

**ALERTS**

## Energy, Telecommunications And Utilities Law Alert - Indiana Court Of Appeals Reaffirms IURC Has Duty To Apply Precedent

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**UPDATE:** On Jan. 25, 2018, the Indiana Supreme Court granted transfer in this proceeding. This means that the Court of Appeals opinion that is the subject of this alert has been vacated. We now await a final decision from the Supreme Court.

On Sept. 28, the Indiana Court of Appeals reversed a rate order issued by the Indiana Utility Regulatory Commission (IURC) in *Hamilton Southeastern Utils. v. Ind. Util. Reg. Comm'n*, Case No. 93A02-1612-EX-2742. Hamilton Southeastern Utilities receives operation, maintenance and engineering services from an affiliate company pursuant to an agreement on file with the IURC. In prior rate cases, the IURC had authorized recovery of the payments to the affiliate, but in the case on appeal, the IURC applied a lower-of-cost-or market standard from National Association of Regulatory Utility Commissioners (NARUC) guidelines and thereby reduced the amount recovered. The court held the commission's failure to follow its prior precedent or explain its departure from it was reversible error. "[T]he Commission's unexplained reliance on a heretofore unapplied standard recommended by NARUC renders its decision arbitrary. . . . [The Commission must] clearly explain[] why it had decided inconsistently with its prior orders."

A second issue on appeal was the recovery of income taxes. Hamilton Southeastern is an S corporation and is therefore taxed like a partnership. The IURC nevertheless authorized recovery of income taxes based upon evidence of the taxes that the shareholders would pay on the income. The court affirmed, finding no error in determining that the utility could recover "the income taxes its shareholders actually paid."

Finally, the court decisively reconfirmed a long-standing rule when it rejected a recent practice of the commission to appear as a party with full briefing rights in appeals from its orders. The court held "the Commission's Order should speak for itself, without the need to further rationalize its decision to our court. Accordingly, the Commission is not a proper party on appeal from its own decision and should be dismissed."

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