

ORIGINAL



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

INVESTIGATION BY THE INDIANA)
UTILITY REGULATORY COMMISSION,)
UNDER IC §§ 8-1-2-58 AND 59, TO)
INVESTIGATE ELECTRIC UTILITY)
TREE-TRIMMING PRACTICES AND)
TARIFFS RELATING TO SERVICE)
QUALITY IN THE STATE OF INDIANA)

CAUSE NO. 43663

ORDER ON RECONSIDERATION

APPROVED: JUL 07 2011

RESPONDENTS:)
ALL INDIANA JURISDICTIONAL)
ELECTRIC UTILITIES)

BY THE COMMISSION:

David E. Ziegner, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On November 30, 2010, the Commission issued its Order in this Cause (“the Order”). On December 20, 2010, Respondent Indianapolis Power & Light Co. (“IPL”) filed its Verified Petition for Reconsideration, Clarification and Rehearing, Respondents Duke Energy Indiana Inc., Indiana Michigan Power Company, Northern Indiana Public Service Co., and Southern Indiana Gas & Electric (collectively “Respondents”) filed its Petition for Clarification, Reconsideration, and Rehearing, and Mr. Charles Goodman, et al.¹ (“Goodman”) filed his Verified Motion for Reconsideration and Clarification. On January 14, 2011, IPL and Respondents (collectively, “the Utility Group”), the Indiana Office of Utility Consumer Counselor (“OUCC”) and Goodman filed Responses to the various Petitions/Motions for Reconsideration. On January 24, 2011, Goodman filed his Reply to the IPL and Respondents’ Responses, and the Utility Group jointly filed a Reply to Goodman’s and the OUCC’s Responses.

In addition, on January 18, 2011, and January 20, 2011, IPL and Respondents, respectively, filed Motions for Stay. On January 28, 2011, the OUCC filed its Response to IPL’s Motion for Stay, and on January 31, 2011, the OUCC filed its Response to Respondents’ Motion for Stay. On February 4, 2011, and February 7, 2011, IPL and Respondents, respectively, filed their Replies to the OUCC Response.

Having reviewed the Petitions and Motions filed by the parties, the Commission addresses the following issues:

1. **Notice Requirements.** The Utility Group requests clarification of the notice requirements identified in the Order. On page 102 of the Order, the Commission requires “a

¹ At the January 5, 2010 Evidentiary Hearing, counsel for Goodman indicated that he was representing several individuals other than Mr. Goodman.

utility should provide notice to a customer in person, or over the phone, and at least one form of written notice to the customers.” The Utility Group noted concerns over interpreting the Order to require infinite attempts to contact customers either in person or by phone. The Utility Group requested that the Commission clarify the notification requirement by stating that “a utility must provide notice to a customer by making at least two attempts to contact a customer in person, or over the phone, and at least one form of written notice to the customers.” We believe that such clarification is reasonable, and is approved. Further, the Commission finds that with respect to contacts made by phone, a message left on voicemail satisfies the phone contact requirement. Finally, we note that the Order states that the “notice requirement need not apply where there is no residence on a particular property” We clarify that the notice requirement should apply for each billing address, regardless of whether it is a residential or business address.

With respect to utility notice of line upgrades, we clarify that the utilities shall provide written notice to affected customers at least 60 days prior to any line upgrade.

2. Utility Property Rights. The Utility Group also requests that the Commission clarify that the Order does not abrogate utilities’ existing property rights that the utilities may have under statutory or common law.

This Commission has the authority to regulate the practices and services of the utilities under its jurisdiction. Indiana Code § 8-1-2-69. The Order requires utilities to comply with a number of standards that the utilities, in general, agree are appropriate and generally followed already. In addition, the Commission makes certain restrictions on certain cutting practices that are disapproved by the Shigo Guide, and requires customer consent for cuts exceeding 25% of a tree’s canopy.

The requirements of the Order apply to utility vegetative management practices in general, without regard to particular purported property rights. It is unclear how such requirements limit any such purported property rights. For instance, Indiana Code § 8-20-1-8 provides that outside of municipal boundaries, a “utility may trim any tree along the road or highway.” Nothing in the Order prevents a utility from trimming trees located in a non-municipal right-of-way; the Order merely regulates how such trimming may occur. To find otherwise would create an unworkable classification of different property types: one in which utilities apparently believe no standards would apply (despite their acceptance of the applicable trimming guidelines); and one in which the trimming standards outlined in the Order would apply. This disparity would be further complicated given the admission by the utilities that they do not know the extent of current right-of-way and easement boundaries. *See Respondent’s Petition for Clarification, Reconsideration, and Rehearing*, at 13-14.

