDUSTRIAL GROUP'S BRIEF IN RESPONSE TO PHASE I ISSUES

Introduction

On May 8, 2020, the Indiana Office of Utility Consumer Counselor (OUCC) and eleven public utilities (Utility Petitioners) filed separate petitions with the Indiana Utility Regulatory Commission (Commission) seeking various forms of relief related to the COVID-19 Pandemic. More specifically, seeking emergency relief under Indiana Code §8-1-2-113, the OUCC sought an order continuing to stay the moratorium on utility service disconnections first implemented by Executive Order 20-25. The OUCC also sought an order requiring utilities to waive certain, specified, fees, to expand the use of customer payment arrangements, and to institute "regulatory accounting" to address impacts related to the continuation of the disconnection moratorium, the waiver of fees, and the expansion of payment arrangements.

The Utility Petitioners, without seeking emergency relief, asked for broad authority from the Commission to defer as regulatory assets, for later recovery from ratepayers, an expansive list of incremental expenses they have allegedly incurred in responding to the COVID-19 Pandemic; as well as deferred accounting authority for the unrealized revenues related to the suspension of disconnections as well as the waiver of various charges, including customer deposits, that are related either to the payment of utility bills or the re-establishment of service. Further, the Utility Petitioners seek deferred accounting authority for lost revenues related to any loss of load due to reduced consumption during the Pandemic.

Both the OUCC and Utility Petitioners also sought a second phase of the proceeding, to address other issues.

By docket entry issued on May 18, 2020, the two proceedings were consolidated, and on May 27, 2020, the Commission issued an order that established a briefing schedule to address the relief sought by the OUCC and Utility Petitioners related to the issues of disconnections, utility fees, customer payment arrangements and regulatory accounting by June 30, 2020. (May 27th Order at 3-4).

The Indiana Industrial Group (Industrial Group), in response to the Commission's May 27th Order, by counsel, hereby files its response to the immediate relief sought by the OUCC and Utility Petitioners.

The Industrial Group does not oppose the request by the OUCC to continue the disconnection moratorium, the waiver of fees, or for the state's utilities to expand payment arrangements for customers. Amidst the current challenges facing many Hoosier families and businesses operating in the state, providing relief for those customers in the form of increased security of utility services is an important step on the road to recovery. So too is the establishment of a means for customers to address financial issues such as arrearages. The measured relief sought by the OUCC also permits proper recording of the cost and revenue impacts of the requested relief, without providing the sort of assurances of recovery associated with more extraordinary relief such as approval of deferred accounting.

The Industrial Group opposes the Utility Petitioners' request for recovery of lost revenues due to changes in load. Such a request runs counter to existing principles of regulation in Indiana and prior Commission determinations. In addition, approval would establish Indiana as an outlier among other jurisdictions. Moreover, the request lacks sufficient evidentiary support, and represents bad policy, effectively focusing only on the Utility Petitioners' financial strength without regard to the interests of customers or necessary regulatory balance. This request should be denied.

As for the request by the Utility Petitioners with respect to the treatment of incremental expenses and revenue impacts associated with the suspension of disconnections and waiver of fees, the Industrial Group does not *per se* object to relief. Nevertheless, as the record stands, there has been insufficient detail provided by the Utility Petitioners to justify the specific relief requested. It is premature to grant deferred accounting treatment as requested by the Utility Petitioners until such time as a more comprehensive review of the request, including the reasonableness of the size of the asset and the costs included, can be conducted. This will make for a more orderly assessment of the request.

In any event, with respect to the OUCC and Utility Petitioners' relief outlined above, other issues such as the allocation of costs and potential ratemaking treatment should be addressed in subsequent proceedings.

A. The OUCC's Request for Customer Assistance and Limited Regulatory Accounting Should Be Approved

On May 8, 2020, the Indiana Office of Utility Consumer Counselor filed its "Verified Petition for Generic Investigation into COVID-19 Impacts". (OUCC Petition).[1] Within the OUCC Petition, the OUCC seeks, first, specific relief with regards to the protection and assistance of customers coping with the impacts of the COVID-19 Pandemic. Second, the OUCC seeks an order from the Commission that requires utilities to utilize "regulatory accounting" to record any impacts associated with the requested relief.

The Industrial Group addresses these two requests for relief in turn.

[1] On May 27, 2020, the OUCC filed an Amended Petition that further described the scope of the Commission's jurisdiction and clarified the range of utilities to be included within the investigation. The Amended Petition made no material changes to the relief requested by the OUCC, or addressed in this brief.

1. The **Industrial Group Does Not Object to the <u>OUCC's Request for Customer Assistance</u>**

The OUCC Petition seeks approval of several, specific, forms of customer assistance. First, the OUCC seeks a Commission order extending the disconnection moratorium for utility services initially instituted by Executive Order 20-05. The OUCC also seeks a Commission order finding that utilities should waive certain fees. Specifically, the OUCC seeks an order that would require waiver of late fees, convenience fees, customer deposits, and reconnection fees. Finally, the OUCC requests an order directing the utilities to use expanded payment arrangements to assist customers facing challenging economic conditions as a result of the COVID-19 Pandemic.

The Industrial Group has no objection to the relief requested by the OUCC seeking the issuance of an order with respect to these requests for customer assistance. Extending the disconnection moratorium established by Executive Order 20-05, waiving the specified fees, and creating a requirement that utilities use expanded payment arrangements to assist customers, are all reasonable steps to be taken to assist customers affected by the disruptions, economic and otherwise, caused by the COVID-19 Pandemic.

