STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR FOR GENERIC INVESTIGATION INTO COVID-19 IMPACTS TO BE CONDUCTED OVER TWO PHASES; EMERGENCY RELIEF PURSUANT TO IND. 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**
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**

<u>SIERRA CLUB'S RESPONSE TO JOINT UTILITIES PETITION AND OFFICE OF UTILITY CONSUMER COUNSELOR PETITION</u>

Indiana utility customers are facing an unprecedented pandemic. In order to protect public health, Governor Holcomb ordered all non-essential business to close their doors on March 24, 2020 and that shelter-in-place order remained in effect until May 1, 2020, creating an economic free-fall that has impacted nearly all Hoosiers, particularly low-income and hourly wage workers who suddenly find themselves without a source of income. Over 36,000 Hoosiers have tested positive for the coronavirus, with over 2,000 of them losing their lives, and over 236,000 Hoosiers are currently unemployed. African American and other minority Hoosiers have been particularly impacted by the virus. The financial cliff that persons living paycheck-to-paycheck avoided prior to the COVID-19 pandemic is now unavoidable, with utility, rent, and other bills coming due. School and childcare closures, job furloughs, permanent job losses, and COVID-19-related health issues are just some of the crises low-income families, in particular, are experiencing. It is within this context of suffering across Indiana that the Indiana Utility Regulatory Commission ("Commission") should view the Joint Utilities Petition and Office of Utility Consumer Counselor's ("OUCC") Petition in these consolidated proceedings.

The OUCC requests the Commission commence an investigation to consider the impacts of COVID-19 on utility service and to adopt certain Indiana ratepayer protections—staying utility disconnections after Governor Holcomb's moratorium is lifted, waiving certain fees such as late fees, convenience fees, deposits, and reconnection fees, and expanding the use of payment arrangements to aid customers. The Commission should pick up this mantle and look to create a state program that can relieve the economic pressure, which will allow Hoosiers to rebound from the financial fallout of this pandemic while maintaining access to utility service essential to slowing the spread of the disease and to protecting public health.

The Joint Utilities petition stands in stark contrast to the OUCC petition. While the Joint Utilities wish to create a deferred regulatory asset for incurred costs directly related to COVID-19, the Joint Utilities also want authority to create a deferred regulatory asset to "accrue revenue reductions related to lost load and other revenue reductions attributable to their changes in operations and customer loads caused by [COVID-19]" and "approval of timing, tracking, and documentation requirements for the future recovery of the COVID-19 regulatory asset."[1] Essentially, the Joint Utilities are seeking the authority to charge customers for power the utilities never generated and customers never used so that their bottom line is not impacted by the pandemic. The Commission should deny this request to record and recover lost revenue for many reasons, including that the Commission can only create a regulatory asset for an "incurred cost" and lost revenue is not an incurred cost, and the "chance of loss or profit from operations is one of the risks a business enterprise must take."[2]

The Commission's handling of these consolidated proceedings should recognize the enormity of the pandemic and its economic fallout for both newly financially-strapped customers and customers who were already suffering economically before the pandemic. The Commission should not burden any of these customers further by requiring them to pay for power that they never used. In addition, the Commission should extend the shut-off moratorium and establish protocols to ensure all customers, regardless of their income, remain connected to affordable utility service. The Commission should also require utility data collection to enable it to effectively determine when the crisis has passed and structure appropriate arrearage management programs for the growing number of low-income Hoosier customers.

[1] *See* Joint Utilities Petition at 2 (emphasis added).
[2] *See In Re: Petition of Duke Energy Indiana, Inc. for Approval of Authority For Deferred Accounting treatment*, Order on Reconsideration, Cause No. 43743 at 15 (Oct. 19, 2011).

I. Applicable Law Prevents Utilities From Deferring Lost Revenues as a Regulatory Asset.

A. <u>The Commission Should Deny Joint Utilities Request for Authority to Defer, as a Regulatory Asset, Because Regulatory Assets are Allowed Only for Incurred Costs, Not Lost Revenue</u>.

Joint Utilities request to: "defer and record in Account 182.3 for future recovery the incremental expenses, including bad debt expense incurred, and reduced revenues, including the waiver of late fees and reductions due to reduced customer load if applicable, from State Directives or Commission orders and changed business practices resulting from the public health emergency caused by COVID-19."[3] Joint Utilities claim that Financial Accounting Standards Board Accounting Codification ("ASC") provides the regulatory basis[4] for it to receive general authority to defer as a regulatory asset, reduced revenues due to reduced load.[5]

But the ASC allow a utility to create a regulatory asset only for an "incurred cost," not for lost revenue. ASC 980-340-25-1 governs recognition of regulatory assets.[6] In order for a utility

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[3] *See* Joint Petitioners' Petition, Cause No. 45377, at ¶ 8.

[4] The Commission regularly approves accounting treatment that complies with the ACS. *See e.g. In re: N. Indiana Pub. Serv. Co. for Approval of an Amendment to Its Certificate of Auth. to Issue Bonds*, Final Order, Cause No. 45020, (May 16, 2018) (approving a proposed accounting treatment because it was consistent with the Accounting Standards Codification); *In re: Petition of N. Indiana Pub. Serv. Co. for Approval of A Certificate of Auth. to Issue Bonds, Notes, or Other Indebtedness in an Amount Not to Exceed*, Final Order, Cause No. 44191 (Nov. 28, 2012) (approving a proposed accounting treatment because it was consistent with the Accounting Standards Codification).

