

IN THE
INDIANA SUPREME COURT

Case No. _____

CARLA MILLER,	)	Appeal from the Clark Circuit Court
	)	
Appellant-Plaintiff,	)	Trial Court Cause No.
	)	10C02-2005-CT-067
v.	)	
	)	The Honorable William A. Dawkins,
INDIANA GAS COMPANY, INC.,	)	Magistrate Judge
	)	
Appellee-Defendant.	)	Court of Appeals Case No. 25A-CT-866
	)	

APPELLEE'S RESPONSE TO PETITION TO TRANSFER

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QUESTION PRESENTED ON TRANSFER

Because natural gas is odorless, odorant is added to give it a detectable smell. The odorization of natural gas is governed by federal regulation. The regulation provides that “[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 of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.” 49 C.F.R. § 192.625(a). Determining the concentration level at which odorant is readily detectable requires the use of “an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.” 49 C.F.R. § 192.625(f).

Carla Miller brought claims against Indiana Gas alleging the natural gas it supplied was not properly odorized. The Court of Appeals affirmed the trial court’s summary judgment in Indiana Gas’s favor. *Miller v. Indiana Gas Company, Inc.*, Case No. 25A-CT-866, 2026 WL 479305 (Ind. Ct. App. Feb. 20, 2026) (“Op.”). Miller presents three issues on transfer, which Indiana Gas restates as follows:

Whether the Court of Appeals correctly held, based on the designated evidence in the record, that there is no genuine issue of material fact that the natural gas Indiana Gas supplied was properly odorized under the controlling federal regulation.

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BACKGROUND AND PRIOR TREATMENT OF ISSUE ON TRANSFER

I. Miller's Lawsuit.

This appeal stems from Miller's lawsuit arising out of a natural gas explosion that occurred at the home of Billy and Janet Phillips in Jeffersonville, Indiana ("Phillips Residence") on May 19, 2019 ("Incident"). (App. Vol. II, pp. 116, 127-128.) Miller lived next door to the Phillips Residence. (App. Vol. II, p. 113.) The investigation revealed that someone other than Indiana Gas had intentionally removed a threaded cap from a natural gas pipe in the basement of the Phillips Residence, allowing gas to flow into the residence. (App. Vol. VII, pp. 18, 131, 159, 168; Vol. VIII, pp. 9, 14.)

The Incident generated litigation involving multiple parties. (App. Vol. II, p. 36.) This appeal is limited to the trial court's summary judgment order on Miller's claims against Indiana Gas. (App. Vol. II, p. 36.) On transfer, Miller focuses exclusively on her allegation that the natural gas Indiana Gas supplied to the Phillips Residence was not properly odorized. This allegation serves as the premise for her product liability claim and her common law negligence claims. (Pet., pp. 8-9, 15; App. Vol. II, pp. 119-121.)

II. The Federal Regulatory Standard for the Odorization of Natural Gas.

Indiana Gas is heavily regulated by the Indiana Utility Regulatory Commission ("IURC") and Pipeline and Hazardous Materials Safety Administration ("PHMSA"). (App. Vol. VII, pp. 16, 18, 143, 151-152.) The odorization of natural gas is governed by 49 C.F.R. § 192.625, a federal regulation promulgated by PHMSA.

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Miller concedes that 49 C.F.R. § 192.625 is controlling. (Pet., p. 5.) “The main issue” – as Miller frames it – “is whether the gas contained the proper level of odorant.” (Pet., p. 4.)

The federal regulation establishes a quantitative, objective standard for the odorization of natural gas and provides that “[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 of the lower explosive limit*, the gas is readily detectable by a person with a normal sense of smell.” 49 C.F.R. § 192.625(a) (emphasis added). A natural gas expert whose opinions are part of the summary judgment record explained that the lower explosive limit of natural gas in air is approximately 5%. (App. Vol. VII, pp. 147, 152, 170.) Thus, the regulation requires that the odorant in natural gas be readily detectable by a person with a normal sense of smell at a concentration of no more than 1% gas in air. (App. Vol. VII, pp. 147, 152.)

