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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED)	
PETITION OF INDIANAPOLIS POWER &)	
LIGHT FOR APPROVAL OF PUBLIC)	CAUSE NO. 44981
LIGHTING AND LED CONVERSION)	
CONTRACT WITH THE CONSOLIDATED)	APPROVED: DEC 13 2017
CITY OF INDIANAPOLIS-MARION)	
COUNTY, INDIANA)	

ORDER OF THE COMMISSION

Presiding Officers:
James D. Atterholt, Chairman
Loraine L. Seyfried, Chief Administrative Law Judge

On August 28, 2017, Indianapolis Power & Light Company (“IPL”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”). IPL also filed its direct testimony, attachments, and workpapers.

On October 13, 2017, the Indiana Office of Utility Consumer Counselor (“OUCC”), filed its direct testimony.

The Commission held an evidentiary hearing in this Cause commencing at 9:30 a.m. on October 31, 2017, in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. IPL and the OUCC appeared and participated at the hearing. The parties presented their respective prefiled evidence, all of which was admitted into evidence without objection, and offered their witnesses for cross-examination. Following the hearing, IPL filed its Late-Filed Exhibit 1.

Based upon applicable law and evidence presented, the Commission finds:

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published as required by law. IPL is a “public utility” under Ind. Code § 8-1-2-1. Under Ind. Code §§ 8-1-2-24 and -25, the Commission has jurisdiction over customer-specific contracts. Therefore, the Commission has jurisdiction over IPL and the subject matter of this proceeding.

2. **IPL’s Characteristics.** IPL is a corporation organized and existing under the laws of the State of Indiana, with its principal office at One Monument Circle, Indianapolis, Indiana. IPL renders electric utility service in the State of Indiana. IPL owns and operates electric generating, transmission, and distribution plant, property, equipment, and related

facilities, which are used and useful for the convenience of the public in the production, transmission, delivery, and furnishing of electric energy, heat, light, and power.

3. Background and Relief Requested. The Consolidated City of Indianapolis-Marion County, Indiana (“City”) is an IPL retail electric service customer. The City receives service for street lighting pursuant to IPL’s Commission-approved tariff and the Public Lighting Contract between IPL and the City dated July 15, 2011 (“Prior Agreement”). The Prior Agreement expires December 31, 2017. Recently, the City ended its long-standing moratorium on the installation of new IPL street lights. The City desires to convert existing IPL-owned street lights to energy efficient light-emitting diode (“LED”) technology. The City desires to implement the LED conversion in a manner that will produce lighting bill savings to fund the installation of Additional Street Lights.

The Prior Agreement establishes a contract-based process if the City wants new facilities installed that are not addressed in IPL’s current tariff. In the March 16, 2016 Order in Cause No. 44576, the Commission found that IPL and the City should use the contract mechanism to investigate and further develop an LED conversion proposal. Consistent with this guidance provided by the Commission, IPL and the City negotiated a Public Lighting and LED Conversion Contract (“Public Lighting Agreement” or “Agreement”). As reflected in IPL’s Late Filed Exhibit 1, the City approved the Agreement on December 4, 2017. IPL requests Commission approval of the Public Lighting Agreement by and between the City and IPL.

4. Evidence.

A. IPL. William H. Henley, IPL Vice President, Regulatory and Government Affairs, described the Public Lighting Agreement and explained why it should be approved. More specifically, he explained the Public Lighting Agreement includes a three-year street light conversion project that will convert at least 27,240 existing IPL-owned street lights to LED technology. He said the Agreement also provides that the City will request IPL to install Additional Street Lights based on the monthly street lighting bill savings the City receives from the converted lights.

Mr. Henley explained that the City’s commitment to the mass conversion allows IPL and the City to achieve certain volume pricing discounts and economies of scale. He discussed the competitive solicitation process that would be used for letting the contract for the services to be performed for the LED conversion and also discussed how IPL would work to provide the City with the best and final bid on the LED fixtures.

