

IN THE CLARK CIRCUIT COURT NO. 2

STATE OF INDIANA

CARLA MILLER

V.

CAUSE NO: 10C02-2005-CT-067

INDIANA GAS COMPANY, INC.

ORDER GRANTING
SUMMARY JUDGMENT

This matter comes before the court on motion by the Defendant for summary judgment. The court being otherwise sufficiently advised in the premises, now finds and orders as follows:

FINDINGS OF FACT

1. This property damage and personal injury action arises from a natural gas explosion on May 19, 2019, at the home of William "Billy" Phillips and Janet Phillips, located at 904 Assembly Road, Jeffersonville, Indiana. There were originally multiple plaintiffs, and multiple defendants. These parties are the only ones remaining after protracted litigation;
2. Carla Miller (hereinafter "Miller") lived next door to the Phillips, at 906 Assembly Road. Her claim arises from property damage and personal injuries sustained in the explosion;
3. In the early morning hours of May 19, 2019, Janet Phillips awoke to get ready for work. When she flipped on a light switch in her basement, the spark caused an explosion that leveled her house, killed her husband, caused grave personal injuries to her, and caused personal injuries and property damage to her neighbor, Carla

Miller;

4. Miller filed the instant suit against Indiana Gas Company, Inc;
5. Ms. Miller's Complaint asserts causes of action for strict products liability under the Indiana Product Liability Act (IPLA) (Compl. ¶¶ 98-119), negligence (id. ¶¶ 120-129), negligent hiring (id. ¶¶ 130-133), negligent training (id. ¶¶ 134-137), negligent supervision (id. ¶¶ 138-142), negligent retention (id. ¶¶ 143-146), negligent failure to warn (id. ¶¶ 147-149), negligent product liability (id. ¶¶ 150-153) and damages therefrom (id. ¶ 154, et seq.);
6. Ms. Miller further alleges that Defendant, Indiana Gas "has an unsafe and aging pipeline distribution network, which is inaccurately mapped, poorly maintained, and predisposed to corrosion, leaks and system failures." (Compl. ¶ 29.) In support of these allegations, Miller identifies numerous prior instances of failed odorization, including Defendant's own public acknowledgment just one year prior, that it failed to follow its own written procedures and failed to maintain accurate maps and records of its pipeline facilities. (Compl. ¶¶ 17-27, 28.);
7. At the time of the Incident, Indiana Gas supplied natural gas service to the Phillips Residence pursuant to the terms and conditions of the Tariff for Gas Service, I.U.R.C. No. G-19, filed with and approved by the IURC ("Indiana Gas Tariff"). (Alexander Aff., ¶ 7; Alexander Aff., Ex. A).
8. Pursuant to the Indiana Gas Tariff, the "Customer shall furnish, install, and maintain all necessary piping beyond the outlet side of the meter." (Alexander Aff., Ex. A, Indiana Gas Tariff, Sheet 53).

9. Pursuant to the Indiana Gas Tariff, “[i]t shall not be the duty of [Indiana Gas] to inspect Customer’s piping, appliances or equipment.” (Alexander Aff., Ex. A, Indiana Gas Tariff, Sheet 53).
10. Pursuant to the Indiana Gas Tariff, “[Indiana Gas] shall not be liable for damages caused by defective piping or appliances on Customer’s Premises.” (Alexander Aff., Ex. A, Indiana Gas Tariff, Sheet 59).
11. The Incident occurred at the Phillips Residence on the morning of May 19, 2019. (Alexander Aff., ¶ 8, Ex. D, Ex. E).
12. After the Incident, individuals from Indiana Gas and the IURC arrived at the scene of the Incident. (Alexander Aff., ¶ 9; Novak Aff., ¶ 6; Friend Aff., ¶ 6).
13. Indiana Gas performed an investigation into the cause and origin of the Incident. (Alexander Aff., ¶¶ 9 – 21; Alexander Aff. Ex. C, Ex. D and Ex. E).
14. Indiana Gas’ cause and origin investigation was observed by Dan Novak and Howard Friend of the IURC. (Novak Aff., ¶ 8; Friend Aff., ¶ 8).
15. Indiana Gas’ cause and origin investigation included a gas leak survey. The gas leak survey included bar hole testing (making a hole in the soil and testing for the existence of natural gas using a combustible gas indicator); walking along the gas main and checking cleanouts and sewer manholes using a flame ionization unit to detect the indication of methane; and pressure testing the service line to 904 Assembly Road for leaks. (Alexander Aff., ¶¶ 9 – 21; Alexander Aff. Ex. D and Ex. E).
16. Indiana Gas performed two pressure tests on the natural gas service line serving