[5] *See* Dir. Testimony of Cheryl Roberto at ¶¶ 5-6 and fn. 1; Duke Energy Indiana explicitly acknowledges that a regulatory asset can only be created "provided the provisions of ASC 980-340-25-1 are met." *See* Brian P. Davey Affidavit at ¶ 16. Affidavits provided by two additional Electric Petitioners concur that ASC 980, Regulated Operations, governs. *See* Angela Camp Affidavit (on behalf of NIPSCO) at ¶ 15; Angie M. Bell Affidavit (on behalf of SIGECO) at ¶ 15. IPL and I&M offer no accounting authority whatsoever to create the requested regulatory asset. *See* David A. Lucas Affidavit at ¶1 3; and Gustavo Garavaglia M Affidavit at ¶ 17. NIPSCO additionally accurately acknowledges that in order to record (not recover) "lost revenue" NIPSCO must separately have an approved alternative regulation program such as decoupling or performance incentives in place. *See* Camp Affidavit at ¶ 15.

[6] *See* Dir. Testimony of Cheryl Roberto at ¶ 6.

to create a regulatory asset, it must first have an "incurred cost" that would otherwise be charged as an expense.[7] An "incurred cost" is "a cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."[8] Selling less electricity than expected for a few months to commercial and industrial customers, is not an incurred cost and would not "otherwise be charged to expense."[9] Lost revenue is simply not an incurred cost. So the Commission cannot create a regulatory asset for revenue unearned because disappointing sales do not qualify for treatment as a regulatory asset under the governing accounting rules.

The Joint Petition also refers to ASC 980-605.[10] However, ASC 980-605 governs accounting treatment for revenues collected pursuant to an approved alternative regulation program. It does not provide independent or additional authority to create a new regulatory asset for historical unearned revenues.[11] If the Commission wanted to permit recovery of <u>future</u> COVID-19 unearned revenue, then it would need to establish some type of decoupling in an alternative revenue program and that revenue would be recorded pursuant to ASC 980-605 once the decoupling program is adopted. Such decoupling programs would require a reduction of ROE and a reversal of the LRAM.[12] In any event, this accounting rule does not support the lost-revenues relief requested here.

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[7] *See* Dir. Testimony of Cheryl Roberto at ¶ 6; *see also* ASC 980-340-20, ASC 980-340-25-1 <u>https://asc.fasb.org/section&trid=2156667#d3e43596-110378</u>.
[8] *See* Dir. Testimony of Cheryl Roberto at ¶ 6 ; *see also* ASC 980-340-20 <u>https://asc.fasb.org/glossarysection&trid=2156666&id=SL2322129-110378</u>.
[9] *See* Dir. Testimony of Cheryl Roberto at ¶ 6; *see also* ASC Chapter 700 describe expenses, none of which could be construed to include sales that did not occur.
[10] *See* Joint Petitioners' Petition, Cause No. 45377, at 14 fn.5, 16.
[11] *See* Roberto Dir. Test. at fn. 1.
[12] *See* Roberto Dir. Test. at ¶ 14.

B. <u>It would be Unjust and Unreasonable to Charge Ratepayers for Generation They Never Used and the Utility Never Generated</u>.

Customers are legally obligated only to pay “just and reasonable” rates for service rendered; the Commission cannot obligate them to pay for service they did not receive.

In *Northern Indiana Pub. Serv. Co. v. Citizens Action Coalition*, 485 N.E.2d 610 (Ind. 1985), cert. denied, 476 U.S. 1137 (1986), the Court of Appeals considered the issue of whether or not the Commission acted contrary to law in permitting Northern Indiana Public Service Company (“NIPSCO”) to amortize the sunk costs of a cancelled nuclear plant project through retail rates. Because of delays due to litigation, to opposition to licensing provisions involving safety, and to escalating costs, NIPSCO cancelled the project, after expending over $205 million. Even though NIPSCO never completed the project and the plant was never placed into service, the Commission permitted NIPSCO to amortize about $190 million through retail rates over a fifteen year period. The Indiana Supreme Court voided the Commission decision and held that the sunk costs were unrecoverable based on two inter-dependent concepts. First, the project never became “used and useful” in the provision of utility service. 485 N.E.2d at 613-615 (“To begin with, utility charges are based upon service.” Indiana law, accordingly, “protects consumers from having to pay for service not received.”) Second, since the project was an unsuccessful venture, allowing recovery would improperly put the customers in the position of an insurer of the utility’s lost capital investment. 485 N.E.2d at 615 (The Court cautioned that ratepayers should not be “required to act in aid and support of the utility as an insurer of the investor’s risk.”)

The Commission should thus deny the Joint Utility Petitioners’ request to create a regulatory asset and eventual rate recovery for lost revenue as it would lead to unjust and unreasonable rates by forcing ratepayers to pay “for service not received” and, furthermore, to allow recovery of money with no connection to the provision of service would put the ratepayers in the position of being insurers of utilities. *See NIPSCO*, 485 N.E.2d at 613-617; *see also Ind. Gas Co. v. Office Util. Consumer Counselor*, 675 N.E. 2d. 739, 744 (Ind. Ct. App. 1997) ("To allow recovery of costs related only to the ownership of the land, with no connection to the provision of service, would put the ratepayers in the position of being insurers of any purchase made by Indiana Gas. Such a result is untenable.").

II. Even if Applicable Law Permitted Joint Utilities to Defer Lost Revenues as a Regulatory Asset, the Commission Should Deny their Request Because it Would Violate the Regulatory Compact.