2. **The Industrial Group Does Not Oppose the OUCC's <u>Limited Request for "Regulatory Accounting"</u>**

The OUCC Petition also requests that the utilities begin the use of regulatory accounting to record impacts arising from any continuation of the disconnection moratorium, the waiver of specific fees, and the use of expanded payment arrangements from March 19, 2020 until "such time as it is determined how to appropriately address the delivery of utility service during the ongoing public health and global economic crisis." The OUCC is clear in its petition that the requested relief is not meant to bind the Commission, the OUCC, or other parties, to any "particular treatment" of the recorded impact, nor would it preclude the Commission, the OUCC, or other parties from inquiring about, or considering, other financial impacts that may occur as a result of the COVID-19 Pandemic. Indeed, as stated in the OUCC's Proposed Order filed on May 22, 2020, this regulatory accounting is "for the limited purpose of recording the direct costs incurred from unpaid customer bills, waived charges, and extended payment arrangements . . . ." (OUCC May 22 Proposed Order).

The Industrial Group does not object to the accounting relief sought by the OUCC to the extent the requested relief is aimed at creating a detailed understanding of the potential costs and savings associated with the impacts of continuing to stay disconnections; waiving certain, specific, fees; and utilizing expanded payment arrangements to assist customers in paying for utility service. This is an important step, because, as the Commission has already noted, the impacts of the COVID-19 Pandemic "may not be fully understood for months, if not years, as the effect is ongoing." (May 27, 2020 Order at 4). In such a circumstance, developing the detailed information contemplated by the OUCC's request, and the Commission's May 27th Order, is an important step in the Commission's role of balancing the interests of both utilities and their captive customers.

This is particularly true insofar as the OUCC's request for regulatory accounting does not, on its face, require the approved regulatory accounting to create assets deferred for subsequent recovery from ratepayers. This is an important point. As will be discussed more thoroughly in the Industrial Group's response to the Utility Petitioners' numerous requests for deferred accounting relief, particularly with respect to the recovery of alleged lost revenues, an order from the Commission to establish a regulatory asset, deferred for subsequent recovery, carries with it some presumption of ultimate recovery through rates. <u>See</u>, <u>e.g.</u>, <u>Northern Indiana</u>

Public Service Co. v. Office of Utility Consumer Counselor, 826 N.E.2d 112, 118-119 (Ind. App. 2008) ("deferral must be based on a 'reasonable belief' that the costs will eventually be recovered through rates."). Further, the Commission has clearly stated that when considering the extraordinary relief of granting deferred accounting treatment:

> . . . it is necessary to consider the balance struck between the utility and its ratepayers by approving such a request. For example, the gravity of the financial event involved and its impact upon the utility is appropriate to consider, as well as the impact such accounting and/or ratemaking treatment will have upon the utility's ratepayers. Further, it is necessary for the utility requesting such extraordinary treatment to be able to demonstrate with convincing evidence that the financial event is in fact occurring, and that such financial impact is fixed, known and measurable. If all of these elements are established, a utility might receive approval for such an extraordinary request.

Indiana Michigan Power Co., Cause No. 40980 (Nov. 12, 1998).

At this point, many of these elements remain uncertain including the impact waiving fees or expanding payment arrangements will have on utilities and the impact creating deferred assets of unknown size will have on customers. Likewise, as yet, there is insufficient evidentiary foundation to assess the impacts on any utility as "fixed, known, and measurable."

Under the circumstances, then, the accounting relief requested by the OUCC "for the limited purpose" of recording the costs of a continued disconnection moratorium, waiver of specific fees, and use of expanded payment arrangements is a reasoned and measured step that allows the parties and the Commission to assess the appropriateness of more extreme relief, such as that sought by the utilities, with a more fully developed evidentiary record and adequate opportunity to consider such requests in a comprehensive manner.

To the extent that the Commission deems it prudent, however, to expand the scope of the OUCC's requested accounting relief to include the creation of deferred assets subject to later recovery, such relief should be carefully circumscribed in scope. In particular, any asset should be restricted only to the fees identified in the OUCC's Petition, and then only to those fees which are actually *waived* as opposed to those which are simply being deferred by utilities with the expectation that they will be ultimately charged to the individual customers who have incurred those fees. The difference here is between fees which a utility will not actually recover absent some form of regulatory relief, and those which may still be subject to recovery from customers in the ordinary course of business. This latter category of fees should not, from a rate-making perspective, be assumed to be subject to recovery as part of a regulatory asset from customers through rates, but instead should be assumed to be ultimately recovered from the individual customer as a condition for the continuation of utility service.

Regardless of the path chosen by the Commission, the recommendation by the OUCC that the parameters of such relief should be decided in subsequent proceedings should be followed. Issues such as allocation, the reasonableness of the asset, and the appropriate means of recovery, if any, are all issues that can, and should, await disposition until a later proceeding when a comprehensive assessment of the impacts on customers and the affected utilities can be made on a more complete evidentiary basis.

B. The Utilities' Request for Deferred Accounting to Recover Lost Revenue from Reduced Sales Is Contrary to Law, Unreasonable and Bad Policy

The Utility Petitioners seek accounting relief to implement deferred recovery of what they describe as lost load and revenue reductions associated with the COVID-19 Pandemic. In particular, the utilities seek to create regulatory assets in order to book reduced revenue attributable to decreased consumption by ratepayers during the pandemic. However, the creation of a regulatory asset and the implementation of deferred accounting, as sought here, must be predicated on a regulatory assurance of future recovery through rates. The step they are asking the Commission to take, in other words, is to determine *now* that such reduced revenues will be recovered through regulated rates in the future. That overreaching proposal seeks extraordinary ratemaking relief that is unprecedented in Indiana, contrary to established ratemaking principles, unsupported by the record, discordant with prevailing regulatory treatment across the nation, and remarkably self-indulgent in the face of the widespread adversity and economic hardship that is impacting individuals and businesses throughout Indiana.

