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IN THE

INDIANA SUPREME COURT

No. _____

IPL INDUSTRIAL GROUP, INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR, CITY OF INDIANAPOLIS and CITIZENS ACTION COALITION OF INDIANA, INC.,	Appeal from the Indiana Utility Regulatory Commission
Appellants (Intervenors and Statutory Party Below),	Court of Appeals No. 20A-EX-800
v.	IURC Cause No. 45264
INDIANAPOLIS POWER & LIGHT COMPANY and INDIANA UTILITY REGULATORY COMMISSION,	The Hon. Jim Huston, Chairman The Hon. Sarah Freeman, The Hon. Stefanie Krevda, The Hon. David Ober The Hon. David E. Ziegner, Commissioners
Appellees (Petitioner and Administrative Agency Below).	

APPELLEE INDIANAPOLIS POWER & LIGHT COMPANY'S BRIEF IN RESPONSE TO PETITION TO TRANSFER

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INTRODUCTION

The TDSIC statute, IND. CODE §§ 8-1-39-1 *et seq.*, "allows utilities to seek pre-approval from the Indiana Utility Regulatory Commission for certain electric or gas infrastructure projects and to recoup the costs of those projects through periodic petitions to the Commission for increases to its rates." *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 125 N.E.3d 617, 619 (Ind. 2019) [*NIPSCO 2019*]. Here, the IURC approved Indianapolis Power & Light Company's proposed TDSIC Plan, making the three determinations required by I.C. § 8-1-39-10(b).

These included determining under I.C. § 8-1-39-10(b)(3)—the sole TDSIC provision at issue here—that "estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan."

On costs, the IURC found the Plan's estimated cost "rests on a sound factual and analytical foundation and is reasonable," and IPL's estimate was "the best estimate of the cost of the eligible improvements included in the Plan." Appellant's Appendix Vol. II (App. II), 27-29. On benefits, the IURC found the Plan would "reduce risk of asset failure and maintain service reliability," thus "provid[ing] incremental benefits compared to how the future would otherwise unfold." App. II, 30.

Based on that evidence-based analysis, the IURC Order determined the Plan "will provide a net benefit that exceeds the cost of the eligible improvements." *Id.*

Appellants IPL Industrial Group *et al.* (Consumer Parties) say that this IURC determination misread I.C. § 8-1-39-10(b)(3). They also say the IURC misapplied its "administrative notice" rule (since repealed), and the Order didn't include required

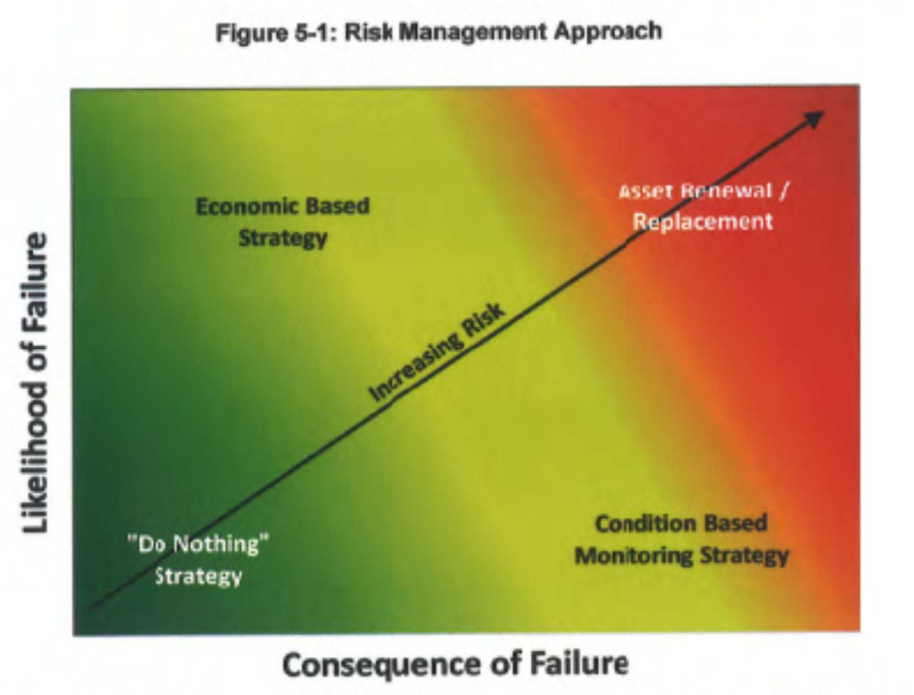
"specific findings." The Court of Appeals rejected these claims, affirming the Order. *IPL Indus. Grp. v. Indianapolis Power & Light Co.*, — N.E.3d —, 2020 WL 6479600 (Ind. Ct. App. Nov. 4, 2020) [Decision].