- 904 Assembly Road. Both tests confirmed that there were no leaks on the service line, which is part of Indiana Gas' system. (Alexander Aff., ¶ 11; Novak Aff., ¶ 12; Friend Aff., ¶ 11; Novak Aff., Ex. A; Friend Aff., Ex. A).
17. The gas leak survey was negative for leaks on Indiana Gas' facilities. (Novak Aff., ¶ 9; Friend Aff., ¶ 9; Alexander Aff., ¶ 11; Alexander Aff. Ex. D and Ex. E).
 18. The Indiana Gas-owned facilities are under the jurisdiction of the IURC and the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") and thus considered jurisdictional. (Alexander Aff., ¶ 19).
 19. The source of the natural gas involved in the Incident was "not jurisdictional" or "non-jurisdictional." (Alexander Aff., ¶ 18; Alexander Aff. Ex. D and Ex. E; Novak Aff., ¶ 13; Friend Aff., ¶ 12).
 20. The terms "not jurisdictional" and "non-jurisdictional" mean that the source of the natural gas involved in the Incident was not a leak on Indiana Gas-owned facilities. (Alexander Aff., ¶ 19).
 21. The IURC concluded, and reported to PHMSA, that the cause of the Incident was not jurisdictional. (Novak Aff., ¶ 13; Friend Aff., ¶ 12; Novak Aff., Ex. A; Friend Aff., Ex. A);
 22. Indiana Gas documented its investigation. (Alexander Aff., ¶ 20; Alexander Aff., Ex. D).
 23. Following the investigation, Indiana Gas reported its findings to the IURC. (Alexander Aff., ¶ 21; Alexander Aff., Ex. E).
 24. The IURC prepared a Final Incident Report that was signed by Dan Novak and

Howard Friend specifically concluding that the “leak survey was negative for gas leaks” and “the cause of this incident is not jurisdictional.” (Novak Aff., ¶ 14; Friend Aff., ¶ 13; Novak Aff., Ex. A; Friend Aff., Ex. A). In other words, the IURC determined that any gas leak was on the customer side of the gas meter.

25. John Erickson, P.E. and President of Safety & Compliance Evaluation, also concluded that “[l]eakage surveys, post-accident pressure tests of [Indiana Gas’] pipeline facilities and hourly meter readings at 904 Assembly Road indicate that the natural gas that caused this explosion came from a leak inside the house, not from [Indiana Gas’] pipeline system.” (Erickson Aff., ¶ 6; Erickson Aff., Ex. A).
26. The Incident was caused by an opening on the piping inside the customer’s home at 904 Assembly Road. (Alexander Aff., ¶ 18). Specifically, shortly after 2 p.m. on May 18, 2019, the day before the natural gas explosion, natural gas at more than 400 times the normal usage amount began passing through the meter connected to the Phillips home that is directly next door to Ms. Miller’s home. (Compl. ¶ 84.)
27. For approximately 13 ½ hours, increased amounts of natural gas were flowing into the home of Billy and Janet Phillips. (Compl. ¶ 85.) This is not disputed by Defendant, Indiana Gas Company. (See Indiana Gas Company’s Brief In Support of Motion for Summary Judgment (“Indiana Gas Brief”) at 7, ¶ 27.)
28. The meter at 904 Assembly Road had an Encoder Receiver Transmitter (“ERT”) that stored a rolling 40 days’ worth of readings. The ERT data is collected from a vehicle that is equipped with a Field Collection System (“FCS”). The FCS technology allows a vehicle equipped with antennas to pull the ERT data from the meter through a radio

frequency. The FCS technology allows the data to be pulled from the meter to a laptop mounted inside the vehicle. The data is then sent from the laptop to servers via a secure connection. This equipment was used on May 19, 2019, to pull the ERT data from the meter located at 904 Assembly Road. (Alexander Aff. ¶ 15; Alexander Aff., Ex. D).