A. <u>Utilities Are Not Guaranteed Revenues—Only the Opportunity to Recover Their Costs and A Fair Return</u>.

The purpose of regulation is to ensure utilities recover their costs and have the reasonable opportunity to earn a fair rate to return—not to guarantee utilities make a profit or receive certain revenues. The rate making process of setting just and reasonable rates involves a balancing of the investor and the consumer interests. The Commission has the responsibility of balancing the right of the utility's investors to recover costs and the opportunity to earn fair rate of return against the right of the public that it pay no more than the reasonable rates for the utility's services. While the rates allowed can never be so low as to be confiscatory, within this limit, if the rightful expectations of the investor are not compatible with those of the consuming public, it is the public which must prevail.

The U.S. Supreme Court has long held that it is not the role of regulators to insulate a regulated entity from market forces. In *Market Street Railway Co. v. Railroad Commission of California*, 324 U.S. 548 (1945), a street railway company challenged the validity of state commission order that reduced its rates. The United States Supreme Court found that this reduction did not violate the Constitution holding: "The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces." 324 U.S. at 567; *see also Pub. Serv. Comm'n of Mont. v. Great N. Utils. Co.*, 289 U.S. 130, 135 (1933) (due process clause safeguards against taking private property for public service without just compensation, but does not assure public utilities right under all circumstances to return on value of their property); *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, (1944) ("regulation does not insure that the business shall produce net revenues"); *Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 590 (1942) (noting that the "hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated, business"); *Jersey Cent. Power & Light v. FERC*, 810 F2d 1168, 1181 (D.C. Cir. 1987) ("[A] company that is unable to survive without exploitative rates has no entitlement to such rates.")

While the Joint Utility Petitioners may have anticipated earning higher revenues before COVID-19 hit, the Commission only has to guarantee cost recovery and the opportunity to earn a fair rate of return, not actual anticipated profits. Since the Commission does not need to guarantee profits and expectations of the investor are not compatible with those of the consuming public interest in only paying for used power, it is the public which must prevail here.

B. Under the Regulatory Compact in Indiana, Risk of Lost Revenue Rests with Utility Investors.

As the Joint Utility Petitioners receive compensation for business risk through rates, including their return on equity, allocating responsibility for lost profits to ratepayers would remove all risk to the utility and violate Indiana's regulatory compact. Moreover, recovery of unearned revenue would not simulate competition. The Commission should thus deny the Joint Utility Petitioners request to create a regulatory asset for lost revenue.

Joint Utility Petitioners have monopoly service areas in which customers cannot chose to obtain their electric service from a different provider.[13] "[T]he public is provided reasonable and adequate utility service at reasonable rates and, in exchange, utilities are ensured cost recovery and an opportunity to earn a reasonable return on its investment."[14] The Commission has observed that:

> 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. <u>The chance of loss or profit from operations is one of the risks a business enterprise must take. This 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</u>.[15]

The Commission has specifically determined that since the regulatory compact operates in Indiana, it is not in the public interest to compensate utilities for a reduction in sales resulting from the weather, income, commodity prices or economic conditions.[16] When sales increase, such as residential customer sales during COVID-19 or a hot summer, the utility enjoys the additional revenues. A utility's customers are not entitled to a refund or rate reduction. When the sales decrease, such as commercial and industrial sales during COVID-19 or a general economic downturn, the utilities experience reduced revenues but are not entitled to receive additional revenue.[17]

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[13] *See In Re: Petition of Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana*, Final Order, Cause No. 43839 at 83 (Apr. 27, 2011).

[14] *See In Re: Petition of Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana*, Final Order, Cause No. 43839 at 83 (Apr. 27, 2011).

[15] *See In Re: Petition of Duke Energy Indiana, Inc. for Approval of Authority For Deferred Accounting treatment*, Order on Reconsideration, Cause No. 43743 at 15 (Oct. 19, 2011) (emphasis added).

[16] *See In Re: Petition of Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana*, Final Order, Cause No. 43839 at 86 (Apr. 27, 2011).

[17] *See, e.g., In re PSI Energy, Inc.*, Final Order, Cause No. 39195 at 9-10 (Feb. 26, 1992) (PSI's rates routinely included provision for storm damage, but when an extraordinary ice storm occurred PSI sought to recover the unexpected losses from its ratepayers. The Commission

The Commission has taken pains, through a Lost Revenue Adjustment Mechanism ("LRAM"), to compensate electric utilities for revenues lost as a result of their own efforts to help their customers save energy, but the Commission explicitly rejected broader "decoupling" of revenue from sales.[18]

The return on equity ("ROE") authorized for each Joint Utility Petitioner were established within the context that utility investors are allocated the risk of variable sales.[19] Since investors, not customers, earn the return on capital, investors must bear corresponding risk. If the Commission were to allow utilities to continue to earn their ROE and engage in selective ratemaking to top off anticipated profits when revenues fall short, then shareholders would face no risk. Such one-sided treatment is especially unnecessary given that utilities in Indiana, on average, have been authorized to earn an ROE of nearly 10.1%, while the average authorized ROE throughout the United States is 9.7%.[20]

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reasoned: "An argument can be made that if we allow PSI to increase rates because of a year in which storm damage exceeded the embedded storm damage expense we might also offset any increase by prior years where actual storm damage was less than the expense embedded in rates. If utilities were allowed to engage in this selective form of ratemaking, then certainly ratepayers in our opinion must be given the same latitude." The Commission further found that PSI was compensated for storm damage twice, once through the storm damage expense embedded in rates and again "through the inclusion in rates of the opportunity to earn a reasonable return commensurate with the returns associated with investments containing similar risks." *Id.* at 10. "We believe the return granted by this Commission in PSI's most recent rate case compensates it for the operational risk of severe weather." *Id.*).