The Consumer Parties seek transfer, reiterating their rejected arguments. None is correct. None warrants this Court's attention.

ARGUMENT

I. The IURC's Reading Of The TDSIC Statute Comports With Its Terms And Purposes, And Is Undoubtedly Reasonable.

The IURC finding that the Plan would "reduce risk of asset failure and maintain service reliability" (App. II, 30) rested in part on the Plan's "risk management" approach, illustrated by the chart below:



Non-Confidential Exhibits Vol. I (Non-Conf. Ex. I), 119. The vertical axis represents an asset's Likelihood of Failure (or LOF) over time, with LOF highest at the top. The horizontal axis represents the Consequences of Failure (or COF), measured by impact

of asset failure on IPL utility customers, with COF highest at the right. The upper right quadrant, shown in increasingly darker red, shows where an asset's LOF and COF are both at high levels, which is when it is targeted for renewal or replacement.

In their sole statutory attack on the Order, the Consumer Parties posit that the IURC can't consider risk reduction as a Plan benefit, stating: "[S]ubstituting 'risk reduction' for 'incremental benefits' is inconsistent with the TDSIC statute, and therefore is unreasonable and not entitled to deference." Pet. 16.

The panel aptly captured this notion: "Put differently, the Consumer Parties posit that if a utility's system is 99% reliable, a TDSIC plan will satisfy the statutory incremental benefits requirement only if it will further elevate the overall system's reliability. Under their reading, the fact a TDSIC plan will preserve system reliability going forward, when it would otherwise degrade, is immaterial." Decision, at *5.

The Decision's holding was equally apt: "Nothing in the TDSIC statute supports the Consumer Parties' narrow reading of incremental benefits." *Id.*

The IURC reading, by contrast, comports with the statute's term; furthers its purposes; and is clearly a reasonable interpretation, to which courts defer.

(1) The IURC used ordinary meanings of "incremental" and "benefit," which the TDSIC statute doesn't define. "'When interpreting a statute, we presume the legislature uses undefined terms in their common and ordinary meaning.'" Decision, at *6 (quoting *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 100 N.E.3d 234, 238 (Ind. 2018)). "'If the legislature has not defined a word, we give the word its plain, ordinary, and usual meaning, consulting English language dictionaries when helpful

in determining that meaning." *Id.* (quoting *Moriarity v. Ind. Dep't of Nat. Res.*, 113 N.E.3d 614, 621 (Ind. 2019)). "[A] 'benefit' is defined as 'something that guards, aids, or promotes well-being;' while 'incremental' means 'something that is gained or added.'" *Id.* (quoting WEBSTER'S THIRD INT'L DICT. 204, 1146 (3d ed. 1993)).

Under these ordinary meanings, IPL's Plan clearly provides incremental benefits. The Order identified "seven categories of benefits," including "rebuilding more than 400 miles of over-head power lines"—which it was "uncontested … make IPL's system safer to the public and more reliable, while also improving the ability to restore power promptly in the event of an outage." Decision, at *6. "Based on all these benefits—which is not solely risk-reduction—the Commission found the record showed a 'sound basis' for the proposed projects and associated costs such that the project cost was 'justified by the incremental benefits.'" *Id.* (quoting App II. 29-30).

Reducing risks—making an unwanted result incrementally less likely to occur, and increasing system reliability—is manifestly beneficial. "Risk reduction" isn't a rewrite of "incremental benefits." It's an obvious example of such benefits.[1]

(2) The IURC's reading also comports with TDSIC purposes. "In determining legislative intent"—the "primary goal" of construction—"we consider the objects and purposes of the statute." *In re Supervised Estate of Kent*, 99 N.E.3d 634, 638-39 (Ind. 2018) (citation & internal quotation marks omitted). Courts reject readings that "defeat the [statute's] larger purpose". *State v. I.T.*, 4 N.E.3d 1139, 1147 (Ind. 2014).