1. The request to book regulatory assets for reduced sales carries serious consequences <u>because it assures future recovery in rates</u>

While presented as a simple request for preliminary accounting relief, the reduced revenue proposal by the Utility Petitioners raises an immediate question of serious ratemaking importance. The booking of a regulatory asset requires a regulatory assurance of future recovery in rates. This is not a situation where the Commission can grant accounting relief and then make an independent decision later whether recovery of such revenue reductions is appropriate. Rather, the Phase I accounting relief itself must be predicated on a Commission assurance of future recovery. Once provided, such an assurance induces reliance and becomes problematic to reconsider. The Commission should recognize, accordingly, that the Phase I question is not merely whether deferred accounting is appropriate as a placeholder for future consideration, but whether the Utility Petitioners are entitled to a determination now that they will recover reduced revenues in future rates.

According to FASB Accounting Standards Codification 980-605-25, the accounting recognition of future revenues responsive to past events requires regulatory authorization, including: (a) a regulatory order that allows for automatic adjustment of future rates (though a process for regulatory verification does not preclude status as automatic); (b) an amount that is objectively determinable and "probable of recovery"; and (c) collection within 24 months of the annual period when recognized. Compare FASB Statement No. 71 ¶9 (asset may be supported by "reasonable assurance" of regulator if it is "probable" that future revenue will result from inclusion in cost for ratemaking purposes and the future revenue will permit recovery of the previously incurred cost). The regulatory assurance of future recovery needed to record a regulatory asset has been delineated by both Indiana appellate decisions as well as Commission orders. See NIPSCO, 826 N.E.2d at 118-19 (rejecting argument that deferred accounting does not guarantee recovery; "a deferral must be based on a 'reasonable belief' that the costs will eventually be recovered through rates"); Re Hoosier Energy Rural Electric Cooperative, Inc., 1984 WL 1022220 (IURC 1984) at *423-27 (declining to rule on request for deferred accounting where "the commission cannot unequivocally assure the recovery of the principal and interest associated with the deferred amounts").

The critical first step for deferred accounting and the creation of a regulatory asset, then, is a regulatory assurance of future recovery. Whether that assurance is described as "probable" recovery, or a "reasonable belief" of eventual recovery, or an unequivocal assurance by the Commission, that threshold determination alters the present status and provides the utility with authorization to accumulate an asset on its books and records. When the utility then seeks rate relief to recover the asset, it will be empowered to point back to the Commission assurance as a source of reliance. Even if the assurance is something less than an absolute guarantee, it will be challenging for the Commission to deny recovery without appearing to renege on the assurance that was the basis for the accounting treatment. The present juncture, then, is the point when rate recovery must be addressed. The Utility Petitioners cannot secure deferred accounting authority, while preserving the Commission's independent discretion to decide at a later time whether or not to allow rate recovery of the revenues at issue.

2. The Utility Petitioners' proposal for deferred recovery of reduced revenues is unprecedented in Indiana

Although the term is not used in the Utility Petitioners' filing, there is word for the ratemaking mechanism proposed here: *decoupling*. A decoupling mechanism disconnects utility revenue levels from fluctuations in consumption, so that the utility's recovery of a defined threshold of revenue is assured without regard to changes in actual customer usage. That is what is being proposed here. The Utility Petitioners wish to implement deferred accounting in order to collect losses resulting from reduced consumption levels through future rates, in order to preserve earnings as though the decrease in consumption had not occurred. In multiple respects, that proposal is extraordinary and unprecedented under Indiana regulation.

For electric utilities specifically, decoupling has not been approved by the Commission in any previous proceeding. It was specifically addressed and rejected when proposed in a 2009 rate case by Vectren South Electric, one of the Energy Utility petitioners here. See Southern Indiana Gas and Electric Co., Cause No. 43839 (April 27, 2011) at 76-87. The Commission carefully analyzed the balance of interests between utilities and ratepayers, considered the material differences between electric and gas utilities, and concluded that the decoupling proposal was not in the public interest. Id. at 82-87. Notably, the Commission differentiated the decoupling proposal from DSM-related recovery of lost revenues, and expressly rejected the proposed expansion to include recovery for the effects of an economic downturn:

> Another factor that contributes to the reduction in demand is the current economic downturn and the necessity of ratepayers to conserve as much money as possible. It would not be equitable to allow Petitioner to recover from its ratepayers for energy savings caused by ratepayers' own responsible efforts to conserve.

Id. at 85.

The Commission has not approved decoupling for any electric utility subsequent to the Vectren South Electric Order in 2011. A proposal is pending in the current Duke Energy Indiana rate case, Cause No. 45380, where the issue is controversial and vigorously contested by consumer parties. Despite that pending request in a contested case, Duke is one of the Utility Petitioners seeking an alternative decoupling mechanism in this proceeding. Unlike the pending rate case, however, Duke proposes here that deferred accounting for reduced sales be allowed on an accelerated procedural schedule based on an abbreviated record, without any prefiled testimony or an evidentiary hearing. The pending request in the rate case is the subject of considerable controversy and has been presented for decision based on a fully developed evidentiary record. The request in this proceeding merits comparable scrutiny and process.

With regard to the Utility Petitioners that provide natural gas service, both Vectren North and Vectren South Gas already have decoupling mechanisms in place pursuant to prior Commission orders. See Southern Indiana Gas and Electric Co., Cause No. 43112 (Aug. 1, 2007) at 26-31 (approving settlement with OUCC); Indiana Gas Co., Cause No. 43298 (Feb. 13, 2008) at 23-25 (same). To the extent those two utilities seek something different or more with the decoupling proposal in this proceeding, their request is not framed in relation to the relief the Commission has already determined to be appropriate or any explanation as to why the existing mechanism is allegedly insufficient.