29. The ERT data pulled from the meter at 904 Assembly Road on May 19, 2019, showed a dramatic increase of natural gas flow through the meter, beginning between 3:00 p.m. and 4:00 p.m. on Saturday May 18, 2019. The ERT data showed a sudden increase on May 18, 2019, from 0.00 ccf between 2:00 p.m. and 3:00 p.m., to 2.74 ccf between 3:00 p.m. and 4:00 p.m. After 4:00 p.m. on May 18, 2019 the flow of gas through the meter continued at a rate of 4.04 to 4.12 ccf per hour until the explosion occurred at approximately 5:00 a.m. on May 19, 2019. The corresponding daily totals of natural gas flowing through the meter was 0.44 ccf on May 17, 2019, 35.80 ccf on May 18, 2019, and 19.94 ccf on May 19, 2019 (until the explosion occurred at approximately 5:00 a.m.). (Alexander Aff. ¶ 16; Alexander Aff. Ex. B and Ex. E).
30. Gerry S. Mang of American Structurepoint, Inc. conducted an inspection of the Phillips Residence on May 19, 20, and 21, 2019. Mr. Mang found that “[a] cap had been recently removed from the open line by human intervention. . . . Electronic recording data supports an open line from the day before the incident to the time of the incident. . . . The uncapped gas line inside the home is consistent with the amount of natural gas recorded on the ERT data for a period of 13 hours.” (Mang Aff., ¶¶ 6-8; Mang Aff., Ex. A).

31. Donald J. Hoffman, Ph.D., P.E., IAAI-CFI, Safety Engineering Laboratories, concluded that “[t]he source of gas was the uncapped gas line inside the home. The cause of this explosion was the opening of the gas line at approximately 3:00 P.M. the day before.” (Hoffman Aff., ¶¶ 6-7; Hoffman Aff., Ex. A).
32. Donald J. Hoffman further determined that “[t]he sudden increase in gas flow at 3:00 P.M. on the afternoon prior to the incident is consistent with the removal of the piping’s cap. The condition of the open piping after the incident (i.e., rusted but undamaged with pipe dope further up on the threads) is consistent with the removal of the cap. A properly tightened cap would likely have required use of a tool to remove it from the pipe. This evidence is consistent with someone intentionally removing the cap from the gas piping at approximately 3:00 P.M. on the day prior to the incident.” (Hoffman Aff., ¶¶ 8-11; Hoffman Aff., Ex. A).
33. Gerry S. Mang further determined that “[t]o remove the pipe cap would require two wrenches, one to hold the pipe nipple and one to remove the cap. The flow data indicates the removal of the cap occurred around 4:00 PM May 18, 2019.” (Mang Aff., ¶¶ 10-11; Mang Aff., Ex. A).
34. No Indiana Gas personnel were at 904 Assembly Road on May 18, 2019. (Alexander Aff., ¶ 22).
35. The only individuals present at the Phillips Residence on May 18, 2019, the day prior to the Incident, were Billy and Janet Phillips. (Deposition of Janet Phillips (“Phillips Dep.”), p. 10, ll. 1-3; p. 61, ll. 6-12; Janet Phillips’ Interrogatory Answers, Desig. Ex. 10, No. 12).

36. On the day before the Incident, Billy and Janet Phillips both worked in the yard at the Phillips Residence from around 8:00 or 9:00 in the morning until 3:00 or 4:00 in the afternoon. (Phillips Dep., pp. 61, ll. 24 – p. 62, ll. 3).
37. When Janet Phillips finished working in the yard around 3:00 or 4:00 in the afternoon on May 18, 2019, she left the Phillips Residence to go to the grocery store and get gas for her car while Billy Phillips remained alone at the Phillips Residence. (Phillips Dep., p. 62, ll. 2-11).
38. Billy Phillips was the only individual at the Phillips Residence from approximately 3:00 p.m. to 4:00 p.m. on May 18, 2024. (Phillips Dep., p. 61, ll. 6-8, 24-25, p. 62, ll. 1-11).
39. Billy Phillips completed plumbing, electrical, painting, drywall, and flooring projects around the Phillips Residence and kept tools at the Phillips Residence. (Phillips Dep., pp. 30, l. 25 - p. 31, ll. 22);
40. Ms. Miller alleges the lack of detectable odorant prevented the Phillips and anyone else from smelling the copious amounts of gas pouring into the Phillips' home from May 18 to May 19, 2019, when the explosion occurred. (Compl. ¶¶ 84-89.);
41. Because in its untreated state, natural gas is odorless and colorless, federal regulation 49 CFR § 192.625 requires the gas company – Indiana Gas – to add odorant to protect consumers, like the Phillips and Ms. Miller. (Compl. ¶ 126.) Defendant does not dispute this. (Indiana Gas Reply at 9.);
42. 49 CFR § 192.625 states: “A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth the lower

explosive limit, the gas is readily detectable by a person with a normal sense of smell.”