[1] The Consumer Parties also distort the evidence on benefits. *E.g.,* IPL didn't say, and the IURC didn't find, that "predicting any reliability improvement is 'difficult'" (Pet. 16). The Order simply notes IPL testimony that "predict[ing] *overall* system reliability improvement *on a quarterly or annual basis* is difficult." App. II, 19 (emphasis added).

"The TDSIC statute 'encourages energy utilities to replace their aging infrastructure by modernizing electric or gas transmissions, distributions, and storage systems.'" Decision, at *5 (quoting *NIPSCO 2019*, 125 N.E.3d at 624). The statute creates a "complex, integrated process," administered by the IURC, that "protects both suppliers and consumers of electric and gas services, improves the stability of the provision of these services, and increases the predictability of costs associated with providing and using these services." *NIPSCO 2019*, 125 N.E.3d at 619.

The IURC statutory reading furthers these purposes, incentivizing utilities to develop plans to "reduce risk of asset failure and maintain service reliability" (App. II, 30). The Consumer Parties' reading does the opposite, making utilities wait until assets *fail*, and service reliability *degrades*, before a plan may be approved. As in *State v. I.T.*, it is "highly unlikely that the Legislature meant to create such a backwards incentive," which "disserve[s] the Statute's purpose." 4 N.E.3d at 1147.

(3) Reading the TDSIC statute to include risk reduction benefits is reasonable. This, too, requires rejecting the Consumer Parties' restrictive alternative.

"'[I]nterpretation of a statute by an administrative agency charged with … enforcing [it] is entitled to great weight, unless this interpretation would be inconsistent with the statute itself.'" *Moriarity*, 113 N.E.3d at 619 (citation omitted). "'[I]f the agency's interpretation is reasonable, we stop our analysis and need not move forward with any other proposed interpretation.'" *Id.* (citation omitted). When "faced with two reasonable interpretations of a statute, one of which is supplied by an administrative agency charged with enforcing the statute, the court should defer

to the agency." *Shaffer v. State*, 795 N.E.2d 1072, 1076 (Ind. Ct. App. 2003); *accord, e.g.*, *Sullivan v. Day*, 681 N.E.2d 713, 716 (Ind. 1997).

The IURC's "incremental benefits" reading is reasonable. This disposes of the Consumer Parties' restrictive reading, even if were also reasonable (which it isn't).

II. The IURC Didn't Abuse Its Discretion To Take Administrative Notice Of Workpapers.

The IURC graned IPL's rebuttal motion to take administrative notice of work-papers filed with IPL's prefiled testimony, and served on all parties, months earlier. App. II, 35 (citing 170 I.A.C. 1-1.1-21(h), authorizing such notice of "documents previously filed with the Commission").

"[A]dmission of evidence during rebuttal that could have been presented in a party's case-in-chief is a decision left to the sound discretion of the trial court" (or here, agency). *Reed v. Bethel*, 2 N.E.3d 98, 111 (Ind. Ct. App. 2014). The Consumer Parties also had to show harm. *E.g., State Farm Mut. Auto. Ins. Co. v. Woodgett*, 59 N.E.3d 1090, 1093 (Ind. Ct. App. 2016) (reversal warranted "only if [admission] error is inconsistent with substantial justice"); *State Farm Mut. Auto. Ins. Co. v. Shuman*, 176 Ind. App. 186, 200, 370 N.E.2d 941, 952 (1977) (same "even for the admission of rebuttal evidence which should have been presented in plaintiff's case in chief").

As the panel held, the IURC properly applied its administrative rule, and the Consumer Parties weren't harmed. Decision, at *3-*4 & n.2. Nothing in the Petition shows otherwise. The evidentiary ruling—which the Consumer Parties make their lead issue—isn't transferworthy in any event. Indeed, the IURC has since amended its rule, eliminating the notice provision applied here.