A consistent thread in all of the proceedings in which the Commission has entertained decoupling proposals has been that such requests have been considered only in general rate cases. When Vectren South Electric sought to implement a decoupling mechanism in an Alternative Regulatory Plan proceeding in Cause No. 43427, the Commission denied the proposal on precisely that basis, finding the request should instead be presented as part of a general rate case proceeding. See Southern Indiana Gas and Electric Co., Cause No. 43427 (December 16, 2009) at 33-34. The Commission quoted its October 21, 2009 Order in Cause No. 43180 on that point:

> In the context of a rate case, parties, and ultimately this Commission, can address and thoroughly review issues regarding revenues, expenses, and cost of service. Further, we agree with the OUCC's comments that decoupling mechanisms clearly shift risk from the utility to ratepayers, and that reduction of risk should be considered in determining the appropriate return on equity . . .

Id.

Despite that established Commission policy and practice, the Utility Petitioners here are seeking to implement a decoupling proposal outside the context of a rate case, through an expedited process involving scant evidence and no hearing. Their proposal does not provide for consideration of the many issues properly addressed in a rate case, particularly the appropriate return reflecting the shift of risk between utility and ratepayers. Procedurally as well as substantively, then, the decoupling proposal here is unprecedented in Indiana.

3. In multiple respects, the lost revenue proposal contravenes established ratemaking principles

The provision of utility service is not supposed to be a risk-free venture. Utility rates incorporate a return on investment precisely to provide compensation for the risks assumed by investors. See Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) ("the return to the equity owner should be commensurate with returns on investments in other enterprises have corresponding risks"). The authorization of a specified revenue level in a rate order, to a business receiving compensation for risk, is not and should not be treated as a guarantee of actual recovery by the utility. See Investigation into the Impacts of the Tax Cuts and Jobs Act, Cause No. 45032-S17 (Dec. 27, 2018) at *8 ("[T]his Commission has often stated that public utilities are in no fashion guaranteed to earn their authorized return, or any return at all, but, are only provided an opportunity to earn such a return") (quoting Commission Investigation, Cause No. 38194 (June 1, 1987) at 15). It is analytically misguided, then, for the Utility Petitioners to seek insulation from the risks for which their existing returns on equity already provide compensation, thereby treating the authorization of revenue levels as if it were a guarantee of actual realization.

"The chances of a loss or profit from operations is one of the risks a business enterprise must take." Public Service Commission v. City of Indianapolis, 235 Ind. 70, 88, 131 N.E.2d 308, 315 (1955). That element of risk promotes efficiency and diligence under the classical "invisible hand" rationale, which "requires the utility to bear losses and allows the utility to reap gains depending upon its managerial efficiency and how it weathers economic uncertainties after rates are fixed." Indiana Gas Co. v. Office of Utility Consumer Counselor, 575 N.E.2d 1044, 1052 (Ind. App. 1991). Accord City of Indianapolis, 235 Ind. at 88, 131 N.E.2d at 315. Here, the Utility Petitioners seek relief from losses arising from the risks and economic uncertainties faced by all businesses. That is not the proper function of regulation.

After all, the purpose of regulation is to protect consumers from the abuses of monopoly power in a market where providers of essential services are granted exclusive service franchises. See Citizens Action Coalition v. Northern Indiana Public Service Co., 485 N.E.2d 610, 614 (Ind. 1985), cert. denied, 476 U.S. 1137 (1986) ("Utilities are regulated in order to protect the consumers from the abuses of monopoly i.e. artificially high prices."); Northern Indiana Public Service Co. v. Citizens Action Coalition, 548 N.E.2d 153, 159 (Ind. 1989) ("The statutory scheme set up by the Public Service Commission Act operates primarily to protect consumers and assure them of continuing service at a reasonable price."). The statutory role of the

Commission is to compensate for the "missing element of competition" and provide a "surrogate for competition." Id. In CAC, the Supreme Court explained that, in a competitive market, an automobile manufacturer could never force consumers to pay for the costs of a cancelled factory that did not ever produce any cars. See 485 N.E.2d at 615. By the same token, a competitive business could not impose higher prices on consumers to make up for past losses from reduced sales. Rate regulation, accordingly, should not force consumers to bear price increases that could not be sustained in a competitive market.

Conversely, it is not the purpose of regulation to compel consumers to act as insurers against risk of loss by a utility. See Indiana Gas Co. v. Office of Utility Consumer Counselor, 675 N.E.2d 739, 744 (Ind. App.), transfer denied, 690 N.E.2d 1180 (Ind. 1997) (holding it is "untenable" to "put ratepayers in the position of being insurers"); CAC, 485 N.E.2d at 615 (holding consumers cannot "be required to act in aid and support of the utility as an insurer of the investor's risk"). Even in the context of "extraordinary" circumstances, "the fact that a utility has not met its authorized return does not provide conclusive evidence that it should be accorded extraordinary relief." Duke Energy Indiana, Inc., Cause No. 43743 (Oct. 19, 2011) at 19, aff'd, Duke Energy Indiana, Inc. v. Office of Utility Consumer Counselor, 983 N.E.2d 160 (Ind. App. 2012). In that order in Cause No. 43743, the Commission denied deferred accounting for costs associated with an extraordinary ice storm, noting that "the amount embedded in base rates to meet storm damage obligations carries with it a risk of under or over recovery that is shared by both the shareholders and the ratepayers." Id.