The determination of this concentration level requires the use of “*an instrument* capable of determining the percentage of gas in air at which the odor becomes readily detectable.” 49 C.F.R. § 192.625(f) (emphasis added). The federal regulation requires instrument readings to be performed on natural gas drawn from the distribution line. *See* 49 C.F.R. § 192.625(a) (“A combustible gas in a distribution line must . . . be odorized . . .”). Checking for odor in gas drawn from the distribution line, using “an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable,” results in a measured concentration of

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odorant reported as a percentage, and eliminates the potential for other odors in the ambient air masking detection of the odorant. *See* 49 C.F.R. §§ 192.625(a), (f).

III. The Odorator Readings Within the Federal Regulatory Standard.

Indiana Gas, accompanied by the Jeffersonville Fire Department, performed odorator readings on natural gas drawn from the gas lines attached to the meters at the houses on each side of the Phillips Residence and the house directly across the street, on the day of the Incident. (App. Vol. VII, pp. 17, 121, 127.) An odorator is an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable, as required by the federal regulation. (App. Vol. VII, p. 17.) The odorator readings determined that odorant was readily detectable at 0.21% (next door to the north), 0.21% (next door to the south), and 0.28% (across the street) gas in air. (App. Vol. VII, pp. 17, 121.) Each of these measured concentrations of odorant were well within the federal regulatory standard of no more than 1% gas in air.

IURC representatives Howard Friend and Dan Novak were at the scene immediately following the Incident and observed first-hand all testing conducted during the investigation. (App. Vol. VII, pp. 132-133, 135-138, 140-141.) Friend averred that he personally “observed [Indiana Gas] obtain odorant readings from the neighborhood that indicated odorant levels were within the acceptable range.” (App. Vol. VII, p. 138.) Friend and Novak authored and signed the IURC’s Final Incident Report upon completion of the investigation. (App. Vol. VII, pp. 133, 135-136, 138, 140-141.) The Final Incident Report, which the IURC submitted to PHMSA,

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concludes that “odorant levels [were] within the acceptable range.”¹ (App. Vol. VII, pp. 133, 135-136, 138, 140-141.)

IV. Indiana Gas’s Motion for Summary Judgment.

Indiana Gas filed a Motion for Summary Judgment on Miller’s claims. (App. Vol. VI, p. 134.) Indiana Gas maintained that the natural gas supplied to the Phillips Residence had been properly odorized in accordance with 49 C.F.R. § 192.625. (App. Vol. X, pp. 156-164.) Indiana Gas designated as evidence the odorator readings and the IURC’s conclusion that “odorant levels [were] within the acceptable range.”² (App. Vol. VII, pp. 135-136, 138, 140-141.)

Miller did not designate any evidence that the natural gas Indiana Gas supplied to the Phillips Residence was *not* properly odorized pursuant to the controlling federal regulation.³ She did not designate any expert reports opposing

¹ Miller challenges the weight of Friend’s and Novak’s testimony because they did not physically perform the odorator readings. (Pet., p. 9.) But the representatives had first-hand knowledge of the investigation, personally observed the odorator readings being performed, and relied on the odorator readings in preparing the IURC’s Final Incident Report, which both of them authenticated. (Appellee’s Br., pp. 32-37, 46-47.)

² Indiana Gas also designated evidence that the source of the Incident was an uncapped gas line inside the Phillips Residence. Pursuant to its gas tariff and Indiana law, Indiana Gas had no duty for the pipeline inside the Phillips Residence. (Appellee’s Br., pp. 38-43.) Nor was Indiana Gas the proximate cause of the Incident. (*Id.*, pp. 53-55.)

³ Miller alludes to “testing . . . after the explosion at 2% LEL in excess of the federal limit” (Pet., p. 13.) Indiana Gas previously dispelled her reference to this irrelevant datapoint. (Appellee’s Br., p. 44 n.10.) The testing to which Miller refers is not an odorator reading and had nothing to do with odorant levels. Instead, it was a measurement of residual gas trapped in PVC casing, taken for the purpose of assessing the risk of explosion. The IURC, which observed this testing, understood the difference when it concluded that “odorant levels [were] within the acceptable range.” (App. Vol. VII, pp. 133, 135-136, 138, 140-141.)