[18] *See e.g., In Re: Petition of Southern Ind. Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana,* Final Order, Cause No. 43839 at 86 (Apr. 27, 2011).

[19] *See* Roberto Dir. Test. at ¶¶ 7-8; *see also In re PSI Energy, Inc.*, Final Order, Cause No. 39195 at 10 (Feb. 26, 1992) ("We believe the return granted by this Commission in PSI's most recent rate case compensates it for the operational risk of severe weather."); *see also Citizens Action Coal. of Ind., Inc. v. N. Ind. Pub. Serv. Co.,* 485 N.E.2d at 615 (The Indiana Supreme Court cautioned that ratepayers should not be "required to act in aid and support of the utility as an insurer of the investor's risk.").

[20] *See* Roberto Dir. Test. at ¶ 8.

Finally, recovery of such losses would not simulate competition. The role of the Commission is not to protect utilities from all hazards and uncertainties associated with conducting business in an unpredictable world. The Commission properly serves to simulate the competitive environment dynamics in the context of a regulated monopoly.[21] In performing its role as a surrogate for competition, the Commission should allocate the risk of reduced profits to the utility, not to consumers who, in a competitive marketplace, would not be asked to pay a business's lost profits.[22]

C. The Joint Utilities Have Not Made a Prima Facie Showing Necessary to Demonstrate Extraordinary Relief is Appropriate.

The Commission should deny the Joint Utility Petitioners request because they have not provided sufficient, complete, or compelling evidence that reduced sales constitute a significant financial event which is fixed, known, and measurable and for which the balance of equity between the utility investors and its customers requires the utility to receive extraordinary relief.

In the normal course of utility regulation, utilities do not have the opportunity to seek relief for a "single issue"—single issue ratemaking occurs when a utility's rates are altered on the basis of only one of numerous factors that are considered when determining the revenue requirements of a regulated utility.[23] In "extraordinary" circumstances, however, Commissions

[21] *See e.g., N. Ind. Pub. Serv. Co. v. Citizens Action Coal. of Ind., Inc.*, 548 N.E.2d 153, 160 (Ind. 1989) ("The role of the commission in such a case becomes one of compensating for the missing element of competition"); *Citizens Action Coal. of Indiana, Inc. v. N. Indiana Pub. Serv. Co.*, 485 N.E.2d 610, 614 (Ind. 1985) ("The statutes which govern the regulation of utilities and which grant the PSCI its authority and power provide a surrogate for competition.").

[22] *See Citizens Action Coal. of Ind., Inc. v. N. Ind. Pub. Serv. Co.*, 485 N.E.2d at 614-15 (analyzing recoverability of utility expenditure by reference to the ability of a competitive business to recover similar expense in the face of price competition).

[23] *See* Roberto Dir. Test. at ¶ 9; *In Re: Petition of Duke Energy Indiana, Inc. for Approval of Authority For Deferred Accounting Treatment*, Order On Reconsideration, Cause No. 43743 at 15 (Oct. 19, 2011).

have considered extraordinary relief. In Indiana, the Commission has established the following factors for granting extraordinary treatment:

> In considering such requests, 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.[24]

Joint Utility Petitioners have not provided legally sufficient evidence of the "gravity of the financial event" related to unearned revenue. The only support for this request is that each Joint Utility Petitioner provides separate affidavits, which state that during a single month (April 2020) they have experienced lower than anticipated demand from commercial and industrial customers, resulting in reduced sales to these customers.[25] Such evidence is insufficient for "extraordinary treatment" for five reasons.

First, none of the Joint Utility Petitioners quantifies the impact of lower sales on the ability of the utilities to cover their fixed costs.[26] While overall retail sales are down, none of the Joint Utility Petitioners have acknowledged or attempted to quantify the contribution to fixed costs that commercial and industrial customers make each month through demand charges regardless of the volume of energy sold. Nor has any Joint Utility Petitioner acknowledged or attempted to quantify the over-contribution, residential customers are making to fixed costs.

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[24] *See In Re: Petition of Duke Energy Indiana, Inc. for Approval of Authority For Deferred Accounting Treatment*, Order on Reconsideration, Cause No. 43743 at 16 (Oct. 19, 2011); Roberto Dir. Test. at ¶ 9.

[25] *See* Roberto Dir. Test. at ¶ 10 which discusses Angela Camp Affidavit, on behalf of NIPSCO, at ¶ 12; Brian P. Davey Affidavit, on behalf of Duke Energy Indiana, at ¶ 11; Angie Bell Affidavit, on behalf of SIGECO, at ¶ 12; David A. Lucas Affidavit, on behalf of I&M, at ¶ 10; Gustavo Garavaglia M, on behalf of IP&L, at ¶ 13.

[26] *See* Roberto Dir. Test. at ¶ 10(a).