To the extent a utility holds the property in fee or has otherwise obtained property rights that allow the utility to conduct vegetative management contrary to either the standards the utilities themselves agree are appropriate or the limitations on vegetative management practices addressed in the Order, such property rights may serve as evidence to show customer consent to nonstandard practices.

3. **Tariff Authority.** The Utility Group requests that the Commission clarify the Order with respect to Commission authority to approve tariff language providing for utility access to customers' properties.

On page 109 of the Order, the Commission stated:

The fact that IPL has raised the issue of costs of obtaining additional easements in the absence of its perceived authority under its tariff provision suggests that IPL does not have the easements it is required to have in order to conduct its VMP in accordance with its clearance standards and ANSI A300. As a creature of statute, the Commission can only grant a utility what it has been authorized to do by the General Assembly. There is no statutory authorization that provides the Commission the ability to allow a utility to do what IPL's tariff provision purportedly allows.

The Utility Group has misinterpreted this section as a statement by the Commission that the Commission does not have authority to approve tariff language related to property access or vegetative management. The Commission did not intend to make such an implication. Accordingly, we find that clarification on this issue is appropriate.

What the Commission was attempting to address with respect to IPL in particular, and other utilities generally, is that the Commission does not have authority to grant property rights via utility tariffs. As part of its obligation to provide reasonable and adequate utility service under Indiana Code § 8-1-2-4, utilities have many options available to them to acquire the property rights necessary to furnish utility service, such as vegetative management, including the power of eminent domain. Once utilities have obtained the requisite property rights, or the consent of the utility customer, utility tariffs may be useful in further defining the utility-customer relationship.

4. **Restrictions on Trimming in the Event of Emergencies or Situations Involving Public Safety.** The Utility Group requested clarification concerning the applicability of the restriction on trimming more than 25% of a tree without customer consent, or trimming beyond existing easement or right-of-way boundaries required in emergencies, in the interest of safety, or for system reliability.

The general purpose of the Order was to address routine vegetative management programs that occur on an ongoing basis. As we specifically stated on page 98 of the Order, we directed the utilities to adhere to the recognized trimming guidelines unless a customer consented, an emergency or safety issue exists, or the life of a tree would be preserved. Due to the nature of routine vegetative maintenance, time is not necessarily of the essence, which provides time to determine existing property rights if they are in dispute, and if necessary, obtain customer consent or additional property rights to make approved cuts.

We are cognizant of the Utility Group's concerns regarding emergencies or situations involving public safety. Accordingly, we find that, as with trimming guidelines, property concerns or aesthetic interests must be secondary to the primary mission of electric utilities,

namely the provision of reasonably adequate electric service. Thus, in cases of emergency or public safety, utilities may, without customer consent, remove more than 25% of a tree or trim beyond existing easement or right-of-way boundaries in order to remedy the emergency or public safety situation. This is consistent with the utility requirement to provide adequate service under Indiana Code §§ 8-1-2-4 and 113.

5. **Conclusion.** Having clarified the Order as set forth herein, any issues raised in the various Petitions/Motion for Reconsideration and Rehearing and Motions for Stay not otherwise addressed in this Order on Reconsideration are hereby denied.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

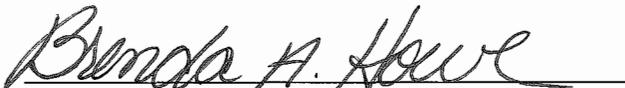
1. The Commission's November 30, 2010 Order, is clarified as set forth herein. Except as otherwise addressed, the Petitions/Motion for Reconsideration and Rehearing and Motions for Stay are hereby denied.

2. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS AND ZIEGNER CONCUR; BENNETT AND MAYS NOT PARTICIPATING:

APPROVED: JUL 07 2011

I hereby certify that the above is a true and correct copy of the Order as approved.


Brenda A. Howe
Secretary to the Commission