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Indiana Gas’s Motion for Summary Judgment. (App. Vol. VIII, pp. 153-248; Vol. IX pp. 1-248; Vol. X pp. 1-138; Tr., pp. 49-51.) She did not file a motion under Trial Rule 56(I) to extend the time to respond to Indiana Gas’s Motion for Summary Judgment. (App. Vol. II, pp. 32-35; Tr., pp. 49-51.) Nor did she submit an affidavit under Trial Rule 56(F) showing the need for a continuance of the response deadline to conduct more discovery.⁴ (App. Vol. II, pp. 32-35; Tr., pp. 49-51.) Instead, Miller relied primarily on Janet Phillips’s testimony that she did not personally smell gas at the Phillips Residence prior to the Incident. (Appellant’s Br., p. 16.) Miller’s Petition to Transfer likewise turns on this testimony. (Pet., pp. 2, 4-6, 9-13.)

V. The Court of Appeals’ Opinion Affirming Summary Judgment.

The trial court entered summary judgment in favor of Indiana Gas. (App. Vol. II, pp. 36-58.) The trial court found that “[a]ll evidence in the [summary judgment] 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.” (App. Vol. II, p. 54.) The Court of Appeals affirmed.

The Court of Appeals recited the controlling standard for the odorization of natural gas set forth in 49 C.F.R. § 192.625. (Op., pp. 18-19.) The Court of Appeals recounted the “designated evidence that odorator readings taken at the scene of the Incident in neighboring homes showed natural gas odorant levels to be well within the 1% upper limit for detection under the federal standard[.]” (*Id.*, p. 19.) The Court

⁴ This history belies Miller’s suggestion she was deprived of the opportunity to depose individuals before summary judgment was granted. (*See* Pet, p. 9.)

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of Appeals also noted the IURC’s conclusion that “odorant levels [were] within the acceptable range.” (*Id.*)

The Court of Appeals carefully framed the parties’ respective burdens in the specific context of 49 C.F.R. § 192.625:

Indiana Gas’s designated evidence established that the odorization of natural gas is governed by federal regulation, and all of the odorator readings taken in the area surrounding the Phillips Residence were within the range required by federal regulation. After Indiana Gas presented its designated evidence demonstrating the absence of any genuine issue of fact as to a determinative issue of whether the natural gas was defective, the burden shifted to Miller to come forward with contrary evidence showing an issue for the trier of fact.

(*Id.*, p. 20.)

However, Miller’s designated evidence fell short because it did not refute Indiana Gas’s evidence that its natural gas had been properly odorized pursuant to the controlling federal regulation. As the Court of Appeals articulated:

[T]he only contrary evidence that Miller presented was that Janet did not smell any gas. Even if Janet did not smell gas in the Phillips Residence prior to the Incident, this merely establishes that she did not smell gas, not that it was not properly odorized under the federal regulation, which was the material fact at issue. . . . Simply put, Miller’s designated evidence is not material to the question of whether the gas provided by Indiana Gas was defective. The designated evidence establishes that there is no genuine issue of material fact that the natural gas was properly odorized under the federal regulatory standard[.]

(*Id.*)

Miller seeks transfer to this Court.

ARGUMENT

I. Miller Misunderstands this Court’s Role on Transfer.

At the outset, Indiana Gas addresses Miller’s misconception about this Court’s role on transfer. Miller’s Petition to Transfer is essentially a motion to reconsider this particular case, in that she asks this Court to review the same evidence the trial court and Court of Appeals considered and reach a different result. But this Court is not an error-correcting court like an intermediate appellate court.⁵

“Transfer is the procedural mechanism the Court uses to weed out the typical error-correcting appeal of interest solely to the litigants while asserting jurisdiction over the appeals that have broader impact on the development of Indiana law.” 24 IND. PRAC., APPELLATE PROCEDURE § 13.1 (3d ed. 2025). The “principal function of the Indiana Supreme Court is to address major legal questions that have broad implications beyond resolution of the lawsuit between the parties.” *Id.* § 13.2. Mere “error” may “not be enough to warrant a grant of transfer if the error does not affect an ‘important question of law’ in a ‘case of public importance.’” *Id.* (quoting Ind. App. R. 57(H)).

