

ALERTS

Energy, Telecommunications And Utilities Law Alert - Regulatory Commission Must Decide Reasonableness Of Municipal Ordinance

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On Aug. 24, the Indiana Court of Appeals issued its opinion in *Duke Energy, Indiana LLC v. Town of Avon*, No. 93A02-1704-EX-780 (Ind. Ct. App. Aug 24, 2017), that reversed an Indiana Utility Regulatory Commission (IURC) order dismissing Duke's complaint against Avon, Indiana, about a town ordinance that governs utility rights of way and their cost. The issue has been remanded to the IURC.

The dispute arose out of Avon's plans to construct trail improvements and an ordinance adopted by Avon requiring Duke to relocate its facilities and to pay for the relocation. Avon originally filed a lawsuit in Hendricks Circuit Court seeking an injunction to order Duke to comply. Duke then filed a complaint with the IURC pursuant to Indiana Code § 8-1-2-101 seeking a review of the reasonableness of the ordinance. The IURC dismissed Duke's complaint because of the pending lawsuit in Hendricks Circuit Court.

On appeal, the Indiana Court of Appeals reversed IURC's decision and remanded to the agency, holding that "Indiana law establishes exclusive jurisdiction in the IURC." The Indiana Energy Association and the Indiana Chapter National Association of Water Companies, Inc., joined in an amici brief. After noting and thanking the *amici curiae*, the court quoted extensively from the brief to the effect that there "are sound public policy reasons why the General Assembly has declared the [IURC] to be the exclusive arbiter of enforceability of ordinances affecting utility services."

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