

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - INDIANA**

### **Tyus v. Indianapolis Power & Light Company**

**Court of Appeals of Indiana - September 16, 2019 - N.E.3d - 2019 WL 4399872**

Motorists brought suit against power company arising out of automobile accident automobile accident that occurred in intersection where traffic signal and lights were non-operational after storm.

Power company moved for judgment on the pleadings or to dismiss for failure to state a claim. The Superior Court granted motion, and motorists filed interlocutory appeal.

The Court of Appeals held that:

- Trial court had jurisdiction to hear motorists' personal injury claims;
- Appellate court had jurisdiction to hear motorists' challenge to Indiana Utility Regulatory Commission (IURC) tariff order containing release clause granting to power company immunity from liability for negligence;
- IURC did not have primary jurisdiction over motorists' suit;
- Power company owed duty of reasonable care to motorists; and
- Tariff and rate order's release clause was void.

Power company owed duty of reasonable care to motorists, in personal injury suit arising from automobile accident that occurred in intersection where traffic signal and lights were non-operational after storm; statute contemplated Indiana Utility Regulatory Commission's (IURC) intent to impose duty on public utilities in event of interruption of service to act to protect health and safety of public, power company undertook for consideration city's duty to operate traffic signals that were erected for benefit of motoring public, and motorists were part of motoring public.

Tariff and rate order which contained release clause granting to power company immunity from liability for personal injury or property damage caused to non-customers by power company's own negligence and in connection with power company's interruption of power service was beyond authority delegated to Indiana Utility Regulatory Commission (IURC) by legislature, and thus clause was void; legislature only conferred on IURC power to formulate rules necessary or appropriate to carry out provisions of statute, there was no evidence or specific language indicating legislature gave or intended to give IURC power to shield power company from liability, power company had monopoly on providing power to city, and release clause constrained city in its ability to incentivize power company to act with reasonable care.