Miller fails to appreciate this dynamic. Indeed, Miller asks this Court to correct what she perceives to be the Court of Appeals’ mistake in surmising that she had “abandoned her negligence-based claims and [was] focuse[d] solely on . . . her product liability claim.” (*See Op.*, p. 16 n.2.) To the extent Miller believes the Court of Appeals

⁵ Miller compounds her misunderstanding with a request for “a briefing schedule on the issues” if transfer is granted. (*See Pet.*, p. 16.) There is no merits briefing if this Court grants transfer, which the Court should deny in any event.

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made a mistake in this regard, she should have taken it up with the Court of Appeals on rehearing. *See Indiana Dep’t of State Revenue, Inheritance Tax Div. v. Bandelier*, 104 N.E.2d 133, 134 (Ind. Ct. App. 1952) (“The object of a petition for rehearing is to point out mistakes of law or of fact, or both, which it is claimed the court made in reaching its conclusion.”) (citation omitted). However, such a case-specific issue is not a basis upon which to grant transfer.⁶

II. Miller Articulates No Valid Grounds for Transfer.

Turning to the substance of Miller’s Petition, she articulates no valid grounds for transfer.

A. Miller Misconstrues the Court of Appeals’ Holdings.

Foremost, Miller’s Petition rests on a fundamental misreading of the Court of Appeals’ Opinion. Miller insists that the Court of Appeals “improperly weigh[ed] the facts and evidence” by giving the odorator readings “more weight” than “the firsthand testimony of [Janet] Phillips” (Pet., p. 10.) From there, Miller posits that the Court of Appeals adopted a blanket summary judgment rule that “firsthand testimony is insufficient to create a genuine issue of material fact” (*Id.*, p. 7.) Moreover, she argues that the Court of Appeals imposed on her a heightened summary judgment burden by requiring her to “prove the natural gas provided by

⁶ Regardless, as detailed in Section II(C), Miller’s negligence claims suffer the same fate as her product liability claim. The undisputed evidence that the natural gas Indiana Gas supplied to the Phillips Residence was properly odorized in accordance with 49 C.F.R. § 192.625 defeats not only Miller’s allegation that the natural gas was defective, but also her allegation that Indiana Gas breached its common law duty to supply properly odorized natural gas to its customers.

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Indiana Gas was defective” (*Id.*, p. 14.) Miller misconstrues the Court of Appeals’ holdings.

The Court of Appeals did not weigh Janet Phillips’s testimony, question her credibility, or draw one inference over another. Rather, the Court of Appeals determined that Janet Phillips’s testimony – *even if true* – was *immaterial* to the only question germane to Indiana Gas’s Motion for Summary Judgment: whether the natural gas supplied to the Phillips Residence was properly odorized *in accordance with 49 C.F.R. § 192.625*. (Op., p. 20.) As the Court of Appeals held, “[e]ven if Janet did not smell gas in the Phillips Residence prior to the Incident, this merely establishes that she did not smell gas, not that it was not properly odorized under the federal regulation, which was the material fact at issue.” (*Id.*)

Miller’s assertion that she did not have to prove the natural gas was defective likewise misses the point of Indiana Gas’s motion and the Court of Appeals’ Opinion. Indiana Gas designated evidence that its natural gas was properly odorized under the federal regulatory standard and, therefore, not defective as a matter of law. *See Downs v. Panhandle E. Pipeline Co.*, 694 N.E.2d 1198, 1202 (Ind. Ct. App. 1998) (“Properly odorized natural gas is not unreasonably dangerous for use by ordinary consumers.”). This shifted the burden to Miller to come forward with proof that the natural gas *was* defective under 49 C.F.R. § 192.625 – the very regulation she admits sets the standard for the odorization of natural gas. While Miller contends she was “only required to demonstrate a disputed issue of fact” at the summary judgment stage, this is exactly what she failed to do. (*See Pet.*, p. 14.)

