

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Handwritten signatures and initials:
JEB
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IN THE MATTER OF THE PETITION OF THE)
CITY OF TIPTON, INDIANA, BY ITS)
MUNICIPAL ELECTRIC UTILITY, FOR)
APPROVAL OF A NEW SCHEDULE OF RATES)
AND CHARGES FOR ELECTRIC SERVICE)

CAUSE NO. 42589

APPROVED: AUG 11 2004

BY THE COMMISSION

David E. Ziegner, Commissioner

Scott R. Storms, Chief Administrative Law Judge

On March 3, 2004, the City of Tipton, Indiana ("Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition for authority to increase its rates and charges for electric utility service and for approval of a new schedule of rates and charges applicable thereto. Pursuant to notice given, a Prehearing Conference was held on April 13, 2004 at 9:30 a.m. in Room E306 of the Indiana Government Center South ("IGCS"), Indianapolis, Indiana. Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") attended the Prehearing Conference. Thereafter, the Commission issued a Prehearing Conference Order on April 21, 2004, in which it established dates for the prefiling of testimony and exhibits and the hearing of evidence.

On July 22, 2004, Petitioner and the OUCC filed a Joint Stipulation and Agreement, together with supporting exhibits ("Joint Stipulation") and supplemental testimony and exhibits in support of the Joint Stipulation.

Pursuant to notice duly published as required by law, a public hearing was held in this Cause on July 29, 2004, at 9:30 a.m. in Room E-306 of the IGCS, Indianapolis, Indiana. At the Evidentiary Hearing the Petitioner offered into evidence the testimony of Otto W. Krohn, CPA, of O.W. Krohn & Associates, and the attached Tipton Municipal Electric Utility Special Purpose Report prepared by O.W. Krohn & Associates and the testimony and exhibits of David L. Reep, Utility Manager, Tipton Municipal Utilities. Petitioner also offered into evidence the Supplemental Testimony and Exhibits of David L. Reep. The OUCC offered into evidence the testimony of Wes Blakley. In addition, the parties offered into evidence Joint Exhibit 1, consisting of the Joint Stipulation, with supporting Exhibits and Joint Exhibit. 2, a form of proposed order for the Commission's consideration. All of the aforementioned exhibits were admitted into the record without objection. No members of the general public appeared or were present at any of the hearings in this Cause.

Based upon the applicable law and the evidence herein and being duly advised, the Commission now finds that:

1. **Statutory Notice and Commission Jurisdiction.** Due, legal and timely notice of the public hearings conducted by the Commission in this Cause was given and published as required by law. Petitioner is a "municipally-owned utility" within the meaning of the Public Service Commission Act, as amended, and the Commission has jurisdiction over the parties and the subject matter of this Cause, to the extent provided by the laws of the State of Indiana.

2. **Petitioner's Characteristics.** Petitioner is a municipal corporation which owns and operates a municipal electric utility and collects rates and charges for the use of and service rendered by the electric utility pursuant to Indiana Code § 8-1.5-3, *et seq.* Petitioner is a member of the Indiana Municipal Power Agency and purchases all of its power and energy requirements from the Agency, pursuant to the terms of a Power Sales Contract. Petitioner provides electric utility service to approximately 4,250 customers in and around the City of Tipton, Indiana.

3. **Relief Requested.** Petitioner requested approval to increase its rates and charges for electric service to recover the statutory revenue requirements enumerated in IC 8-1.5-3-8. It has been more than 20 years since Petitioner's last base rate increase was approved by the Commission. Pursuant to negotiations with the OUCC, Petitioner has agreed to an increase in its rates and charges of 9.3% (Joint Exhibit 1).

4. **Test Period.** The test period selected for determining Petitioner's revenues and expenses reasonably incurred in providing electric utility service to its customers was the twelve months ended December 31, 2003. With adjustments for changes that are sufficiently fixed, known and measurable, we find this test period is sufficiently representative of Petitioner's normal operations to provide reliable data for ratemaking purposes.

5. **Operating: Revenue.** The OUCC and the Petitioner agree that Petitioner's pro forma operating revenues from rates and charges for the test period were \$6,033,264 (Joint Exhibit 1).

6. **Petitioner's Revenue Requirement.** Indiana Code 8-1.5-3-8 establishes the revenue requirements elements which this Commission must apply in determining reasonable and just rates and charges for a municipally-owned utility, such as Petitioner. Certain of the elements are cash revenue requirements, which Petitioner would need to pay as legal and other necessary expenses incident to the operation of its electric utility. These elements are:

- (a) maintenance costs, operating charges, including the cost of purchased power, upkeep and repairs;
- (b) taxes, including payments in lieu of taxes;
- (c) interest charges on bonds or other obligations, including leases;
- (d) a sinking fund for the liquidation of bonds or other obligations, including leases;
- (e) revenue needed to "provide adequate money for working capital"; and
- (f) adequate money for making extensions and replacements to the extent not provided for through depreciation expense.