Mr. Henley explained that the City will pay IPL a contribution in aid of construction (“CIAC”) estimated to be approximately \$11 million. He said the CIAC structure was created at the request of the City to allow it to buy down the ongoing cost of service for the converted lights. This will allow the City to use the resulting street lighting bill savings along with the bill reduction resulting from the energy and operation and maintenance (“O&M”) savings to increase the number of street lights serving the City. Mr. Henley noted that the agreed rates

for IPL service to the converted street lights reflect no return “of” or “on” the CIAC paid by the City.

Mr. Henley explained that under the Agreement, the City will retain current tariff pricing for existing IPL-owned lights until their conversion, notwithstanding a general rate case order. Mr. Henley discussed the rates for services under the Agreement and provided an analysis showing the development of the rates. He said the Agreement provides that the “Grandfathered Rates” apply to all Existing Street Lights for the term of the Agreement unless and until those IPL-owned street lights are converted. The Agreement also provides agreed “LED Rates” for the converted LED street lights and the Additional Street Lights. Except as otherwise expressly provided in Article 8 of the Agreement, IPL’s Tariff, including the Standard Contract Riders applicable to Rates MU-1 and APL, are applicable to the LED Rates and the Grandfathered Rates under the Agreement. Mr. Henley explained that IPL’s cost of service study shows that maintaining the current rates is reasonable in this circumstance. Mr. Henley also discussed the true-up for O&M and an associated interim credit provided in the Agreement. He explained that the true-up process would not involve an audit or Commission filing and is a reasonable mechanism in this circumstance to allow the City to be billed IPL’s actual cost of O&M for the LED street lights.

Mr. Henley explained that IPL’s customers will benefit from the approval of the Agreement through the contribution to fixed costs and cannot be adversely affected since the rates will exceed the total incremental cost of providing the agreed services to the City. He said maintaining current tariff pricing and approving contract pricing through the term of the Agreement, without change, provides certainty for the City to facilitate the project. It also facilitates the timely initiation of the conversion project and removes the City’s street light conversion issues from IPL’s general rate case. Mr. Henley concluded that the rates and terms contained in the Agreement are just and reasonable, in the public interest, practical and advantageous to the parties and not inconsistent with the purpose of the Public Service Commission Act, as amended.

Mr. Henley explained that IPL will own, operate, and maintain the street lights under the Agreement. He stated that IPL and the City will work together as provided in Article 13 to coordinate and resolve operating issues, including reports received by the Mayor’s Action Center. He said the City is in the best position to know its street lighting needs and will continue to direct the location of the street lights and select the facilities. Therefore, consistent with its current tariff, IPL is not responsible for the design and layout of the street lighting system and associated lighting coverage and aesthetic issues.

Mr. Henley explained that the LED fixtures are more energy efficient than high pressure sodium or other existing fixtures. He said the energy efficiency savings from the LED fixtures, IPL’s estimated O&M savings, and the City’s CIAC payment mean the City’s bill for the LED street light service will be approximately \$778,000 less than the bill would have been if the existing fixtures remained in place. He said this savings allows the City to cause IPL to install Additional Street Lights. Mr. Henley stated the City’s goal is to achieve a total of 4,000 Additional Street Lights. Once the 4,000 Additional Street Lights are installed,

the bill savings (referred to in the Agreement as the Additional Light Balance) can be used as CIAC to support the conversion of more of the Existing Street Lights or to cause IPL to install more Additional Street Lights. Mr. Henley stated that the ultimate total number of additional and converted street lights will depend on street light and construction factors that impact the cost of service, such as location and facilities needed for the LED lighting (e.g., new or existing pole, underground or overhead facilities, and placement in concrete).

Mr. Henley testified that the City's commitment to the minimum number of new street lights provides assurance that the City will follow through on achieving the public safety and other lighting goals underlying the Agreement. He said this in turn underscores the reasonableness of the rates, terms, and conditions agreed to by IPL and the City to facilitate the LED conversion and street lighting expansion.

Mr. Henley testified that IPL is able to provide the electric service requirements under the Agreement without adversely affecting the provision and reliability of service to other retail customers. He stated that Commission approval of the Agreement will benefit the parties to the Agreement as well as IPL's other customers and explained why the Agreement is in the public interest.

