STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANAPOLIS POWER & LIGHT COMPANY PURSUANT TO IND. CODE § 8-1-39-9 FOR: (1) APPROVAL OF AN ADJUSTMENT TO ITS ELECTRIC SERVICE RATES THROUGH ITS TRANSMISSION, DISTRIBUTION, AND STORAGE SYSTEM IMPROVEMENT CHARGE ("TDSIC") RATE SCHEDULE, STANDARD CONTRACT RIDER NO. 3; AND (2) AUTHORITY TO DEFER 20% OF THE APPROVED CAPITAL EXPENDITURES AND TDSIC COSTS FOR RECOVERY IN PETITIONER'S NEXT GENERAL RATE CASE.	)	CAUSE NO. 45264 TDSIC 1

CONSUMER PARTIES' RESPONSE TO
IPL'S PETITION FOR RECONSIDERATION AND CROSS-PETITION FOR RECONSIDERATION

The Consumer Parties (IPL Industrial Group, City of Indianapolis, and Indiana Office of Utility Consumer Counselor) submit this Response to the Petition for Reconsideration filed by IPL on October 19, 2020 ("Petition") and this Cross-Petition for Reconsideration.

I. With regard to the 609% increase in indirect costs, the proposed clarification sought by IPL is misdirected and inappropriate.

IPL asks the Commission to revise the portion of the Order approving recovery of cost increases in excess of the approved estimates (Order at 9), in order to say the increase in indirect costs was not opposed by any "witness" instead of not being challenged at all. See Petition at 1. IPL implies there was no timely challenge insofar as the issue was raised only in post-hearing filings. Id. In fact, the issue was raised in discovery. See City-IG Joint Ex. 16. That discovery response was duly admitted at the hearing, by stipulation, in lieu of cross-examining IPL's witness on that subject. See 9-9-20 Submission of Stipulated Exhibits. The evidence supporting

the challenge was presented at the hearing and is part of the record. IPL had the burden of proof to show "specific justification" under Ind. Code §8-1-39-9(g) ("Section 9(g)"), and the Consumer Parties offered evidence at the hearing to show that IPL failed to sustain that burden. Hence, the suggestion by IPL that there was some kind of evidentiary default is inaccurate and IPL's requested clarification should be rejected. Instead, the Order should be modified to state the Consumer Parties raised a timely challenge to the increase in indirect costs.

There was no evidentiary failure here. The record shows that IPL exceeded its estimated indirect costs for the work within the scope of this proceeding by 609%, going from the approved estimate of $202,770 to the request here for recovery of $1,437,917. See City-IG Joint Ex. 16, Response to DR 2-5(a)(i). There was no change of circumstances, no new development, no unexpected surprises – only an assertion that IPL decided, post-approval, to change its method of computing indirect costs. Id., Response to DR 2-5(c), (d), (e); IPL Ex. 1 at 16-17. Respectfully, that does not suffice to establish the "specific justification" required by Section 9(g). See Northern Indiana Public Service Co., Cause No. 44403-TDSIC-1 (Jan. 28, 2015) at 20 (holding it is insufficient for utility to "simply detail the reasons why the increase occurred"); id. at 21 ("Under the TDSIC Statute, it is ultimately the utility's responsibility to ensure sufficient actions are taken to provide a reasonably detailed and accurate estimation of the project for approval.").

The increase in indirect costs is material. IPL stated it resulted in increases "across all projects." See IPL Ex. 3 at 12. For the work in the scope of this proceeding, the 609% increase results in excess costs of $1,235,147. See City-IG Ex. 16, Response to DR 2-5(a)(i). For each of the three projects that IPL admits are over budget, IPL identified the increase in indirect costs as a component of the variances. See IPL Ex. 3 at 12-15. The indirect cost portion of the increases

for those three projects totaled $613,843. See City-IG Ex. 16, Response to DR 2-5(a)(i) (Center #7, Northwest #1, Northwest #9). Consequently, $613,843 of the excess costs for which IPL sought recovery under Section 9(g) should be disallowed for lack of the "specific justification" required by that statutory provision.

This issue also has implications for future TDSIC proceedings. The 609% increase at issue will, according to IPL, be applicable "across all projects." See IPL Ex. 3 at 12. When applied to the entirety of IPL's $1.2 billion TDSIC Plan, the impact will be enormous. At the very least, the Commission should clarify that the determination in this case is without prejudice to any potential challenge to increases in indirect costs as may be presented in future proceedings.