43. Defendant does not dispute that from May 18, 2019 until the explosion on May 19, 2019, there was a “dramatic increase in the flow of natural gas through the meter” into the Phillips’ home. (Indiana Gas Brief at 2.) Ms. Miller alleges that at these levels, had odorant been properly added, the smell should have been overwhelming. However, Ms. Miller alleges there was no smell (Miller Response at 6.);
44. Janet Phillips testified during her deposition that she never smelled natural gas in her home prior to the explosion even though tremendous levels of natural gas began leaking into their home over thirteen (13) hours prior. (Miller Response, Exhibit B.);
45. Defendant’s employee, Jeff Higdon, one of the first of its employees to arrive on the scene after the explosion, testified that he did not smell natural gas at the location of the explosion. (Miller Response, Exhibit D.);
46. The Jeffersonville Fire Department’s Report, authored by Captain Jason Sharp, noted that the gas pipe to the house was open, but they did not smell any gas when they shut it off. (Miller Response, Exhibit C.);
47. The federal regulation addressing odorization of natural gas states “a combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.” 49 CFR 192.625. The lower explosive limit of natural gas in air is approximately 5%. Therefore, the regulation requires that the gas must be “readily detectable by a person with a normal sense of smell” at no

more than 1% gas in air. (Erickson Aff., Ex. A);

48. As part of the investigation immediately after the Incident, Tyler Episcopo, Greg Alexander and James Jones of Indiana Gas, along with Chad Ogden of the Jeffersonville Fire Department, performed odorator readings at 902, 903, and 906 Assembly Road, i.e., the houses on either side and across the street from the Residence. (Alexander Aff., Ex. D);
49. An odorator is a handheld device used to evaluate and record odor levels at test locations. (Alexander Aff., 13). The odorator is an instrument that allows the user to determine the percentage of gas in air at which the odor becomes readily detectable. *Id.*
50. An odorator is not used to test for odor in the ambient air. The ambient air and the soil were tested with Flame Pack 400 hydrocarbon gas detectors, Sensit Gold sensors and a GMI GT gas detector in the area adjacent to the Phillips Residence looking for potential leaks that may have allowed natural gas to migrate into the Phillips Residence. Again, this extensive leak survey of the neighborhood was negative for gas leaks. (Alexander Aff. ¶ 10, 11, Ex. D; Novak Aff., Ex. A; Friend Aff., Ex. A).
51. The odorator readings found that the natural gas odorant levels were at .21%, .21%, and .28%, respectively, all well within the regulatory standard of no more than 1% gas in air. *Id.*
52. That same day Dan Novak of the IURC, who was on-site observing the investigation, personally smelled odorant in the natural gas at 908 Assembly Road. (Novak Aff., ¶ 10).

53. Shane Alexander of Indiana Gas also smelled odorant in the natural gas at 908 Assembly Road. (Alexander Aff., ¶ 14);
54. Defendant proffers several theories or possibilities regarding Janet Phillips' alleged inability to smell gas inside her home, including that she might not have a "normal sense of smell," that the couple had animals in the home, or that Billy Phillips routinely smoked marijuana in the home;
55. The IURC, the regulatory body responsible for overseeing Indiana Gas' compliance with all applicable regulations, including 49 CFR 192.625, determined "the odorant levels are within the acceptable range." (Novak Aff., Ex. A; Friend Aff. 10, Ex. A).
56. While Jeffersonville Fire Department Captain Sharp stated he did not hear or smell gas coming from the gas line at the time he shut it off and Indiana Gas technician Jeff Higdon stated he did not smell natural gas when he arrived at the scene, this was because there was no natural gas leaking at the time of their observations. The excess flow valve installed on the service line to the Phillips Residence was triggered by the explosion and immediately cut off all gas flow to the Phillips Residence. (Erickson Aff., Ex. A; Alexander Aff., Ex. E).
57. "An excess flow valve (EFV) is a mechanical safety device that may be installed on a natural gas service line, and is designed to automatically shut off the flow of natural gas through a service line in the event of a significant break..." (Erickson Aff., Ex. A).
58. As further explained by Adam Giles of Indiana Gas in his report to the IURC, "[t]he excess flow valve at 904 Assembly Rd. engaged at the time of the explosion as a

result of the gas meter/meter bar being knocked off the lockwing evidenced by there being no blowing gas upon the arrival of the Jeffersonville Fire Department or the subsequent arrival of Vectren's first responder." (Alexander Aff., Ex. E).