B. OUCC. Ms. Lauren M. Aguilar, Utility Analyst in the OUCC's Energy Resources Division, identified the materials she reviewed and explained how she conducted her analysis of the issues presented in this case. She reviewed the terms of the Agreement and discussed the benefits IPL expects the City and its residents (all of which are electric utility customers of IPL) to realize under the proposed Agreement. She said the OUCC met with both IPL and the City and found nothing to suggest the negotiations were conducted in any manner other than at arms-length. She stated that it is reasonable to associate the conversion of LED lights with improved public safety and with reduced O&M expenses and energy consumption.

She said the OUCC recommends that at the end of the Agreement, IPL file a request for approval of subsequent service terms at least six months before the end of the contract term. She recommended IPL file a notice with the Commission indicating whether the contract will be extended or terminated. She said if the contract is to be extended, IPL shall include the terms of the extended contract.

Ms. Aguilar explained that IPL provides street lighting service to other municipalities and added that IPL and the City have informed other communities of the potential volume discount if they would like to move forward with a conversion project. She stated that if other municipalities arrange for LED street light conversions, such arrangements should be documented in contract.

Ms. Aguilar stated it is reasonable to expect the City's monthly street lighting service bill to be maintained at the current average after its LED conversion project has been completed. She discussed the assurances in the Agreement that prevent other IPL ratepayers from bearing additional cost from the City's LED street lighting project. She said other

ratepayers' interest will be protected as long as IPL follows the language in the Agreement. She also noted the OUCC's position in this case does not constitute consent or waiver of possible future objections to cost recovery for LED street light conversions or additions not specifically funded by the City under the Agreement. In addition, the OUCC specifically reserves its right to object to any other type of financial recovery IPL might seek related to or arising from the use of these customer-funded facilities for public utility purposes.

Ms. Aguilar said IPL has agreed to provide the updated rates to the Commission via compliance filings, since the LED rates for the Additional Street Lights in Schedule 8.1 are currently estimated. She said the OUCC recommends IPL be required to file annual reports in this Cause with the following information:

1. Results of the true-up process required under Sections 8.3 and 8.4 of the Agreement;
2. The number of LED conversions and the number of new LED additions completed under the Agreement (i) during the preceding year, and (ii) the cumulative total to date;
3. Copies of reports regarding the Additional Light Balance discussed in Section 6.1 of the Agreement showing any savings realized by reducing O&M costs and energy consumption (a) during the preceding year; and (b) the cumulative savings to date; and
4. IPL Annual Project Reports should also include:
 - a. A detailed breakdown of O&M cost reductions achieved under the Agreement (i) during the preceding year; and (ii) the cumulative total reductions to date;
 - b. Updated actual reductions in energy consumption as a result of converting street lights to LEDs under the Agreement (i) during the preceding year; and (ii) the cumulative total reductions to date;
 - c. Updated actual reductions in energy consumption as a result of additional LED streetlight installations made under the Agreement (i) during the preceding year; and (ii) the cumulative total to date; and
 - d. Any additional costs not contemplated under the Agreement, as defined in Section 8.5 of the Agreement.

Ms. Aguilar recommended the reports be required to be submitted within 60 days of the end of each true-up period described in Section 8.3 of the Agreement, unless otherwise agreed.

She concluded that the OUCC recommends the Commission: (1) approve the Agreement; (2) require IPL to file any request for Commission approval of an agreed extension, termination, or replacement of the Agreement no later than June 30 of the sixth calendar year following Commission approval of the Agreement (i.e., at least 180 days before the end of the contract term); and (3) require IPL to comply with the annual project reporting requirements set forth above.

5. **Discussion and Commission Findings.** Ind. Code § 8-1-2-24 provides in pertinent part that:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter.

Ind. Code § 8-1-2-25 provides as follows:

The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

Thus, customer-specific contracts, including tailored-rate contracts such as the Public Lighting Agreement, are lawful if the Commission finds their provisions to be reasonable and just, practicable and advantageous to the parties, and not inconsistent with the purposes of the Public Service Commission Act.

