

Bond Case Briefs

Municipal Finance Law Since 1971

PUBLIC UTILITIES - INDIANA

Duke Energy Indiana, LLC v. City of Noblesville

Supreme Court of Indiana - May 30, 2024 - N.E.3d - 2024 WL 2761911

City brought action against electric utility, seeking declaratory and injunctive relief to enforce its ordinance requiring a demolition permit and either an improvement-location or building permit associated with utility's plan to build facility in city.

The Superior Court found for city, ordered utility to comply with ordinances and obtain permits, fined utility \$150,000 for starting demolition without permits, and awarded city \$115,679.10 in attorney fees, expert fees, and costs.

Utility appealed. The Court of Appeals affirmed and remanded for determination of whether to award appellate attorney fees. Transfer was granted.

The Supreme Court held that:

- Trial court had discretion to give Utility Regulatory Commission primary jurisdiction over city's claim against electric utility;
- Commission had primary jurisdiction to decide utility's counterclaim; and
- Trial court could not rule on city's claim on remand.

Trial court had discretion to give Utility Regulatory Commission primary jurisdiction over city's claim against electric utility, which sought declaratory and injunctive relief to enforce its ordinance requiring demolition and building permits for utility to build facility in city, or to retain jurisdiction over city's action, as either the trial court or the Commission could decide a claim seeking to enforce an ordinance against a public utility.

Resolution of electric utility's counterclaim against city, challenging city's authority to enforce ordinance requiring demolition and building permits before utility could build facility in city, required a determination that was placed within the special competence of the Utility Regulatory Commission by the utility code, which gave Commission expansive authority to decide whether a local ordinance improperly impeded a public utility's service, and thus Commission had primary jurisdiction to decide counterclaim; utility's garage and office projects were necessary to maintaining its transmission lines, which in turn were critical to providing reliable utility service to customers, and demolition of existing structure was an essential precursor to construction of new substation.

Trial court could not rule on city's request to enforce its ordinance requiring demolition and building permits before electric utility could proceed with building facility in city, on remand of city's action against utility seeking declaratory and injunctive relief to enforce its ordinance, as Utility Regulatory Commission had primary jurisdiction over utility's counterclaim challenging city's authority to enforce its ordinance against utility, which would dictate whether to grant city's request to enforce its ordinance.