B. Miller Attempts to Create Disputes and Conflicts That Do Not Exist.

Miller's attempts to create material factual disputes and legal conflicts that do not exist are unavailing. Miller urges that "[t]he point of odorization is so that individuals can smell a gas leak" (Pet., p. 11.) But this conflates a person *smelling* natural gas with the PHMSA's regulatory *standard* for the odorization of natural gas, which dictates Indiana Gas's legal duty and is an entirely different matter. Miller herself concedes that 49 C.F.R. § 192.625 is controlling. (Pet., p. 5.)

The federal regulation establishes a quantitative, objective standard for the odorization of natural gas. Assessing whether the regulation has been met requires a determination of the percentage of natural gas in air at which the odorant in the gas is readily detectable. The level of concentration at which the odor must be readily detectable is 1% or less. (App. Vol. VII, pp. 147, 152.) This precise determination must be *measured* with an odorator – "an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable." 49 C.F.R. § 192.625(f). Indiana Gas's odorator readings (and the IURC's acceptance of those results) are the only designated evidence in the record that the natural gas supplied to the Phillips Residence met the federal regulatory standard of being readily detectable at no more than 1% gas in air. (App. Vol. VII, pp. 17, 121.)

Even if "[a] jury could easily believe" Janet Phillips's first-hand testimony that she did not smell gas prior to the Incident, this would not change the outcome of this case. (See Pet., p. 12.) The fact that Janet Phillips did not smell gas says nothing about the concentration levels of odorant in the natural gas at the time she did not

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smell anything. Her testimony establishes no measurement, percentage, or level of concentration at all.⁷ As Indiana Gas explained at oral argument, “It’s not enough that somebody says they did smell [gas] or didn’t smell [gas]. You have to know the concentration. You have to know the percentage.” Oral Argument 21:24.

Miller nevertheless speculates that the smell of gas “should have been overwhelming” to Janet Philips “[h]ad odorant been present at the proper levels[.]” (Pet., p. 11.) It is well settled that “mere speculation cannot create questions of fact.” *Biedron v. Anonymous Physician 1*, 106 N.E.3d 1079, 1092 (Ind. Ct. App. 2018) (citation omitted). Indeed, there is evidence that Billy Phillips smoked pot in the Phillips Residence every day for 12 years, and the Phillips had a dog and a cat that lived in the house – all of which would mask other odors. (App. Vol. VIII, pp. 70-72, 74.) Such environmental variables explain why PHMSA promulgated a quantitative, objective standard for the odorization of natural gas, requiring gas in a distribution line to contain sufficient odorant so that at a concentration of no more than 1% gas in air, the gas is readily detectable by a person with a normal sense of smell. (App. Vol. VII, pp. 147, 152.) The precise standard under 49 C.F.R. § 192.625 is not whether any one person can or cannot smell gas in the ambient air, regardless of the infinite variables that might be present.

⁷ Miller mentions that one of Indiana Gas’s representatives did smell gas in the ambient air after the explosion. (Pet., p. 13.) But as Indiana Gas acknowledged at oral argument, while an interesting piece of information, whether *anyone* smelled gas in the ambient air is immaterial to whether the gas was properly odorized at a concentration of no more than 1% gas in air. Oral Argument 34:23.

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Al-Sinan v. Blackbird Farms Apartments, LLC, 139 N.E.3d 224 (Ind. Ct. App. 2019), is not to the contrary. *Al-Sinan* involved a landlord’s alleged breach of duty to keep walkways clear of ice. There was no controlling regulation setting the upper limit of a precise standard of measurement at which the duty of care was satisfied. The issue in *Al-Sinan* was binary: whether ice was present on the ground or not. Consequently, the plaintiff’s testimony that she observed icy conditions in the area where she fell was enough to create a question of material fact as to the presence of ice. *Al-Sinan* is inapposite.