By proposing to recover past losses in future rates, the Utility Petitioners seek to contravene the prohibition against retroactive ratemaking. "Past losses of a utility cannot be recovered from consumers nor can consumers claim a return of profits and earnings which may appear excessive." City of Indianapolis, 235 Ind. at 88, 131 N.E.2d at 315. Accord Indiana Gas, 675 N.E.2d at 1052 ("Indiana courts have long held that past losses of a utility cannot be recovered from consumers and in turn that consumers may not claim a return of excessive profits and earnings from the utility."); Duke Energy Indiana, Inc., Cause No. 43743 (Oct. 19, 2011) at 15 ("The prohibition against retroactive ratemaking is intended to protect the ratepayers by ensuring that present customers will not be called upon to pay for past deficits in their future bill and to prevent the utility from employing future rates as a means of ensuring the investments of the stockholders."). Here, the Utility Petitioners seek recovery for past losses dating back to March 1st, over two months before the petition was filed. All of the utility affidavits supporting the proposal describe losses by reference to the pre-petition month of April.

Finally, the proposed recovery for reduced revenues violates the principle that utility rates pay for service, not for non-service. As the Supreme Court has explained, the regulatory framework "protects consumers from having to pay for service not received, something which they would not be subjected to in a competitive industry." See CAC, 485 N.E.2d at 615. See also Indiana Gas, 675 N.E.2d at 744 ("Indiana Gas is entitled to recover only costs related to the provision of service."). Here, the Utility Petitioners seek recovery through future rates for service that was *not* provided due to reduced consumption, and thus propose rate recovery for non-service. Notably, this situation is materially distinct from recovery of lost profits in a DSM context, where recovery balances interests under *utility programs* aimed at promoting energy efficiency and conservation, so that the utility is not required to serve as the instrument of its own earnings erosion. As the Commission noted when denying a decoupling proposal in the April 27, 2011 SIGECO rate order in Cause No. 43839, "To balance the interests of both the utilities and their ratepayers, this rule limits a utility's right to seek recovery of lost margins specifically caused by that utility's energy efficiency efforts." Id. at 85. Because the reduced consumption here has nothing to do with utility programs to conserve energy, the DSM exception is inapplicable and the general rule applies: rates pay for service, not for non-service.

4. The Utility Petitioners have not presented a record justifying extraordinary relief

Outside of statutory trackers, the Commission has repeatedly described deferred accounting as relief that is "extraordinary" in nature. See Investigation into the Impacts of the Tax Cuts and Jobs Act, Cause No. 45032-S13 (Dec. 27, 2018) at 5; Duke Energy Indiana, Cause No. 43743 (Oct. 19, 2011) at 16; Indiana Michigan Power Co., Cause No. 40980 (Nov. 12, 1998) at 7. Consideration of such an extraordinary request calls for a balancing of consumer and utility interests, including the impact on the utility and the potential rate impact on ratepayers. Id. "Further, it is necessary for the utility requesting such extraordinary treatment to be able to demonstrate with convincing evidence that the financial event is in fact occurring, and that such financial impact is fixed, known and measurable." Id. In this case, the Utility Petitioners have not presented a record supporting the extraordinary relief being sought.

Notably, the Utility Petitioners did not cite Ind. Code §8-1-2-113 in their Petition as a basis for the requested relief. They did not allege that they are facing a financial emergency, did not assert the impact threatens their financial integrity, and did not claim that the reduced revenues render their existing rates in any way confiscatory. Instead, the Petition only suggests in hypothetical terms that the impact "could" adversely affect credit metrics and "might" make access to capital more difficult or expensive. See Utility Petitioners Petition ¶7(a). The Utility Petitioners do not allege any threat to their continued ability to provide reliable service, but rather contend the proposed relief will ensure service is provided "in ways that do not sacrifice utility cash flows and financial strength." Id. ¶7(b). Such allegations indicate a preference to avoid any disturbance to earnings whatsoever, not an emergency imperiling service capabilities or the financial stability of utility operations.

The subsequently filed affidavits provided little added information to substantiate the Utility Petitioners' request for recovery of lost revenues. Those affidavits generally allege that, for the month of April, residential usage increased relative to the same month a year ago, commercial and industrial usage decreased, and overall usage was down. See Camp Aff. (NIPSCO) ¶12; Davey Aff. (Duke) ¶11; Bell Aff. (Indiana Gas) ¶12; Bell Aff. (SIGECO) ¶12; Lucas Aff. (I&M) ¶10; Garavaglia Aff. (IPL) ¶13; Stenger Aff. (Sycamore) ¶9; Osmon Aff. (MNG/ING) ¶4(f); Salkie Aff. (OVG) ¶10. The results for April are generally reported in units of consumption (kWhs or DTHs), without quantifying lost revenues, and in some cases without specifying total system decreases. NIPSCO provided an example of how an annual 1% reduction in sales would affect operating income, without specifying any projected annual percentage impact of 1% or otherwise. See Camp Aff. ¶14. Duke provided an annualized revenue impact compared to a pre-COVID-19 forecast, while acknowledging the length and severity of the impact are unknown. See Davey Aff. ¶¶11, 14. None of the other Utility Petitioners provided any estimates of lost revenues due to reduced consumption.

On this record, the lost revenues for which deferred accounting is proposed are far from fixed, known and measurable. The Utility Petitioners admit other factors besides the COVID-19 Pandemic may be affecting usage levels, but do not present any clear criteria for differentiating between the requested COVID-19 relief and unrelated phenomena, much less verifying the reductions actually attributable to COVID-19 as required by FASB ASC 980-605-25. All of the major utilities except Duke stated, in identical terms, that "[a]lthough a small amount of this change in usage is attributable to normal changes in usage, the vast majority of the change is attributable to business closures during the COVID-19 pandemic," without further delineation or quantification. See Camp Aff. (NIPSCO) ¶12; Bell Aff. (Indiana Gas) ¶12; Bell Aff. (SIGECO) ¶12; Lucas Aff. (I&M) ¶10; Garavaglia Aff. (IPL) ¶13. Duke's omission of that disclaimer is unexplained.