Brian P. Davey, on behalf of Duke Energy, states that the utility is experiencing "revenue impacts due to customer load reductions and therefore lower contribution to fixed costs of the utility."[27] Yet, each Joint Utility Petitioner also acknowledges that it has enjoyed an unanticipated increase in electricity usage, and thereby revenue, from residential customers. By the nature of regulatory rate design, these residential customers have over-contributed (or paid more than their share) to fixed costs due to this unanticipated increase in electricity usage.[28]

Second, none of the Joint Utility Petitioners makes any attempt to identify, let alone quantify, the reduction in costs resulting from the reduction in sales.[29] For instance the Joint Utility Petitioners could have experienced lower fuel and purchased power costs, obtained lower interest rates that reduced their capital costs, or experienced changes in the load shape so that it reduced peaking costs. There is also no evidence regarding whether the Joint Utility Petitioners acted to take advantage of any potential cost savings related to generating or procuring energy for customers.[30]

Third, a number of power plants in Indiana are uneconomically committed to the marketplace as "must run," and ratepayer would save money if these plants were committed and dispatched less.[31] The petition never looks at whether reduced generation may actually have provided a benefit to ratepayers.[32] For instance, Sierra Club submitted testimony in Cause No. 38707-FAC 123 that Duke Energy Indiana would have lost less money if it shut down portions of its generation instead of operating it over the time period September 1, 2019-November 30,

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[27] *See* Brian P. Davey Affidavit, on behalf of Duke Energy, at ¶ 6.
[28] *See* Roberto Dir. Test. at ¶ 10(a).
[29] *See* Roberto Dir. Test. at ¶ 10(b).
[30] *See* Roberto Dir. Test. at ¶ 10(b).
[31] *See* Roberto Dir. Test. at ¶ 10(b).
[32] *See* Roberto Dir. Test. at ¶ 10(b).

2019.[33] Duke Energy Indiana experienced even greater losses during the subsequent reporting period, December 1, 2019 through February 29, 2020, which could have been avoided by choosing not to generate and instead buying cheaper energy on the MISO market.[34] The record in this consolidated proceeding lacks sufficient information to determine if since Duke Energy Indiana consistently loses money by operating its generation, whether the lower demand caused by the pandemic allowed the utility to save money and, if so, how much money it saved. This record simply does not provide enough evidence for the Commission to analyze whether the utilities acted prudently in de-committing their coal units during extended periods of low demand;[35] at a minimum, the Commission should not even consider providing a lost revenues regulatory asset without determining if the utilities have done all within their control to lower costs to customers through their energy market decisions.

Fourth, none of the Joint Utility Petitioners provides an overall quantification of net impact from reduced commercial and industrial sales on each utility's ability to earn its authorized ROE.[36] In fact, with over-contribution of fixed costs by residential customers, continued contribution of fixed costs through demand charges by commercial and industrial customers, the potential to reduce capital costs, and reduced costs from the need to generate or procure electricity, the utilities have not demonstrated that they have experienced a net impact from unearned revenue.[37]

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[33] *See In Re: Application of Duke Energy Indiana, LLC for FAC*, Direct Testimony of Devi Glick on behalf of Sierra Club (Public Version), Cause No. 38707-FAC123, at 12-18 (IURC Mar. 6, 2020); Roberto Dir. Test. at ¶ 10(b).

[34] *See In Re: Application of Duke Energy Indiana, LLC for FAC*, Direct Testimony of Devi Glick on behalf of Sierra Club (Public Version), Cause No. 38707-FAC124, at 6 (June 4, 2020); Roberto Dir. Test. at ¶ 10(b).

[35] *See* Roberto Dir. Test. at ¶ 10(b).

[36] *See* Roberto Dir. Test. at ¶ 10(c).

[37] *See* Roberto Dir. Test. at ¶ 10(c).

Finally, a financial event can only be substantial or of significant gravity if the net effect impacts the utility's ability to earn its authorized ROE.[38] No utility has offered any evidence as to the net impact of unearned revenue on its ability to earn it authorized ROE.[39]

D. The Commission Should Not Provide Joint Utility Petitioners with the Opportunity to Rectify these Evidentiary Deficiencies with the Creation of Subdockets as that Would be Too Onerous on Consumer Advocates and Rate Cases Are the Only Appropriate Type of Docket for Such Relief.

The Commission should not allow the utilities to rectify their filing deficiencies by creating subdockets to examine the issue further for two reasons. First, rate cases are the only type of docket in which the Commission could possibly consider the impacts of lost revenue from COVID-19 impacts (which for all of the reasons discussed above is not an appropriate category for a regulatory asset creation or for recovery from ratepayers) as it would require a comprehensive review of each Joint Utility Petitioner's revenue, expenses, cost of service and performance, and a rebalancing of risk premiums. Unraveling a single thread of the regulatory compact, unravels the fabric of the compact. To assure that any new compact is in the public interest, the Commission would unavoidably consider, at the very least, a downward adjustment to ROE and reversal of the LRAM.[40] Second, it would be burdensome for consumer advocates to expand significant time and expense to engage in each individual subdocket.

E. The Commission Should Deny Joint Utility Petitioners' Request to Recoup Unearned Income Because They Have a Public Benefit Obligation.