59. "The service line excess flow valve reacted as designed." (Mang Aff., Ex. A).
60. John Erickson determined that "the gas to 904 Assembly Road on May 19, 2019 was delivered through a steel main that had been in service for over 18 years. Odor fade is not an issue with pipe that has been exposed to odorized gas for years. . . . There is no evidence that odor fade was occurring in the gas going to 907 Assembly Road. There is ample evidence that odor fade was not occurring in the Assembly Road area including post-accident odorant tests and Dan Novak of the IURC smelling gas at the meter set at 908 Assembly Road." (Erickson Aff., Ex. A);
61. The IURC conducted an investigation of the Incident at the Phillips Residence and concluded that Indiana Gas did not violate any federal or state pipeline safety regulations. (Erickson Aff., ¶ 7; Erickson Aff., Ex. A);
62. The IURC did not issue any notices of probable violation or take any other enforcement action with respect to Indiana Gas arising out of the Incident. The IURC also did not assess any fines or require expenditures in lieu of fines arising out of the Incident. (Erickson Aff. ¶ 8; Erickson Aff., Ex. A).;
63. Plaintiff alleges the IURC and the Indiana Gas Tariff do not govern or control the outcome of product liability cases such as this one. Specifically, plaintiff urges this court to find that the IPLA governs all actions brought by a consumer against a manufacturer or seller for physical harm caused by a product – in this case, defective

gas that was under-odorized. (Miller Response at 17.) Miller further argues the IURC report contains no substantive information about odorant readings and is merely a secondhand regurgitation of information received by Defendant's own employees (and contained in Defendant's Investigative Report). (Miller Response at 25.)

64. Miller further argues that the instant motion for summary judgment is premature because fact and expert discovery is ongoing. In other words, Defendant filed this Motion prior to Plaintiff, Carla Miller, being deposed and prior to Plaintiff disclosing experts. (Miller Response at 3.) In fact, the parties submitted an Agreed Order extending fact and expert discovery, which the Court entered on January 2, 2025. That Agreed Order extended Plaintiff's deadline for expert disclosures to January 24, 2025. Plaintiff contends that while the Court cannot consider the substance of Plaintiff's expert reports (which were not required to be disclosed until after this briefing by agreement), that the Court can consider the fact that both parties have agreed there is outstanding expert discovery.

CONCLUSION OF LAW

65. Plaintiff's argument here, restated succinctly, is:
- a. Defendant had an obligation to odorize all the gas it sells;
 - b. Defendant failed to properly odorize the natural gas sold to her neighbors, Billy and Janet Phillips;
 - c. Had the gas been properly odorized, Janet Phillips would have smelled it;
 - d. Had Janet Phillips smelled gas, the explosion may not have occurred;

- e. Defendant is strictly liable for the explosion;
66. Defendant disagrees with Plaintiff's assertions. Specifically, Defendants argue Billy Phillips caused this explosion, for reasons unknown, by removing a cap from the gas line that filled his home with a tremendous amount of gas. Further, Defendants proffer data, testimony, and other demonstrative exhibits in furtherance of their argument that the natural gas delivered to Assembly Road was odorized within federal limits at the time of the explosion;
67. Summary judgment is appropriate if the designated evidentiary matter shows there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); Burkett v. Am. Fam. Ins. Grp., 737 N.E.2d 447, 452 (Ind. Ct. App. 2000);
68. Once the moving party makes a prima facie showing of the non-existence of a genuine issue of material fact, the burden shifts to the opposing party to come forward with specific evidence demonstrating that there is a genuine issue for trial. Brunton v. Porter Mem. Hosp. Ambulance Serv., 647 N.E.2d 636, 638 (Ind. Ct. App. 1994); Ind. Trial Rule 56(E).
69. The non-moving party may not rest on their pleadings but instead "must set forth specific facts, using supporting materials contemplated under the rule, which show the existence of a genuine issue for trial." Stevenson v. Hamilton Mut. Ins. Co., 672 N.E.2d 467, 471 (Ind. Ct. App. 1996);
70. Here, it is clear that Indiana Gas is not responsible for the leak of gas into Billy and Janet Phillips's home. The Defendant's responsibility ended at the outlet, and the

source of the gas involved in the explosion was not jurisdictional;