A reduction in usage for one month, moreover, does not demonstrate the materiality of any impact on annual earnings. Notably, the April decreases in consumption are reportedly in the commercial and industrial classes, with residential usage showing increases, but the Utility Petitioners do not account for the demand charges paid by industrial and commercial customers, in many cases reflecting demand ratchets that preserve fixed cost recovery despite temporary drops in load. Similarly, tracker revenue is typically subject to reconciliation, and hence adjusted for actual consumption. Furthermore, as explained in Dr. Boerger's affidavit as submitted by the OUCC on May 22, 2020, the parents of both I&M and Duke have reported in recent earnings releases that they do not expect the COVID-19 Pandemic to require downward revisions to the range of prior earnings or growth projections, in part due to cost reductions implemented by those operations. Id. ¶10. None of the utility submissions quantify efforts to reduce costs or otherwise manage the load reductions, and none account for efforts to secure other sources of relief, either individually or through parent companies, such as funding under the CARES Act.

As the Commission has found, and the Utility Petitioners admit, the ultimate impact of the COVID-19 pandemic will not be ascertainable for a considerable length of time. See May 27, 2020 Order at 4 ("The Commission anticipates many impacts of the COVID-19 pandemic may not be fully understood for months, if not years, as the effect is ongoing."); Utility Petitioners Petition ¶5 ("it is unknown at this time how long the event will last, whether it will recur, or how significant the impact will be on Indiana customers and the utilities that provide them with essential services"). There has been no showing that the consumption patterns for April, with unquantified impacts on utility revenue, will be representative of future months, or whether and to what extent there will be an economic rebound as the year progresses. That is not to suggest, of course, that the Utility Petitioners are to be faulted for inability to predict the future, but the point is that it is premature to speculate on the degree of lasting impact based only on one month of reported changes in usage.

The burden is on the Utility Petitioners to demonstrate financial hardship that is serious enough to warrant extraordinary relief, and to support the request for deferred accounting with the identification of quantifiable impacts that are fixed, known and measurable. On this record, the Utility Petitioners have not sustained that burden in either respect. There has been no showing that the ordinary rate mechanisms and regulatory process will be insufficient to address the unquantified revenue concerns raised by the Utility Petitioners.

5. The proposed recovery of lost revenues is out of alignment with regulatory treatment nationally

In their Petition, the Utility Petitioners included a footnote listing 21 other jurisdictions in the United States that have provide some form of relief related to COVID-19 costs. See Petition pp. 13-14 n.4. The statement in the text suggested utilities in other states that have addressed COVID-19-related costs may be regarded as "less risky" than Indiana utilities. Id. ¶7(a). As the subject of that paragraph is the requested creation of a regulatory asset for expenses and reduced revenues, "including due to reduced customer load if applicable," the implication is that the listed jurisdictions have already provided such relief and Indiana is in danger of falling behind if it does not do so as well. That implication, however, is inaccurate with specific reference to recovery of lost revenue from reduced load.

By counsel's count, about half the jurisdictions nationally have already provided some form of relief related to the COVID-19 Pandemic.[2] In the vast majority of those states, deferred accounting has been limited to incremental utility expenses attributable to the pandemic, and in a number of instances also includes foregone fees and increased bad debt expense. To date, only in a few states has reduced revenue due to decreased consumption even been considered.[3] In two of those states, Louisiana and Minnesota, the regulatory authority has indicated only that utility requests may be considered at a future time. In Iowa, the Utilities Board permitted regulatory assets to include "revenue changes," without specifying whether that reference concerns only waived fees and increased bad debt or also includes load reductions, and there are pending requests by several utilities. See SPU-2020-0003 (May 1, 2020); ARU-2020-0123 (May 29, 2020); ARU-2020-0222 (May 29, 2020); ARU-2020-0225 (June 1, 2020). Conversely, the Wisconsin Public Service Commission expressly declined to include "declining sales revenue" in the deferral authorization. See 5-AF-105 (May 14, 2020) at p.4.

Decisions from other jurisdictions, of course, are not binding on the Commission and amount to no more than persuasive authority. But insofar as the Utility Petitioners pointed to other states as a supposed indication that Indiana utilities may be disadvantaged absent the requested relief, the relevant lesson is that recovery of lost revenue due to reduced consumption has not even been considered in the vast majority of the jurisdictions that have provided relief related to the COVID-19 Pandemic. In the few states that have addressed the subject, two have

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[2] Alaska, Arkansas, California, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nevada, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, West Virginia, Wisconsin, and Wyoming.

[3] See Iowa, SPU-2020-0003 (May 1, 2020); Louisiana, Special Order 22-2020 (April 29, 2020); Minnesota, MN-20-427 (May 22, 2020); Wisconsin, 5-AF-105 (May 14, 2020).

left determinations to a future point, one indicated potential receptiveness to the concept, but another refused to grant such relief. The sweeping proposal by the Utility Petitioners here to recover lost revenues from reduced load would make Indiana an outlier on the national scene. Declining that proposal, on the other hand, would leave Indiana utilities aligned with their peers across the country.

6. The Utility Petitioners unreasonably seek to be held harmless from the economic hardship affecting ratepayers throughout the State

The balancing of interests implicated by a utility request for extraordinary relief such as the creation of a regulatory asset is not limited to consideration of the utility's desire for assured recovery, but equally requires protection of consumers from unreasonable rate impacts. See Investigation into the Impacts of the Tax Cuts and Jobs Act, Cause No. 45032-S13 (Dec. 27, 2018) at 5; Indiana Michigan Power Co., Cause No. 40980 (Nov. 12, 1998) at 7. Here, there is no balance in the Utility Petitioners' proposal. They seek total insulation from business risk despite the severe hardship faced by all sectors of the ratepaying public.