The Commission should deny the Joint Utility Petitioners' request to establish a regulatory asset for unearned revenue because these utilities have a public benefit obligation, which requires that they can and should do better than seek to be insured for earnings

[38] *See* Roberto Dir. Test. at ¶ 10(d).
[39] *See* Roberto Dir. Test. at ¶ 10(d).
[40] *See* Roberto Dir. Test. at ¶ 14.

disappointment by their suffering customers.[41] Examples of good utility practice in the face of COVID-19 abound in other jurisdictions.[42] Sierra Club witness Cheryl Roberto, a former commissioner of the Public Utilities Commission of Ohio, found the following examples of companies and/or regulatory agencies that have advanced solutions that go beyond the nearly universal shutoff protections and waiver of fees to ameliorate hardships for customers and community:

- In New York, National Grid has suspended implementation of its authorized rate increase in light of the economic burden of the COVID-19 pandemic.[43]

- In Kentucky, the Commission noted that jurisdictional utilities would be permitted to seek approval to offer reduced rate or free electric service to customers.[44]

- In Minnesota, the Commission urged utilities to identify investments that could be made to support the economic recovery from the pandemic. The Commission promulgated a set of criteria for these investments, requiring, among other things, that they provide "significant utility system benefits" and "create jobs or otherwise assist in economic recovery" for the state.[45]

- The Texas Public Utility Commission established a COVID-19 Electricity Relief Program which implements a tariff rider to cover short-term costs. The rider acts as an interest-free loan between ERCOT and each Transmission and Distribution Utility that will be paid back at the end of the program. Funds are then directed towards qualified residential customers for assistance with bill payment.[46]

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[41] *See* Roberto Dir. Test. at ¶ 16.
[42] *See* Roberto Dir. Test. at ¶ 16.
[43] *See* Roberto Dir. Test. at ¶ 16; *see also* New York Public Service Commission. Order Postponing Approved Electric and Gas Delivery Rate Increases and Updated Reduction to the Low Income Discount Credit and Temporarily Waiving Certain Tariff Fees. March 25, 2020. Case 17-E-0238, Case 17-G-0239, Case 16-G-0058, Case 16-G-0059, Case 14-M-0565.
[44] *See* Roberto Dir. Test. at ¶ 16; *see also* Kentucky Public Service Commission. Order. March 6, 2020. Case No. 2020-00085.
[45] *See* Roberto Dir. Test. at ¶ 16; *see also Minnesota Public Utilities Commission. Order Approving Accounting Request and Taking Other Action Related to COVID-19 Pandemic. Docket No. E,G-999/CI-20-425, Docket Not. E,G-999/M-20-427. May 22, 2020.*
[46] *See* Roberto Dir. Test. at ¶ 16; *see also Public Utility Commission of Texas, Order Related to COVID-19 Electricity Relief Program. Project No. 50664, Item 107* (Filed 3/26/2020).

- o Other electric utilities are experiencing a similar reduction in revenue resulting from electric load decreases in commercial and industrial customer classes, but they have simply opted not to request relief related to load and revenue declines.[47]

As discussed in detail below, Hoosiers are hurting. The Commission should help the Joint Utility Petitioners meet their public obligations by denying their request to record and eventually recoup unearned income so that their profit margin doesn't decrease.

F. <u>No Other State Commission Has Created a Regulatory Asset for Unearned Revenue</u>.

No other state commission in addressing COVID-19 related impacts has created a regulatory asset for unearned revenue due to decreased loads. Joint Petitioners note that "accounting treatment or other relief related to COVID-19 associated costs" has been authorized in 21 jurisdictions.[48] Joint Utility Petitioners' statement obfuscates that fact that none of the cited states have allowed for recovery of unearned revenue due to reductions in sales resulting from COVID-19[49] and none of the cited states have allowed for the creation of a regulatory asset due to reduction in sales from COVID-19.[50] In fact, the Wisconsin Public Service Commission affirmatively considered but decided against approval, including declining sales revenue as a component of a regulatory asset for deferral.[51]

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[47] *See* Roberto Dir. Test. at ¶ 16; *see also Comments of DTE Electric Company and DTE Gas Company on Utility Accounting, In Re: Commission's own motion to review its response to novel coronavirus (COVID-19),* Case No. U-20757, at 4 (Michigan Public Service Commission, April 3, 2020); *Consumers Energy Company's Comments On Utility Accounting Issues Resulting From COVID-19, In Re: Commission's own motion to review its response to novel coronavirus (COVID-19),* Case No. U-20757, at 4-5(Michigan Public Service Commission, April 3, 2020).

[48]*See* Joint Utilities Verified Petition at 13-14 and FN 4 listing: Alaska, Arkansas, Connecticut, District of Columbia, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nevada, Ohio, Oklahoma, Rhode Island, South Carolina, Texas, Virginia, Wisconsin, and Wyoming.

[49] *See* Roberto Dir. Test. at ¶ 12(c)(i).

[50] *See* Roberto Dir. Test. at ¶ 12(c)(ii).

[51] *See* Roberto Dir. Test. at ¶ 12(c)(iii).

III. The Commission Should Treat Utility Customers Fairly.

A. Indiana is Hurting; the Commission Should Extend the Moratorium.

While the true extent of the financial fallout and the permanent changes to the economy remain unclear, what we know today should inform how the Commission responds to these consolidated dockets. The goal for the Commission and the Joint Utility Petitioners should be to assist each customer in remaining connected to the utility network, while we navigate our way through these uncharted waters in a way that protects both newly financially-strapped customers and existing low-income customers.

Over 37,000 Hoosiers have tested positive for the coronavirus, with over 2,100 of them losing their lives.[52] African American and other minority Hoosiers have been particularly impacted by the virus. Even though African Americans make up only 9.8% of the Indiana population, they account for 13.2% of COVID-19 positive cases and 15.3% of the COVID-19 related deaths. In addition, even though other minorities make up only 2.6% of the Indiana population, they account for 18.1% of the COVID-19 positive cases and 12.4% of COVID-19 related deaths.[53]

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[52] *See* Indiana Government COVID-19 Dashboard, https://www.coronavirus.in.gov/2393.htm (accessed on June 8, 2020).

[53] *See* Indiana Government COVID-19 Dashboard, https://www.coronavirus.in.gov/2393.htm (accessed on June 8, 2020).