A. Workpapers Weren't the "Only" or "Critical" Evidence.

The Consumer Parties said below that "support for [IPL] cost estimates …was contained only in the workpapers." Appellants' Br. 33. They now say workpapers "had a critical bearing" on whether IPL provided the "best estimate" of Plan costs; that "IPL admitted" best estimates were in the workpapers; and that the IURC "relied on the workpapers as support for its findings." Pet. 14.

Neither the "only evidence" assertion nor its "critical evidence" variant is correct. The Consumer Parties disregard both the record and the role of workpapers in the IURC's exercise of its regulatory expertise.

"[W]orkpapers represent 'support for the technical evidence and calculations included in a party's case-in-chief.'" Decision, at *4 (quoting App. II, 35). As the IURC's prehearing conference order stated: "When prefiling technical evidence with the Commission, each party shall file copies of the workpapers used to produce that evidence within two business days," with service on other parties. App. II, 111.

Those familiar with IURC practice—including the Consumer Parties and their counsel—know that workpapers "provide detailed computational and comparable backup for the technical evidence in a proceeding." Decision, at *4. Here, workpapers "allow[ed] the Commission's expert staff to review in detail the analyses that further support IPL's evidence." *Id.* Serving workpapers on the Consumer Parties allowed them to do the same.

The notion that this makes workpapers the "only" evidence (Appellants' Br. 33) or the "critical" evidence (Pet. 14) is specious, and refuted by the record.

IPL's Plan was accompanied by evidentiary attachments documenting estimated costs and incremental benefits. *See* IPL Appellee's Br. 12-13; IURC Appellee's Br. 8-14. These included Appendix 8.7, with itemized, year-by-year cost estimates for eligible projects in each Plan category. Non-Conf. Ex. II, 15-41; Conf. Ex. I, 4-25. They included, too, expert reports with detailed data on and analyses of Plan costs and benefits. *See* IPL Appellee's Br. 12-13. There was also substantial narrative testimony explaining the estimates and showing their reasonableness. *E.g.*, Non-Conf. Ex. II, 89-99, 109-10; Non-Conf. Ex. VI, 57-76, 77-100.

The Order repeatedly cites such evidence, in addition to noting supporting workpapers. *E.g.*, App. II, 10-11 (discussing IPL testimony and expert analyses). This includes discussing pertinent evidence in the Order's "Best Estimates" and "Incremental Benefits" findings. App. II, 27-28, 30.

The Consumer Parties' "workpapers" attack also distorts and misstates the record in other ways.

(1) They exaggerate workpaper volume as being "nearly 20,000 pages" (Pet. 9, 14). But *circa* 7,500 pages are in one workpaper on "meter replacement," which has a summary page followed by a list of *all* meters (totaling some 353,775). Also, this workpaper was mistakenly included twice on the CD—meaning it accounts for some 15,000 of the Consumer Parties' "nearly 20,000 pages." *See* Supp. Conf. Ex. I, 11.

(2) The Consumer Parties say "workpapers were not verified or offered through any witness, and were not identified or authenticated except by IPL's counsel." Pet. 9. In fact, IPL witnesses who sponsored evidence—including the Plan

and its appendices and attachments, such as the reports and analyses the Order discusses—*also* identified associated workpapers. *See* IPL Appellee's Br. 10-11.

(3) In saying "IPL admitted" that "best estimates" were in the workpapers, the Consumer Parties cite IPL testimony that they quoted below as follows: "When asked at the hearing, 'Where are the best estimates?', IPL's witness [Shields] answered: 'They are in my Workpapers 1, 2, and 3, and they're summarized in the sortable list, Workpaper 5.'" Appellants' Br. 32 (citing Tr. III, 204). As below, the Consumer Parties ignore the next question and answer:

> Q And what is Appendix 8.7 that you referenced yesterday?
>
> A Yeah, Appendix 8.7 is the cost estimates, and it's a year by year list of the estimated costs of the eligible projects for each one of the project categories.

Tr. III, 204. This reaffirms that Appendix 8.7—one of many appendices admitted in evidence with the Plan—*contains* the "cost estimates" for which workpapers provide computational and related support.

B. The IURC's Reasonable Reading of its Administrative Notice Rule Didn't Prejudice the Consumer Parties.

The Consumer Parties' legal arguments on administrative notice are no better.