The Commission has previously recognized that public street lighting service “is not for the exclusive or separate benefit of the governmental authorities which pay the charges, but it is really for the benefit of the travelling public.” *Indianapolis Power & Light Company*, Cause No. 33735, 1975 WL 410471, 9 P.U.R. 4th 86, 97 (IURC April 1, 1975). The Commission has also more recently encouraged the cost-effective implementation of advanced lighting technology. *Indianapolis Power & Light Company*, Cause No. 44576 at 69 (March 16, 2016).

The record reflects that the Public Lighting Agreement is advantageous to IPL and the City and practicable because it fulfills the City’s desire to convert Existing Street Lights to LED technology and to increase street lighting in the City. The structure of the Public Lighting Agreement balances the City’s appropriation capabilities with its desire to achieve the above referenced goals while maintaining its street lighting service bill at its current level. The City’s commitment to the mass conversion is the catalyst that allows the benefit of volume pricing discounts and economies of scale and scope. This benefits public lighting in the capital of Indiana. Additionally, because of the City’s initial bulk purchase, lower LED fixture costs are also expected to be available for the benefit of other municipalities in the IPL

service area who wish to convert their street lights in the near future. The Public Lighting Agreement also recognizes the need to reflect IPL's cost of providing service in the price charged for that service.

The rates set forth in the Public Lighting Agreement provide for the recovery of the total incremental cost of providing the agreed services to the City plus a significant contribution to the recovery of IPL's fixed costs. The Agreement is the result of arms-length negotiations. Further, IPL's other retail customers will not be harmed by the Commission's approval of the Public Lighting Agreement. Petitioner and its retail electric customers will benefit from the contribution to IPL's fixed costs brought about by the revenues from the Agreement. Therefore, we find the Public Lighting Agreement is fully cost-justified on an incremental cost-of-service basis and reflects the total incremental costs incurred by IPL in providing service to the City under the Agreement.

The Public Lighting Agreement allows for adjustment of the Rates for LED without CIAC as reflected in Schedule 8.1 LED. IPL proposed to provide the updated rates to the Commission via compliance filings. We find that based on the facts presented, such compliance filings are an administratively efficient means to support the Public Lighting Agreement and should be filed under this Cause for review and approval by the Commission's Energy Division.

The OUCC recommended the Commission approve the Public Lighting Agreement. Based on the evidence, we find that the Public Lighting Agreement is in the public interest. We find that the rates and charges and terms and conditions contemplated by the Agreement are just and reasonable, practicable and advantageous to the parties, and consistent with the purposes of the Public Service Commission Act. Thus, we approve the Public Lighting Agreement.

The OUCC also recommended the Commission require IPL to (a) file any request for Commission approval of an agreed extension, termination, or replacement of the Agreement at least 180 days before the end of the contract term; and (b) comply with the annual project reporting requirements set forth in the above summary of the OUCC testimony. At the hearing IPL informed the Commission that it is willing to accept the OUCC's recommendations subject to the protection of any confidential information. Accordingly, we approve the aforementioned filing deadline and annual reporting requirement.

6. Confidential Treatment. IPL filed a motion and supporting affidavit seeking a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The Presiding Officers granted the motion, on a preliminary basis, by Docket Entry dated September 13, 2017. We find this information is trade secret information pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29 and shall be protected from the public disclosure.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Public Lighting Agreement is approved.
2. IPL shall file the updated LED Rates for the Additional Street Lights under this Cause for approval by the Commission's Energy Division.
3. IPL shall file any request for Commission approval of an agreed extension, termination, or replacement of the Public Lighting Agreement at least 180 days before the end of the contract term.
4. IPL shall file under this Cause the annual reports as required by Finding Paragraph 5 and summarized in Finding Paragraph 4.B. above.
5. This Order shall be effective on and after the date of its approval.

ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: DEC 13 2017

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Mary M. Becerra
Secretary of the Commission