Statewide Positive COVID-19 Tests Demographic Data

Race	% of Cases	% of Indiana population
White	44%	85.1%
Black or African American	13.2%	9.8%
Other Race	18.1%	2.6%
Asian	1.5%	2.5%
Unknown	23.3%	0%

Statewide Death Demographic Data

Race	% of Deaths	% of Indiana population
White	64.7%	85.1%
Black or African American	15.3%	9.8%
Other Race	12.4%	2.6%
Asian	0.4%	2.5%
Unknown	7.1%	0%

Indiana was economically hit hard by COVID-19. There are over 241,000 unemployed Hoosiers.[54] The seasonally adjusted unemployment rate in Indiana increased from 3.1% in January 2020 to 16.9% in April 2020.[55] While Indiana had a lower unemployment rate prior to COVID-19 than the national average, it is now worse than the nationwide average, which is 14.7% unemployment.[56]

The employment impacts from this pandemic are not yet fully known. For instance, COVID-19 is likely to affect small business the greatest.[57] According to an April 2020 research paper, about 1.8% of small businesses are projected to permanently shut due to the pandemic. Business size was also found to be inversely correlated with the likelihood of closure during COVID-19 (permanent or temporary); firms with between 6 and 19 employees were most likely to have closed due to COVID-19—indicating that the economic fallout from the pandemic is disproportionately impacting those businesses least likely to be able to bear it.[58] Individuals working for such companies that were initially furloughed could be permanently let go.

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[54] *See* Hoosiers by the Numbers, http://www.hoosierdata.in.gov/infographics/weekly-unemployment-claims.asp (accessed on June 8, 2020).
[55] *See* Robert Dir. Testimony at ¶ 12(b)(i).
[56] *See* Robert Dir. Testimony at ¶ 12(b)(i).
[57] *See* Robert Dir. Testimony at ¶ 12(b)(ii).
[58] *See* Robert Dir. Testimony at ¶ 12(b)(ii).

The financial cliff that persons living paycheck-to-paycheck avoided prior to the COVID-19 pandemic has now become unavoidable. School and childcare closures, job furloughs, permanent job losses, and COVID-19-related health crises make the ability to pay utility, rent, and other bills even harder. Before the pandemic hit Indiana's poorest residents already shouldered a significant energy burden. According to U.S. Department of Energy data, Hoosiers earning 0-30% of area median income spend 12% of income on electricity, compared with the nationwide average energy burden of 11% for this poorest segment.[59] Plummeting income and employment loss will only exacerbate this energy burden for existing low-income customers and newly-financially strapped customers.[60]

When utility bills become unaffordable, the likelihood that ratepayers will seek expensive payday loans significantly increases. Before the COVID-19 pandemic, one financial services report found that utility bills were the number-one reason for consumers to use payday loans. The top three uses for a payday loans included: utility bills (36%), general living expenses (34%), and rent (18%). Users of very short-term loans were almost twice as likely as users of short-term loans to borrow for routine expenses like utility bills (42% versus 28%) or general living expenses (41% versus 20%).[61]

The reality is that this mix of public health and financial impact on so many Hoosiers[62] will likely increase residential utility customer arrearages. Since access to essential service is

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[59] *See* Robert Dir. Testimony at ¶ 12(b)(iii).

[60] *See* Robert Dir. Testimony at ¶ 12(b)(iii).

[61] *See A Complex Portrait: An Examination of Small-Dollar Credit Consumers, The Center for Financial Services Innovation*, Rob Levy, Manager, Innovation and Research, Joshua Sledge, Analyst, Innovation and Research at 4 (Aug. 2012).

[62] It should be noted that while many Hoosiers are financially hurting, the same cannot be said for the Joint Utility Petitioners. Investors in the four of the five publicly traded Indiana electric utilities have reaped increasing dividends every year over the period 2015-2019. *See* Roberto Dir. Test. at ¶ 12, fn. 31, (Witness Roberto reviewed annualized dividend prices for the four

vital to public health and safety at all times, but particularly during a global pandemic, Sierra Club urges the Commission to extend the moratorium on terminations of utility service until the Commission has enough information to understand the scope of the arrearage problem. Sierra Club also requests that the Commission require Joint Utility Petitioners to provide 60-day notice to all customers in arrearages that the moratorium is ending. Extension of the moratorium will be an acknowledgment by the Commission that the ability to remain safely and comfortably in one's own home during this pandemic should not be determined by one's financial condition during this emergency.

In order to determine the correct time to lift the moratorium, Sierra Club encourages the Commission to require that the Joint Utility Petitioners file the following information with the Commission on a weekly basis:

1) The number of residential and non-residential customer accounts of each utility currently in arrearage, as compared to historical averages;

2) Aggregated data on how many of those customers are:

    a. Low-income,
    b. Disabled,
    c. Elderly,

Indiana public companies from the annual Financial Review of Edison Electric Institute at https://www.eei.org/issuesandpolicy/Pages/FinanceAndTax.aspx#financialreview). S&P Global analyzed EBITDA for the 25 most profitable utilities and found that these utilities have all been able to grow their profitability even through Q1 2020. On this list of top 25 most profitable utilities are three of the five publicly-traded, investor-owned utilities that are part Joint Utility Petitioners: Duke, NiSource, and AEP. *See NiSource Logs Biggest Improvement in Profitability by Recurring EBITDA Margin* by Nephele Kirong, https://platform.mi.spglobal.com/web/client?auth=inherit#news/article?id=58985223&KeyProductLinkType=58. Finally, executive compensation is shocking high. In 2019, the Chief Executive Officer of AEP received a compensation package of $14.5 million, https://www.sec.gov/Archives/edgar/data/4904/000000490420000026/0000004904-20-000026-index.htm; and the Chief Executive Officer of Duke received a compensation package of over $15 million, with almost $3 million in non-equity incentive compensation that was paid in March 2020, https://www.duke-energy.com/proxy/_/media/pdfs/our-company/investors/proxy/executive-compensation.pdf?la=en.