The Consumer Parties say: "Under [170 I.A.C.1-1.1-21(j)], a request for administrative notice on a factual matter relating to prefiled testimony 'shall be made at the same time the related evidence is prefiled.'" Pet. 13 (quoting subsection (j)).

The Decision rightly rejected this: "[A]s workpapers merely provide further underlying support for the calculations and details of the factual matters addressed

by a witness' prefiled testimony, they do not constitute facts that are required to be in testimony." Decision, at *4. Rather, "IPL's administrative notice request was made pursuant to 170 I.A.C.1-1.1-21(h), which provides that the 'Commission may take administrative notice'" of "'documents previously filed with the Commission.'" *Id.* Workpapers, filed and served with IPL's prefiled testimony, "amount to 'other documents previously filed,' of which the Commission may properly take administrative notice." *Id.*

The panel was also correct that, as "the Consumer Parties had received notice and a copy of the workpapers three months before the hearing," any alleged mistake in taking administrative notice "merely amounted to harmless error." Decision, at *4 n.2; *see* App. II, 35 (Consumer Parties weren't "blindsided"; they "had access to [work-papers] for months"). Again, courts don't reverse for error in "admission of evidence absent a showing of prejudice" (*Reed*, 2 N.E.3d at 107), which requires showing the admission was "inconsistent with substantial justice" (*Woodgett*, 59 N.E.3d at 1093).

Here, the Consumer Parties could have asked any witness any question, on any workpaper, at any stage. IPL sought administrative notice in rebuttal simply because workpapers came up in the Consumer Parties' rebuttal cross-examination.

III. The Commission Order Made Specific Findings On Each Material Determination Specified By The TDSIC Statute.

The Decision correctly articulated Indiana's "specific findings" requirements:

- "'[A]n Order must contain specific findings on all the factual determinations material to its ultimate conclusions.'" Decision, at *7 (quoting *N. Ind. Pub. Serv. Co. v. U.S. Steel Corp.*, 907 N.E.2d 1012, 1016 (Ind. 2009)).

- "Specific findings are not required on particular arguments by the parties." *Id.* (citing *Citizens Action Coalition of Ind., Inc. v. Indianapolis Power & Light Co.*, 74 N.E.3d 554, 564-65 (Ind. Ct. App. 2017) (findings not required on claims that "one component" of rate order had "deleterious effect on energy conservation and energy efficiency," or that "structure disproportionately harms" some consumers).
- "Findings 'need to be only specific enough to permit us to intelligently review the [agency] decision.'" *Id.* (quoting *J.M. v. Review Bd. of Ind. Dep't of Workforce Dev.*, 975 N.E.2d 1283, 1287 (Ind. 2012)).
- "'Agency findings are specific enough when they are given with sufficient particularity and specificity such that the reviewing court can adequately and competently review the agency's decision.'" *Id.* (quoting *J.M.,* 975 N.E.2d at 1287).
- "'An appeal based on an alleged lack of specific findings presents a mixed question of law and fact,'" on which "'we review the Commission's conclusions for reasonableness, deferring to the Commission based on the amount of expertise exercised by [it].'" *Id.* (quoting *NIPSCO 2019*, 125 N.E.3d at 627).

The Decision correctly applied this law. "[T]he Consumer Parties only disputed the third" of the TDSIC's three required "material determinations"—*i.e.*, that "the 'estimated costs of the eligible improvements ... are justified by [the Proposed Plan's] incremental benefits.'" Decision, at *7 (quoting I.C. § 8-1-39-10(b)). On this issue, the Order's material findings included:

- "'Based on the evidence presented,' the Commission found that 'the record demonstrates that the estimated cost of IPL's TDSIC Plan ... rests on a sound

factual and analytical foundation and is reasonable,' and that IPL's estimate was 'the best estimate of the cost of the [Plan's] eligible improvements.'" Decision, at *7 (quoting App. II, 29).