In their Petition, the Utility Petitioners admit:

> In the initial days following the emergency declaration, the state and national economies ground to a halt, with massive numbers of furloughs and layoffs leading to unprecedented growth in unemployment. Businesses have closed or, if feasible, moved operations to remote work status. Many businesses may not be in a position to re-open after the emergency recedes. Production, supply chain and markets have been disrupted; the financial markets are in turmoil.

Id. ¶2. They then proceed to reiterate:

> The citizens of Indiana, including Joint Petitioners' customers, are facing significant challenges and uncertainties as they are impacted by COVID-19 and the protective actions that the state and federal governments have taken. The numerous schools and businesses ordered closed are customers of Indiana utilities, including Joint Petitioners. Many businesses have had to make difficult

> decisions to reduce and, in some cases, suspend their operations, which in turn has created significant financial challenges for residential customers.

Id. ¶5. They further concede that the economic adversity impacting consumers is expected to linger into the foreseeable future, and will not disappear when emergency orders are lifted. See id. ¶6 ("[I]t is likely that the impacts of the COVID-19 pandemic to the broad economy could last for an extended period of time following the moratorium on disconnecting service. Indeed, the economic impacts will likely extend well beyond the end of the Governor's emergency declaration.").

Despite accurately depicting the serious challenges facing ratepayers, the Utility Petitioners apparently can only see the ways in which that economic devastation affects their own financial interests: the prohibition on disconnections removes their most effective collections tool; the customers falling behind on utility payments drive up arrearages and bad debt; late fees are not being charged; bankruptcies could lead to more write-offs; commercial shutdowns and drops in industrial productivity hamper utility revenue streams. From their perspective, the interests of consumers must be subordinated to the priority of preserving utility earnings: "The Commission should encourage utilities to take such actions and provide relief to customers, *but in ways that do not sacrifice utility cash flows and financial strength.*" See Petition ¶7 (emphasis added).

Their proposed solution to the peril of sacrificing utility cash flows and financial strength is to create regulatory assets, in order to assure future recovery of the revenues they did not receive for the service they did not provide, precisely because customers in the midst of economic upheaval used less energy. Notably, the Utility Petitioners' propose the future recovery must occur within 24 months following the annual period in which the lost revenue was recognized. See Petition ¶7(b). See also FASB ASC 980-605-25-4(c). In other words, while consumers are trying to emerge from a period of severe economic adversity and remain hindered financially as the economy slowly recovers, that is the time the Utility Petitioners seek to burden rates to support a double recovery, once for ongoing service and again for revenues not received in a prior period.

All sectors of the economy and all classes of utility customers have had to bear the impact of the COVID-19 Pandemic and the resulting economic havoc, but for some reason the Utility Petitioners believe that they, alone, are entitled to preserve revenue streams at undisturbed levels, as if nothing happened. There is widespread unemployment, many businesses have been devastated, industrial production has been ravaged, the budgets of state and local governments are severely strained, but somehow the Utility Petitioners expect to be held harmless and carried across the economic storm with all expected earnings fully intact. All businesses, certainly, would appreciate that kind of insulation from risk, but few have recourse to realize such ambitions through regulated rates.

The assured rate recovery the Utility Petitioners seek will not materialize from thin air, but would be added to the heavy burdens already being shouldered by ratepayers. The Utility Petitioners' one-sided vision in which utility cash flows and financial strength are the overriding imperative is unbalanced, unreasonable, and contrary to the public interest.

C. The Utility Petitioners' Request for Deferred Treatment of Incremental Expenses is Premature

In their Joint Petition, filed on May 8, 2020, the Utility Petitioners request authority from the Commission to record, under Account 182.3, a wide range of costs and expenses, including incremental expenses, allegedly incurred as a result of COVID-19 Pandemic and the responses to the Pandemic taken by authorities and the utilities themselves. (Utility Petition at 13-14). The

Utility Petitioners seek, ultimately, approval to defer the costs and expenses in a regulatory asset for later recovery.

The range of costs and expenses the Utility Petitioners seek authority to defer is expansive in scope. It includes, among other items, increased costs for cleaning supplies and personal protective equipment, overtime, sick time, costs related to sequestration of employees, "supplies to enable employees to work from home", increased video conferencing licenses, increased network bandwidth, "other required technology improvements", the shifting of costs from capital budgets to O&M, financing costs and "pension expense". (Utility Petition at 11-12).

In effect, the Utility Petitioners seek a regulatory *carte blache* to incur and recover a range of costs that at this time is ill-defined both in terms of its size and level of specificity. Read expansively, the list of costs included in the Joint Utility Petition would represent recovery, from ratepayers, of nearly every imaginable expense allegedly incurred by the Utility Petitioners in response to the COVID-19 Pandemic. The sort of relief sought by the Utility Petitioners, however, has long been treated as extraordinary in Indiana and requires a more complete showing of the necessity than has, as yet, been put forth by the Utility Petitioners. The requested relief, then, should be delayed until it is properly supported and can be carefully implemented in accordance with the existing standards established by the Commission for approval of the extraordinary relief sought here.

The Commission has established criteria by which it will evaluate requests for the sort of extraordinary relief sought by the Utility Petitioners in this case. That standard makes it necessary for the Commission:

> . . . to consider the balance struck between the utility and its ratepayers by approving such a request. For example, the gravity of the financial event involved and its impact upon the utility is appropriate to consider, as well as the impact such accounting and/or ratemaking treatment will have upon the utility's ratepayers. Further, it is necessary for the utility requesting such extraordinary treatment to be able to demonstrate with convincing evidence that the financial event is in fact occurring, and that such financial impact is fixed, known and measurable. If all of these elements are established, a utility might receive approval for such an extraordinary request.