d. Veterans, or
e. Residents of historically economically disadvantaged communities

3) The number of residential and non-residential customers that were in arrearage in February 2020 and the number of residential and non-residential customers that fell behind, reportedly weekly, from March 1, 2020 to the present day;

4) The number of residential and non-residential customers that requested payment assistance and enrolled;

5) The number of residential and non-residential customers that requested payment assistance and were denied, by reason;

6) The number of residential and non-residential customers that paid up and became current in the reporting week;

7) The number of residential and non-residential customers that entered payment plans;

8) The number of residential and non-residential customers that requested flexible payment plans;

9) Amount of payment assistance provided;

10) Amount of arrearage included in payment plans;

11) Term length of payment plans;

12) The number of residential and non-residential customers that completed payment plans;

13) The number of residential and non-residential customers seeking payment assistance that were ineligible and the reason why they were ineligible;

14) The total current arrearage balance of each utility, as compared to historical averages;

15) Information regarding each utility's revenue and earnings history;

16) Information regarding each utility's financial strength and debt service reserves;

17) The magnitude of late fees and penalties that would have been charged absent the moratorium; and

18) Any other data the Commission may deem relevant.

Collecting this information will allow the Commission to understand when is the correct time to lift the shut-off moratorium and how best to structure customer protections so as to facilitate Indiana's recovery from COVID-19.

B. The Commission Should Approve Uniform, Statewide Consumer Protection Programs that Reflect the Gravity of the Current Situation.

Indiana utilities obligation to serve all customers must adjust to the new economic reality with robust and flexible protections that acknowledge the current situation for low-income customers. The Commission should issue consistent, statewide flexible consumer protection guidelines that all utilities must follow so that a customer's ability to obtain more flexible payment terms and flexible credit and collection protections do not vary based on where they live in the state. The Commission should consider adopting the following policies:

The Commission should allow low-income customers to access discount rates and arrearage reduction programs through simple self-certification of means-tested programs. Besides showing enrollment in LIHEAP or PIPP, customers should be able to show participation in other "low income" programs to self-certify as low-income with their utility. These programs include customer enrollment in: (1) public or assisted housing; (2) Supplemental Security Income ("SSI"); (3) Supplemental Nutrition Assistance Program ("SNAP") (formerly Food Stamps); (4) Temporary Assistance for Needy Families ("TANF"); (5) Telephone Lifeline; (6) Pharmaceutical Assistance for the Aged and Disabled ("PAAD"); (7) Women, Infants and Children ("WIC") Special Supplemental Nutrition program; (8) Medicaid; (9) free or reduced school lunch/school breakfast; (10) Head Start; (11) Dependency and Indemnity Compensation ("DIC") for Surviving Spouse or Parents of Veterans; or (12) other programs as may require income qualification. Proof of enrollment in any of these programs should qualify a customer for special low-income protections.

The Commission should ensure all customers have access to flexible repayment arrangements if they self-certify as low-income. Successful flexible repayment plans require customers to pay off not only their existing monthly bill but also an additional fee, with the goal of eventually retiring the arrearage. The Commission's objective in establishing more flexible repayment terms should be to ensure that the additional monthly amounts owed are as low and affordable as possible, that the time period to retire the arrearage is as long as needed, and that access to the program is as open as possible. The Commission should allow people to self-certify as low income to qualify for such programs, waive down-payments to enter into a repayment plan, and allow a customer to miss two payment cycles before removing them from the payment program and make-up these missed payments by tacking the months of missed payments onto the back end.

The Commission should require utilities to waive new deposits for residential customers, apply existing deposits to outstanding balances, and waive all late fees and penalties. The financial fallout of COVID-19 will leave low-income customers with little to no discretionary income. So customers in financial distress will be unable to pay a deposit on top of arrearages and current bills, or late fees and penalties when the moratorium order is eventually lifted. It is unnecessary to require such fees and penalties so the Commission should waive new deposits, late fees, and penalties until twelve month after the shut-off moratorium is lifted.

The Commission should order all utilities to suspend collection activities and any credit reporting (if they do credit reporting). Expecting that utility customers who are in financial distress to make timely utility payments-in-full is unrealistic. A debt collection service and/or negative credit report can exact untold costs on a consumer that affect a person's ability to pay housing costs, rent an apartment, buy food, pay medical bills, obtain a job and other costs. The

Commission should cease all debt collection and credit reporting, to the extent it exists, until 24-months after the moratorium is lifted.

The Commission should allow a deferred tracking of arrearages and associated costs but explicitly state that the tracking of un-collectibles is only for accounting purposes and does not bind the Commission to grant cost recovery and does presume eventual cost recovery.

While we can be hopeful that the Indiana economy will rebound in the months and years ahead and that low-income customers will be able to begin catching up on accumulated arrearages, there can be no doubt that the economic shutdown will have exacted a significant toll on Hoosiers financially. The Commission must thus thoughtfully structure consumer protection programs that allow customers to safely handle the pandemic, while also regaining their financial footing.

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Respectfully submitted,

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