71. A tariff is required by the IURC to establish the terms and conditions of utility service to its customers. Airco Indus. v. Indiana Michigan Power, 614 N.E.2d 951, 954 n.1 (Ind. Ct. App. 1993);
72. A regulation within the authority granted to the IURC by the legislature has the effect of law. Id.; Whitley Cty. Rural Elec. Membership Corp. v. Lippincot, 493 N.E.2d 1323, 1327 (Ind. Ct. App. 1986); Ameritech Publ'g., Inc. v. Strachan, 783 N.E. 2d 378, 381 (Ind. Ct. App. 2003) rehearing denied.
73. Once a utility regulatory commission approves a tariff, it is "a law, not a contract, and has the force and effect of a statute." Illinois Cent. Gulf R.R. Co. v. Sankey Bros., Inc., 67 Ill. App.3d 435, 439, 384 N.E.2d 543 (1978), aff'd 398 N.E.2d 3 (1979).
74. Under Indiana law, "[t]he tariff governs the relations between a utility and its customers." Ameritech Publ'g., Inc. 783 N.E.2d at 381.
75. The IURC approved the Indiana Gas Tariff, which controlled the terms and conditions of natural gas service to the Phillips Residence. The Indiana Gas Tariff unequivocally states: (1) the "Customer shall furnish, install, and maintain all necessary piping beyond the outlet side of the meter"; (2) "It shall not be the duty of Company to inspect Customer's piping, appliances or equipment"; and (3) "Company shall not be liable for damages caused by defective piping or appliances on Customer's Premises." *See Alexander Aff., Ex. A, Indiana Gas Tariff, Sheets 53, 59.*
76. In addition to the Indiana Gas Tariff, Indiana common law is clear that a gas company is not responsible for gas lines that the gas company does not own or

control. Richmond Gas Corp. v. Reeves, 302 N.E.2d 795, 811 (Ind. Ct. App. 1973) (holding that the gas distribution company was required to exercise ordinary care only with respect to its own mains and service lines, but not customer fuel lines owned by the customer.); N. Indiana Pub. Serv. Co. v. East Chicago Sanitary Dist., 590 N.E.2d 1067 (Ind. Ct. App. 1992) (holding that “absent ownership and control of the [owner’s] faulty wiring, a supplier of electricity has no duty for injury caused by the owner’s failure to safely maintain the wiring.”); Downs v. Panhandle E. Pipeline Co., 694 N.E.2d 1198 (Ind. Ct. App. 1998), *transfer denied* (relying on N. Indiana Pub. Serv. Co. in finding that distributor of natural gas cannot be held liable for leaking and poorly maintained gas supply lines owned by the customer).

77. The Downs Court also stated that the utility must have actual knowledge of an unsafe condition before it has a duty to take action. Id. at 1205.
78. Federal regulations also provide that the responsibility of gas companies terminates at the outlet side of the meters. See 49 CFR 192.3 “A service line ends at the outlet of the customer meter or at the connection to a customer’s piping, whichever is further downstream, or at the connection to customer piping if there is no meter.” Id.
79. Pursuant to the Indiana Gas Tariff, federal regulations and Indiana common law, Indiana Gas’ property and responsibility in this case ended at the outlet side of the meter located at the Phillips Residence.
80. There is no genuine issue of material fact that the cause of the Incident was not a leak on Indiana Gas-owned facilities. The source of the natural gas involved in the Incident was non-jurisdictional, in that it came from beyond the outlet side of the

meter. Namely, the source of the natural gas involved in the Incident was an open pipe inside the Phillips Residence. (Novak Aff., ¶¶ 9, 12-14; Friend Aff., ¶¶ 9, 11-13; Alexander Aff., ¶¶ 11, 18-19; Erickson Aff., ¶ 6; Novak Aff., Ex. A; Friend Aff., Ex. A; Alexander Aff. Ex. D and Ex. E; Erickson Aff., Ex. A);