Accordingly, the Consumer Parties respectfully request that the Commission clarify and revise its finding under Section 9(g) in three respects: (1) to specify that the increase in indirect costs was subject to a timely challenge by the Consumer Parties; (2) to disallow $613,843 of the proposed excess costs on the ground that IPL failed to establish specific justification for the increase in indirect costs; and (3) to clarify that the determination in this case is without prejudice to any potential challenge to indirect costs in future proceedings.

II. The Commission's Order regarding the tax treatment of the regulatory asset is consistent with Commission treatment in other TDSIC matters.

IPL also seeks clarification with respect to the tax treatment of the regulatory asset created by the statutorily mandated deferral of 20% of TDSIC costs for later recovery. IPL asks that the Commission substitute the word "deferred" for "any" in the penultimate sentence of its Order in its findings with respect to Section 9(c) so that there is an affirmative declaration the regulatory asset is not subject to "deferred" income tax rather than "any" income tax. (Petition at 2). The Commission's Order is, however, consistent with prior decisions and record evidence.

As the Commission stated in a NIPSCO's Electric TDSIC-2 case:

> The Commission agrees with NIPSCO and US Steel that the appropriate time to include the tax gross up is when those costs are included in a revenue requirement in a future base rate filing. Beginning with TDSIC 3, NIPSCO should amend its Attachment 1, Schedule 10 so that it does not include any gross up for taxes. This will avoid any confusion on the amount to be included in NIPSCO's future base rate.

IURC Cause No. 44733 TDSIC-2 (Oct. 31, 2017) at 13. The Commission has consistently applied this treatment in subsequent NIPSCO TDSIC proceedings, including the latest case in which a final order has been issued. See IURC Cause No. 44733-TDSIC-6 (Aug. 21, 2019) at 14.

This is consistent with the treatment proposed by Mr. Gorman, who testified that the regulatory asset should reflect a reduction for income tax, which can be collected when the asset is later rolled into base rates and allow IPL to fully recover its TDSIC costs through the amortization of the regulatory asset. City-IG Joint Ex. 1 at 17. This approach reduces the carrying charges on the asset. Id. There is no dispute, in this case, that the deferred TDISC cost will be fully recovered in a subsequent rates case, including the reduced carrying charge that is the result of reflecting deferred taxes on the TDSIC deferrals.

Given the Commission's consistent treatment of the gross-up in the NIPSCO proceedings, and Mr. Gorman's testimony, IPL's request for clarification should be denied as it is inconsistent with decisions in other proceedings and contrary to evidence presented in this case.

At a minimum, if the Commission elects to make IPL's clarification, it should further clarify the Order to indicate that no carrying charges will be permitted on any income tax amounts included in the regulatory asset as, even if they must be recorded, there is no testimony to indicate that carrying charges are an actual expense which must be paid at this time.

Conclusion

The Consumer Parties, therefore, respectfully request that the Commission clarify its order as requested with respect to the findings regarding Section 9(g) and deny IPL's request for modification with respect to the findings regarding Section 9(c) as set forth in this response.

Respectfully submitted,

LEWIS & KAPPES, P.C.

/s/ Todd A. Richardson
Todd A. Richardson, Atty No. 16620-49
Joseph P. Rompala, Atty No. 25078-49

LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
Telephone: (317) 639-1210
Facsimile: (317) 639-4882
Email: trichardson@Lewis-Kappes.com
jrompala@Lewis-Kappes.com

Attorneys for the IPL Industrial Group[1]

[1] Counsel for the City of Indianapolis and Office of Utility Consumer Counselor have authorized counsel for the IPL Industrial Group to make this joint submission.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing document was served via electronic mail, this 22nd day of October, 2020, upon the following:

Teresa Morton Nyhart
Jeffrey Peabody
BARNES & THORNBURG, LLP
11 South Meridian Street
Indianapolis, IN 46204
tnyhart@btlaw.com
jpeabody@btlaw.com

Anne E. Becker
Bette J. Dodd
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
abecker@lewis-kappes.com
bdodd@lewis-kappes.coom

William Fine
Randall Helmen
Jeffery Reed
OFFICE OF UTILITY CONSUMER COUNSELOR
115 W. Washington St., Ste. 1500 South
Indianapolis, IN 46204
wfine@oucc.in.gov
rhelmen@oucc.in.gov
jreed@oucc.in.gov
infomgt@oucc.in.gov

Todd A. Richardson
Todd A. Richardson

LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, Indiana 46282
Telephone: (317) 639-1210
Facsimile: (317) 639-4882