Miller’s emphasis on the contemporaneous nature of Janet Phillips’s testimony compared to the post-Incident odorator readings is equally misplaced. (See Pet., pp. 5-6, 9.) Miller has yet to offer any authority or evidence that such readings are not an accurate datapoint in the investigation of a natural gas incident. The IURC – the state agency charged with regulating Indiana Gas and overseeing the investigation – accepted the odorator readings as valid datapoints based on its conclusion that “odorant levels [were] within the acceptable range.” (App. Vol. VII, pp. 135-136, 138, 140-141.) And regardless of how contemporaneous Janet Phillips’s testimony may be, it still does not show whether the natural gas contained odorant at a concentration above or below the upper limit of 1% gas in air. Again, her testimony establishes no measurement, percentage, or level of concentration.

Miller has not demonstrated reversible error let alone a departure from prevailing law or practice justifying transfer. Quite the opposite, the Court of Appeals closely adhered to the longstanding rule that only genuine issues of *material* fact can

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preclude summary judgment, with a fact being “material” for summary judgment purposes only “if its resolution would affect the outcome of the case[.]” *See Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). The careful and methodical process by which the Court of Appeals drew distinctions between the material and immaterial facts in the record is fully supported by Indiana precedent. *See, e.g., King v. Nat’l Collegiate Student Loan Tr.* 2006-4, 232 N.E.3d 646, 653-54 (Ind. Ct. App. 2024) (holding that affidavit did not create genuine issue of material fact because it did not refute “the germane issue” on which the party had moved for summary judgment); *Patrick v. Henthorn*, 184 N.E.3d 1195, 1201 (Ind. Ct. App. 2022) (“Here, neither Henthorn’s symptoms nor her memory of the accident would affect the outcome of the case. In other words, whether she was hot, dizzy, light-headed, or some combination thereof, or whether she remembered some or none of the accident, does not create a genuine issue of material fact on the dispositive issue—whether she suffered a medical emergency.”). It is Miller who is asking this Court to stray from accepted legal principles by allowing her to avoid summary judgment with immaterial evidence that cannot possibly swing the pendulum in her favor.

C. Miller Cannot Survive Summary Judgment Regardless of Theories.

Finally, even if the Court of Appeals had conducted a separate common law negligence analysis in its Opinion, the result would be the same. Whether couched in terms of product liability or a common law breach of duty, Miller cannot survive summary judgment.

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As Miller concedes, a breach of duty is an essential element of a negligence claim. (Pet., p. 8.) She frames “[t]he main issue” in this case as “whether the gas contained the proper level of odorant.” (*Id.*, p. 4.) She admits that 49 C.F.R. § 192.625 is controlling and sets the standard for the odorization of natural gas. (*Id.*, p. 5.) Miller’s negligence theory rests on the assertion that Indiana Gas “breached its nondelegable duty to properly odorize the gas that caused this explosion” (*Id.*, p. 8.) This is the identical premise of her product liability claim. (*See id.*, p. 15.)

Hence, the undisputed evidence that the natural gas Indiana Gas supplied to the Phillips Residence was properly odorized in accordance with 49 C.F.R. § 192.625 defeats not only Miller’s allegation that the natural gas was defective, but also her allegation that Indiana Gas breached its common law duty to supply its customers with properly odorized natural gas. Miller loses regardless of which legal theory she advances. This makes her case an especially poor candidate for transfer.

CONCLUSION

The Court of Appeals correctly held, based on the designated evidence in the record, that there is no genuine issue of material fact that the natural gas Indiana Gas supplied was properly odorized under the federal regulation that controls the standard for the odorization of natural gas. The Court of Appeals’ analysis is sound, and there is no reason to disturb its reasoned Opinion on transfer. Transfer should be denied.

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Respectfully submitted,

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WORD COUNT CERTIFICATE

The undersigned counsel verifies that the foregoing Response to Petition to Transfer (excluding cover page, table of contents, table of authorities, word count certificate, certificate of service, and signature block) contains 4,196 words, which is no more than then 4,200 words permitted by Appellate Rule 44(E).

/s/ Libby Yin Goodknight
Libby Yin Goodknight

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been served upon the following counsel of record via the Indiana Electronic Filing System (IEFS) this 24th day of April, 2026:

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