Pursuant to Indiana Code 8-1.5-3-8, rates and charges should produce an income sufficient to maintain a municipally-owned utility's property in a sound physical and financial

condition to render adequate and efficient service. Rates and charges that are too low to meet the foregoing requirements are unlawful. Petitioner's municipal legislative body elected to include a reasonable return on the utility plant of the electric utility in accordance with IC 8-1.5-3-8(f).

The parties have agreed to the level of Petitioner's revenue requirements, which are reflected in Joint Exhibit 1 and summarized below.

Based on the evidence, we now make our findings on Petitioner's revenue requirements.

a. **Cost of Purchased Power.** The Petitioner and the OUCC have agreed to pro forma purchased power cost of \$4,868,236 (Joint Exhibit 1). We find that such cost of purchased power is reasonable and supported by the evidence.

b. **Other Operating and Maintenance Expenses.** The Petitioner and the OUCC have agreed to pro forma other operation and maintenance expenses, including taxes other than income taxes, of \$1,109,217 (Joint Exhibit 1). We find that such other operation and maintenance expenses are reasonable and supported by the evidence.

c. **Payment in Lieu of Taxes.** Petitioner and the OUCC have agreed that Petitioner's revenue requirement for payments in lieu of taxes is \$42,200 (Joint Exhibit 1). We find this amount to be reasonable and supported by the evidence.

d. **Depreciation Expense.** Petitioner and the OUCC have agreed that Petitioner's revenue requirement for depreciation expense (extensions and replacements) is \$354,949 (Joint Exhibit 1). We find this amount to be reasonable and supported by the evidence.

e. **Return on Net Plant.** Petitioner and the OUCC have agreed that Petitioner's annual revenue requirement based upon a reasonable return on net plant is \$260,011, which represents a 5.50% return on Petitioner's net plant in service (Joint Exhibit 1). We find this amount to be reasonable and supported by the evidence.

f. **Non-Operating Revenue.** Petitioner and the OUCC have agreed that Petitioner will earn \$40,162 in non-operating revenue per year (Joint Exhibit 1). Such amount should be used as an offset to Petitioner's revenue requirements. We find this amount to be reasonable and supported by the evidence.

g. **Annual Revenue Requirements.** Based upon our findings above, we find that Petitioner's annual net revenue requirement is \$6,594,451, as detailed below:

Cost of Purchased Power	\$4,868,236
Other Operation and Maintenance Expense	1,109,217
Payment in Lieu of Taxes	42,200
Depreciation	354,949
Return on Plant	<u>260,011</u>
Total Revenue Requirement	\$6,634,613
Less: Non-Operating Revenue	(\$40,162)
Net Revenue Requirements	\$6,594,451

We, therefore, find Petitioner's current rates and charges, which produce annual operating revenues of \$6,033,264, are insufficient to provide for Petitioner's annual cash revenue requirements and are, therefore, unreasonable and unlawful.

7. **Authorized Rates.** Petitioner's current rates and charges should be increased so as to produce additional operating revenues of \$561,187, and total pro forma operating revenues of \$6,594,451, representing a 9.3% increase in rates and charges, as shown in Joint Exhibit 1.

8. **Miscellaneous Terms of Settlement.** The increased rates and charges proposed for Commission approval in settlement of the issues in this Cause, and as reflected in Joint Exhibit 1, include an annual revenue requirement for depreciation expense (extensions and replacements) in the amount of \$354,949. Upon approval of a final, non-appealable order incorporating the terms of the Settlement Agreement, Petitioner has agreed to deposit into its electric utility depreciation fund at least 1/12th of \$354,949 (or \$29,579.08) each month, in arrears. All funds deposited into this account will be restricted to use in payment of electric utility capital expenditures. Petitioner also agreed to restrict amounts currently in its depreciation fund to electric capital expenditures. The obligation to make the foregoing deposits into the depreciation fund shall continue until Petitioner files a petition with the Commission for an increase in its base rates and charges for service.

Petitioner agreed to, and did, submit as a supplemental exhibit in this Cause a copy of the appraisal that was used to establish the value of its electric plant in service, for purposes of determining annual depreciation expense and a reasonable return on net plant. Petitioner also agreed to, and did, submit supplemental testimony describing how it used the 1995 appraisal to correct past errors with respect to the amount shown on its books and records as the original cost of its electric plant in service. Finally, Petitioner agreed to, and did, submit the Indiana State Board of Accounts Audit Reports for 1994 and 1995, as supplemental exhibits in this Cause.

