

# **Bond Case Briefs**

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## **UTILITIES - INDIANA**

### **Duke Energy Indiana, LLC v. Town of Avon**

**Court of Appeals of Indiana - August 24, 2017 - N.E.3d - 2017 WL 3624282**

Energy utility company appealed decision of the Indiana Utility Regulatory Commission, which determined that trial court was proper jurisdiction for company's complaint regarding town ordinance, which ordered company to remove, at company's own cost, utility poles, power lines, and other equipment located either on land owned by town or in town's rights-of-way, and dismissed company's complaint.

The Court of Appeals held that:

- Commission had exclusive jurisdiction to hear company's complaint, but
- Court of Appeals, upon remanding company's complaint to Commission, would decline to instruct Commission to hold hearing.

Indiana Utility Regulatory Commission had exclusive jurisdiction to hear energy utility company's complaint on validity of town ordinance ordering company to remove utility poles, power lines, and other equipment located either on land owned by town or in town's rights-of-way, since statute which granted enforcement powers to Commission explicitly stated that it "shall be [Commission's] duty" to "enforce...all...laws...relating to public utilities [,]" and expressly directed Commission to "inquire into any...violation" of local ordinance by public utility, and statute which permitted municipalities to regulate use of municipal property by public utilities specifically contemplated disputes between towns and utilities regarding access to rights-of-way or other access to public property.

Court of Appeals, upon remanding energy utility company's complaint to Indiana Utility Regulatory Commission, would decline to instruct Commission to hold hearing on complaint, since statute which expressly applied to complaints filed by public utilities stated that "[a]n order...may be entered by the [C]ommission without a formal public hearing" or that Commission "may...on its own motion require a formal public hearing[,]" and thus statute left decision to hold hearing to Commission's discretion.