- "The Commission's findings on the incremental benefits are equally clear and evidence based: '[a]s shown in Table 3.3 of the [Proposed Plan], IPL monetized' the customer value 'of avoiding service outages associated with asset failure.' IPL's analysis—which 'did not attempt to quantify all project benefits,' but 'focused on projects that lend themselves to monetization'—showed the projects 'provide a net benefit that exceeds the cost of the eligible improvements.'" *Id.* (quoting App. II, 30).
- "The Order found that 'record evidence demonstrates' that the Proposed Plan seeks 'to reduce risk of asset failure and maintain service reliability;' that it 'provides incremental benefits compared to how the future would otherwise unfold;' and that IPL has 'optimized the incremental benefits' and shown 'a sound basis for the proposed projects and associated costs.'" *Id.* (quoting App. II, 30).
- "Thus, the Order 'determin[ed] that the estimated costs of the [Proposed Plan] improvements are justified by incremental benefits attributable to the [Proposed Plan].'" *Id.* (quoting App. II, p. 30).[2]

Further, **"**these specific findings on Plan benefits are prefaced by the Order's detailed summary of evidence on this topic in IPL's case-in-chief, in the Consumer Parties' opposition case, and in IPL's rebuttal." *Id.*, at *8 (citing *NIPSCO 2019*, 125

[2] These findings are preceded by the Order's "Public Necessity and Convenience" analysis, which also makes specific findings on Plan benefits. *See* App. II, 29.

N.E.3d at 628 (rejecting Industrial Group challenge; IURC "supported its conclusion to approve the TDSIC-2 petition with specific findings," prefaced "by summarizing the conflicting testimony presented to it [ ] by NIPSCO and the Industrial Group")).

The Decision therefore held that the Order made "specific findings on all the factual determinations material to its ultimate conclusions." Decision, at *8. Those findings, "prefaced by an extensive review of the evidence," were "sufficiently particular that we can 'adequately and competently review' the Commission's decision." *Id.* (quoting *J.M.*, 975 N.E.2d at 1287).

The Consumer Parties' list of supposedly "missing findings" doesn't alter these conclusions. Their first claim below said the IURC didn't make findings on whether IPL's Plan satisfied *their own* reading of the TDSIC term "incremental benefits," which excluded "risk reduction." *See* Appellants' Br. 53-55. But interpreting the statute is a legal issue, not an evidentiary one. As shown, the IURC reading of the statute's language is correct; furthers the statute's purposes; and is reasonable, entitled to judicial deference. No law directs the IURC to make "findings" on whether a proposed plan satisfies an alternate, restrictive reading of the TDSIC statute that contradicts the agency's correct, reasonable reading of that statute.

The other claimed "missing findings" involve the Consumer Parties' arguments on four asserted "defects" in IPL's monetization analysis of Plan benefits. *See* Pet. 21-22. This goes nowhere.

Again, findings are required on "determinations material to [the] ultimate conclusions," *NIPSCO v. U.S. Steel*, 907 N.E.2d at 1016. Again, findings aren't

required on particular arguments. *CAC v. IPL*, 74 N.E.3d at 564-65 (no findings required on arguments that order had "deleterious effect" on conservation or efficiency, or "disproportionately harms" some consumers).

The Consumer Parties' four supposed "defects" in IPL's monetization analysis are also incorrect on their own terms.

(1) The first alleged defect is the supposed "mismatch" of "comparing 20 years of computed benefits to only 7 years of TDSIC spending" (Pet. 21).

But the Order details the rebuttal evidence refuting this notion. This includes that (a) "the 20 years of computed benefit" is "a conservative window of continued customer benefits after the completion of the TDSIC-identified projects"; (b) "asset replacement and configuration changes related to these projects generally have expected lives in excess of 20 years"; and (c) "the Plan's total benefits will outweigh its costs within one year after the Plan's investment stops." App. II, 23.

The "mismatch" notion is also a logical fallacy. Benefits from seven years of infrastructure investment don't cease on Day 1 of Year Eight. In purchasing a new car with a five-year loan, buyers take into account the vehicle's continued usefulness and resale value beyond the loan term. Benefits from IPL's Plan will extend beyond the seven years of capital costs recoverable under the TDSIC structure.

(2) The Consumer Parties say the Order didn't address their claim that "IPL measured the projected benefits against a 'do nothing' assumption in which system assets are allowed to run until they fail," which "is *not* IPL's existing practice." Pet. 21-22.