81. Absent a jurisdictional leak or a leak on Indiana Gas-owned facilities, Indiana Gas has no duty for customer owned gas lines, including the gas lines in the Phillips Residence. (Alexander Aff., Ex. A; Indiana Gas Tariff, Sheet No. 53, Sheet No. 59; 49 CFR § 192.3; Richmond Gas Corp., 302 N.E.2d at 811; N. Indiana Pub. Serv. Co., 590 N.E.2d at 1067; Downs, 694 N.E.2d at 1198.);
82. On this issue, Miller offers no argument and no evidence to support a finding that a genuine issue of disputed material fact exists;
82. Rather, Miller urges this court to find that there is a disputed issue of material fact as to whether Indiana Gas properly odorized the gas sold to the Phillips. On this issue, Indiana Gas asserts that testing immediately following the accident, the ambient air and the soil were tested with Flame Pack 400 hydrocarbon gas detectors, Sensit Gold sensors and a GMI GT gas detector. All testing conducted showed that the gas was odorized sufficiently within federal limits.
83. In order to assert a contested issue of disputed material fact, that the gas was improperly odorized, Miller must then assert sufficient evidence, documents or testimony to create such a dispute. Miller's assertion is that Janet Phillips did not smell gas in her home;
84. Additionally, Miller urges this court to find that this matter is not ripe for summary

judgment analysis, as fact discovery, including expert fact discovery, is not complete, and discovery has not closed, under the current trial management order. Miller urges this court to find that summary judgment is inappropriate while discovery is ongoing. However, such an argument contravenes Indiana law, and the rigid effect of Trial Rule 56. Assuming *arguendo* that Miller may gather documents or testimony during the period of discovery that could create a disputed issue of genuine material fact, this court cannot speculate as to what evidence might be obtained and adduced. Had Miller moved to extend the close of summary judgment consideration under TR 56(c), raising this very argument that discovery is ongoing, this court would have granted such relief. However, Miller did not do so, and this court must decide whether such disputed fact exists from the record before it. The non-moving party may not successfully oppose a motion for summary judgment by setting forth speculation, conjecture or mere possibilities in its affidavit. Pathman Constr. Co. of Highland Park v. Drum-Co. Eng'g Corp., 402 N.E.2d 1, 9 (Ind. Ct. App. 1980). The non-moving party must present sufficient evidence to demonstrate a genuine issue of material fact. McGee v. Bonaventura, 605 N.E.2d 792, 794 (Ind. Ct. App. 1993).;

85. It is clear that Indiana Gas is not liable for the release of gas into the Phillips' home, and Miller does not challenge this. Rather, Miller urges this court to find that the Defendant improperly odorized the gas sold to the Phillips, and that Indiana Gas is strictly liable for the explosion. The only real evidence proffered for such a finding is that Janet Phillips did not smell gas. This fact does little more than establish just that....that Janet Phillips did not smell gas. It does not generate a genuine issue of

disputed material fact that the gas was improperly odorized.

86. All evidence in the Trial Rule 56(C) record supports the conclusion that Indiana Gas met the legal regulatory standard set forth in 49 CFR 192.625 for odorizing the natural gas delivered to the Phillips Residence.
87. There is no genuine issue of material fact that the natural gas supplied to the Phillips Residence was properly odorized and Indiana Gas did not breach its duty pursuant to 49 CFR 192.625 to properly odorize the natural gas delivered to the Phillips Residence.
88. Miller has designated no evidence in the Trial Rule 56(C) record to establish that odor fade may have been implicated in the Incident. *See Natural Gas Odorizing, Inc. v. Downs*, 685 N.E.2d 155 (Ind. Ct. App. 1997) (“[a]s a threshold question, we must determine whether Downs has established that odor fade, and thus, the duty to warn against it, may have been implicated in the natural gas explosion at issue in this case.”).
89. The only evidence in the Trial Rule 56(C) record is that odor fade was not implicated in the Incident. (Erickson Aff., Ex. A).
90. Even if Miller had established that odor fade may have been implicated in the Incident (she did not), there are no state or federal regulations that require Indiana Gas to notify customers about odor fade. The American Petroleum Institute Recommended Practice 1162 (“RP1162”), which was incorporated by reference into federal pipeline safety regulations by the Pipeline and Hazardous Materials Safety Administration, making compliance with RP1162 mandatory, does not include odor

fade in the list of public awareness messages that RP1162 requires distributors of natural gas to provide to customers. (Erickson Aff., Ex. A).