Indiana Michigan Power Co., Cause No. 40980 (Nov. 12, 1998) at 7. Of critical note here is the emphasis on the Commission's role in striking a balance between utilities and their customers. This is especially difficult because, at this time, the request from the Utility Petitioners is ill-defined and generally lacking in any detail sufficient to assess the materiality of the financial impacts on the utilities themselves, or on ratepayers. Indeed, a review of the affidavits submitted by the Utility Petitioners reveals extremely limited information regarding the size, or even expected size, of many of the cost categories for which the Utility Petitioners now seek authority to create deferred accounts.

Moreover, some of the categories of incremental expense are so broadly defined that it is difficult to assess the reasonableness, prudence and necessity of allowing associated recovery through rates. For example, it is unclear what might fall into the category of "other required technology improvements" and how broadly the utilities could treat authorization to defer "financing costs and pension expenses".

Accordingly, the Utility Petitioners' request for deferral and ultimate recovery of incremental expenses should be treated with caution. At a basic level, the Utility Petitioners have not presented meaningful evidence that would allow the Commission to fulfill its most fundamental function — balancing the interest of the utilities with the interest of their customers in order to establish just and reasonable rates.

Even if evidence is presented that justifies the extraordinary relief sought by the Utility Petitioners, the actual relief must be carefully circumscribed in its scope. This is because the authorization of deferred accounting carries with it the presumption of subsequent recovery from ratepayers. See, e.g., Re Hoosier Electric Rural Cooperative, Inc., 1987 WL 1022220 (IURC 1984) at *425 (quoting from SFAS No. 71 ¶9 that "reasonable assurance" can be provided by a regulatory if "[i]t is probable" that future revenues will "result from inclusion of that cost in allowable costs for rate-making purposes."); NIPSCO, 826 N.E.2d at 118-119 (affirming Commission's rejection of NIPSCO's argument that deferred accounting does not "guarantee recovery in future rates" because "deferral must be based on a 'reasonable belief' that the costs will eventually be recovered through rates."); FASB ASC 980-605-25 (relied on by the Utility Petitioners to permit accounting recognition of future revenues for past events, but requiring authorization by the regulatory commission that includes, among other criteria, "automatic adjustment of future rates" and an amount "that is objectively determinable and 'probable of recovery'").

With the authorization of the requested deferral at this stage, the Commission will be effectively put into the position of having pre-emptively authorized that later recovery. Should that recovery include ill-defined categories of incremental expenses or not otherwise carefully delineate between permissible and impermissible costs for recovery, the Commission runs the danger of creating an "attractive nuisance", effectively encouraging excessive expenses to be recorded for later recovery.

Before granting any relief, then, the Commission should: (1) have a clear picture of the monetary scope of the request; (2) establish clear criteria as costs that may, or may not, be included; and (3) ensure that the costs included in the request are reasonable as to their size, impact on future customers, and subject to a clear connection to the COVID-19 Pandemic.

The Commission has previously denied deferred accounting treatment when future expenses have not been shown to be fixed, known, and measurable; when the impact is not material on the utility; and when impacts would be deleterious to customers. See, e.g., Indiana Michigan Power Co., Cause No. 40980 (Nov. 12, 1998). At the present time, the record is insufficient to meet these criteria and it would be premature to grant the extraordinary accounting relief sought by the Utility Petitioners. Instead, a more measured approach that permits assessment of carefully circumscribed relief based on a more complete evidentiary record and subject to rigorous review for reasonableness, necessity, and materiality is the justified course of action.

D. The Utility Petitioners' Request for Recovery of Foregone Revenues Should Be Subject to Careful Scrutiny

In addition to the request to defer for later recovery a broad range of expenses, the Utility Petitioners seek to defer various revenue impacts associated with the disconnection moratorium, as well as from the non-collection of late fees, credit card processing fees, bad check fees, reconnection fees and customer deposits that are otherwise incident to the termination and re-establishment of utility service for customers unable to pay their bills. (Id. at 12).

As with the Utility Petitioners' requested treatment of incremental expenses, a number of significant issues arise. First, the actual monetary scope of the alleged "foregone" revenues remains uncertain, and at present it is not clear whether the scope of the impacts is material to the utilities' operations. In addition, there has been no consideration of the impact of the request on future customers as they are asked to absorb any alleged revenue losses. Again, approving such a request carries with it some level of assurance of future recovery, regardless of whether the request is subject to some later review. See FASB ASC 980-605-25.

In this regard, then, the Utility Petitioners' request for a pre-emptive ruling in favor of those revenue impacts is troubling insofar as customers of all classes continue the process of economic recovery and continue to face their own economic challenges whether those be finding work, re-opening a commercial business, or adjusting industrial operations to accommodate changes in demand and to facilitate changes in production due to employee safety concerns. In short, without adequate review of the relief requested, and its impacts, prior to its approval the Commission cannot fulfill its obligation to balance the interest of the utilities with those of customers. The relief requested by the utilities to create a regulatory asset to recover revenues associated with disconnection and reconnection of customers should be delayed until a more complete reckoning and assessment of their impacts can be completed.

Conclusion

The Industrial Group supports the relief sought by the OUCC. However, the accounting relief sought by the Utility Petitioners to create regulatory assets for lost revenues due to load reductions is unreasonable, unbalanced, contrary to established principles, and unsupported by the record, and therefore should be denied. The other accounting relief sought by the Utility Petitioners with respect to incremental expenses and foregone revenues related to the disconnection moratorium may be reasonable if properly substantiated, but on the present record the Utility Petitioners have not shown the amounts to be fixed, known and measurable and have not defined the scope with sufficient clarity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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