Again, the Order details pertinent rebuttal evidence. This included that (a) "do nothing" modeling—which assumes assets aren't replaced during the planning period—simply "provides a baseline for comparing investment scenarios and their impact to IPL's system risk"; and (b) this scenario is "routinely used to perform this type of analysis because [it] is consistent, can be readily modeled, and is appropriate for use in creating risk reduction comparisons." App. II, 21-22.

The Consumer Parties also mischaracterize "do nothing" modeling. It does *not* assume assets are "allowed to run until they fail"; it assumes "repairs done to an asset would restore it to service but would leave the age and service life unchanged." Non-Conf. Ex. I, 185. More important, the model's purpose is indeed "*comparing* investment scenarios"—with the TDSIC Plan being one—that address risks of asset failure and degradation of system reliability. Here, the modeling shows the Plan's approach is superior to *other* investment strategies (and not, as the Consumer Parties suggest, that the Plan is only better than simply letting assets fail). *See* Non-Conf. Ex. I, 191, 199, 202, 205-06 (expert report showing that Plan's "risk-based" investment scenario is less expensive than alternative "age-based" scenarios); App. II, 28 (Order's discussing such evidence).

(3) The Consumer Parties say the IURC didn't make specific findings on their claim that IPL's benefit analysis understated customer costs by omitting a "return on investment" factor—called "carrying charges" before the IURC (*see* App. II, 18)—that, "over 20 years, would impose another $772 million in charges on ratepayers." Pet. 22.

Again, the Order details rebuttal evidence. An expert testified he'd never seen "a benefit and cost comparison for a capital investment portfolio [that] included [such] carrying charges." App. II, 23. The Order also summarized evidence that:

- the Plan's "net monetized benefit of $939 million … exceeds the $772 million in carrying charges";
- taking into account "qualitative benefits that do not lend themselves to monetization (*e.g.*, improved customer experience and modernization) and additional quantifiable benefits (*e.g.*, safety and environmental benefits) that IPL opts not to monetize, the gap between the total benefits and cost of the TDSIC Plan only widens"; and
- "viewed from an overall Plan perspective, the combined contribution of all benefits (qualitative and quantitative) far exceeds these carrying charges."

Id. Thereafter, in determining IPL's Plan "will provide a net benefit that exceeds the cost of the eligible improvements," the Order specifically found that "IPL's analysis did not attempt to quantify all project benefits, but rather focused on projects that lend themselves to monetization." App. II, 30.

(4) The Consumer Parties finally say the IURC ignored that (a) "[w]hile projecting benefits 20 years into the future, IPL did not adjust the figures to present value"—which they claim "drops the computed amount by nearly 75%." Pet. 22.

In fact, the Order specifically found the Plan "will provide a net benefit that exceeds the cost of the eligible improvements *whether considered on a nominal or a present value basis*." App. II, 30 (emphasis added). The Consumer Parties also ignore

that, if $939 million in benefits must be reduced to a $242 "present value," then the claimed $772 million in "rate impact" (or "carrying charges") must be present-valued by the same ~25.8% factor. This reduces those "costs" to a present value of $199 million—$43 million less than the $242 in present-valued benefits.

In sum, none the Consumer Parties' "four fundamental defects" (Pet. 21) is correct; or shows any failure to make findings on material TDSIC determinations; or creates any doubt about the evidence and reasons supporting IURC approval of IPL's Plan. The Decision was fully able to understand, review and affirm the Order.

CONCLUSION

The Order approving IPL's Plan complied with TDSIC statute requirements. The Decision correctly affirmed. The Consumer Parties show no error, much less any error warranting this Court's attention. Transfer should be denied.

Respectfully submitted,

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WORD COUNT CERTIFICATE

Pursuant to Appellate Rule 44(E) & (F), I verify that the foregoing Brief in Response (exclusive of Appellate Rule 44(C) items) contains no more than 4,200 words, as determined by the word processing system used to prepare the Brief (Microsoft Word 2016).

/s/ Peter J. Rusthoven
Peter J. Rusthoven [# 6247-98]

CERTIFICATE OF FILING AND SERVICE

In compliance with Appellate Rules 24 & 68, I certify that on January 7, 2021, I caused the foregoing Brief in Response to be electronically filed with the Clerk of the Indiana Supreme Court, and served upon the following, *via* the Indiana Electronic Filing System:

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