91. Indiana Gas had no duty to warn Miller against odor fade. *Natural Gas Odorizing, Inc.*, 685 N.E.2d at 155; Erickson Aff., Ex. A).
92. The Incident was Caused by an Opening on the Gas Piping Inside the Residence, and Indiana Gas Did Not Proximately Cause the Incident;
93. While questions of causation and allocation of fault are usually not appropriate at summary judgment because they often require a weighing of disputed facts, ““when there is no dispute in the evidence and the fact-finder is able to come to only one logical conclusion[,]” the “apportionment of fault becomes an issue of law solely for the [. . .] court[.]” *St. Mary’s Med. Ctr. v. Loomis*, 783 N.E.2d 274, 285 (Ind. Ct. App. 2003) (quoting *Hampton v. Moistner*, 654 N.E.2d 1191, 1195 (Ind. Ct. App. 1995)).
94. Proximate cause requires, at a minimum, that the harm would not have occurred but for the defendant's conduct.” *Carey v. Indiana Physical Therapy, Inc.*, 926 N.E.2d 1126, 1129 (Ind. Ct. App. 2010).
95. There is no genuine issue of material fact that the natural gas involved in the Incident came from an open gas pipe inside the Phillips Residence. (Alexander Aff., ¶ 18).
96. There is no genuine issue of material fact that an open gas pipe inside the Phillips Residence resulted in an increased gas flow through the meter beginning at approximately 3:00 p.m. to 4:00 p.m. on Saturday May 18, 2019 until the explosion occurred at approximately 5:00 a.m. on May 19, 2019. (Alexander Aff. ¶ 15-16;

Alexander Aff., Ex. D and Ex. E).

97. There is no genuine issue of material fact that a cap was removed by human intervention between approximately 3:00 and 4:00 p.m. on May 18, 2019. (Mang Aff., ¶¶ 6-8, 10-11; Hoffman Aff., ¶¶ 6-7; Mang Aff., Ex. A; Hoffman Aff., Ex. A).
98. There is no genuine issue of material fact that the condition of the open gas piping after the incident (i.e., rusted but undamaged pipe opening with pipe dope further up on the threads) is consistent with the intentional removal of the cap from the piping at approximately 3:00 to 4:00 p.m. on May 18, 2019, and the removal of the cap would have required the use of a tool or tools. (Mang Aff., ¶ 10-11; Hoffman Aff., ¶¶ 8-11; Mang Aff., Ex. A; Hoffman Aff., Ex. A).
99. There is no genuine issue of material fact that no Indiana Gas personnel were at 904 Assembly Road on May 18, 2019. (Alexander Aff., ¶ 22).
100. There is no genuine issue of material fact that Billy Phillips was the only person at the Phillips Residence at the time of the Incident and that Billy Phillips completed plumbing, electrical, painting, drywall, and flooring projects around the Phillips Residence and kept tools at the Phillips Residence. (Phillips Dep., p. 10, ll. 1-3; pp. 30, l. 25 - p. 31, ll. 22; p. 61, ll. 6-12, 24-25, p. 62, ll. 1-11; Janet Phillips' Interrogatory Answers, Desig. Ex. 10, No. 12).
101. Absent an open gas line in the Phillips Residence, the Incident would not have occurred. It is undisputed that Indiana Gas was not in the Phillips Residence on May 18, 2019, Indiana Gas did not open the gas line that was the source of the natural gas involved in the Incident, and Indiana Gas had no knowledge of the open gas line.

102. Plaintiff raised several counts in its complaint, including strict products liability under the Indiana Product Liability Act (IPLA), negligence, negligent hiring, negligent training, negligent supervision, negligent retention, negligent failure to warn, negligent product liability and damages arising from each allegation. This court finds that none of the Plaintiff's counts survive summary judgment analysis. Plaintiff has failed to proffer any argument, documents, nor testimony regarding any negligent hiring, training, supervision, or retention. Plaintiff further alleges the Defendants failed to properly odorize the gas sold to the Phillips residence, but has failed to proffer anything other than speculation regarding any failure. Plaintiff has alleged the Defendants were negligent, but has failed to demonstrate the existence of a genuine issue of disputed fact to support any such finding.
103. Accordingly, there are no disputed facts that require weighing related to proximate cause. The only logical conclusion is that Indiana Gas was not the proximate cause of the Incident. St. Mary's Med. Ctr., 783 N.E.2d at 285.

FINAL JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that summary judgment shall be and hereby is entered in favor of Defendant Indiana Gas Company, Inc. on the Complaint filed by Plaintiff Carla Miller. Pursuant to Ind. T.R. 54(B), this Court expressly directs the entry of final judgment for Defendant, Indiana Gas Company, Inc. against Plaintiff Carla Miller, because there is no just reason for delay.

SO ORDERED THIS 14TH DAY OF MARCH, 2025.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

**WILLIAM A. DAWKINS, Magistrate
Clark Circuit Court No. 2**