9. **Joint Stipulation.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

Based upon our review of the evidence of record, including the Joint Stipulation and the testimony presented at the Evidentiary Hearing, we find the terms of this Joint Stipulation are reasonable, are in the public interest, and constitute a desirable and lawful resolution of the issues presented in this Cause. Therefore, we find that the Joint Stipulation should be approved. With regard to future use or citation of the Joint Stipulation, we find that our approval should be construed in a manner consistent with our finding *In Re Richmond Power & Light*, Cause No. 40434, dated March 19, 1997.

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

1. The Joint Stipulation, a copy of which is attached to this Order, shall be and hereby is approved consistent with the findings herein. The terms and conditions are incorporated herein as part of this Order.

2. Petitioner is hereby authorized to increase its annual revenue from rates and charges by \$561,187, so as to produce total annual operating revenue of \$6,594,451, representing an approximate 9.3% increase in its rates and charges for the sale of electricity, as shown in Joint Exhibit 1.

3. Petitioner shall file with the Electricity Division of the Commission new schedules of rates and charges before placing in effect the rate increase authorized herein, which schedules, when approved by the Electricity Division, shall be effective and shall cancel all previously approved schedules of rates and charges in conflict therewith.

4. Petitioner shall pay the following itemized charges within twenty (20) days from the date of this Order to the Secretary of the Commission:

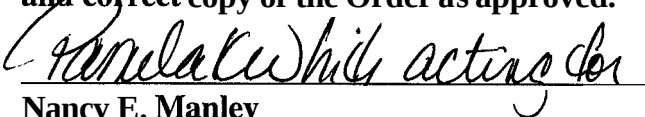
Commission Charges	\$200.00
Reporting Charges	57.68
Legal Advertising Charges	85.62
Utility Consumer Charges	<u>260.00</u>
TOTAL	\$603.30

5. This Order shall be effective on and after the date of its approval.

McCARTY, RIPLEY, HADLEY AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: AUG 11 2004

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



Nancy E. Manley

Secretary to the Commission

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE PETITION OF THE
CITY OF TIPTON, INDIANA, BY ITS
MUNICIPAL ELECTRIC UTILITY, FOR
APPROVAL OF A NEW SCHEDULE OF RATES
AND CHARGES FOR ELECTRIC SERVICE**

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CAUSE NO. 42589

APPROVED:

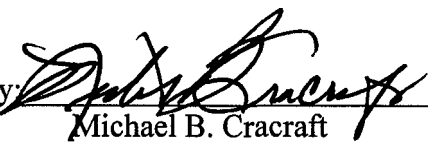
JOINT AGREEMENT AND FOR OF PROPOSED ORDER

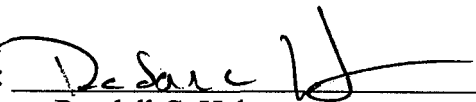
Petitioner, the City of Tipton, Indiana, and the Office of Utility Consumer Counselor,
each by counsel, jointly file herewith the following:

1. Joint Exhibit 1, the Joint Stipulation and Agreement between the Petitioner and the OUCC; and
2. Joint Exhibit 2, the Order (included on diskette).

Dated this 22nd day of July, 2004.

Respectfully submitted,

By: 
Michael B. Cracraft
Attorney No. 3416-49
Attorney for Petitioner

By: 
Randall C. Helmen
Attorney No. 8225-49
Attorney for OUCC

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE	)	
CITY OF TIPTON, INDIANA, BY ITS	)	
MUNICIPAL ELECTRIC UTILITY, FOR	)	CAUSE NO. 42589
APPROVAL OF A NEW SCHEDULE OF RATES	)	
AND CHARGES FOR ELECTRIC SERVICE	)	

**JOINT STIPULATION AND AGREEMENT BETWEEN
THE CITY OF TIPTON AND
THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

On March 3, 2004, Petitioner, the City of Tipton, Indiana, by its municipal electric utility ("Petitioner"), filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition for authority to increase its rates and charges for electric utility service, and for approval of a new schedule of rates and charges applicable thereto. Prior to the public hearing in this Cause, Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "parties") communicated with each other regarding the possibility of settling this Cause and have reached an agreement with respect to all the issues presently before the Commission. Petitioner and the OUCC agree to the following matters and request the Commission to enter the proposed final order which is attached hereto as Joint Settlement Exhibit 2.

1. Petitioner's Operating Revenues. The parties have reached an agreement concerning the revenue requirements for Petitioner under IC 8-1.5-3-8, which agreement is reflected in Joint Settlement Exhibit 1. The parties agree that Petitioner's total test year operating revenues from rates and charges are \$6,033,264. The parties further agree that certain net, non-operating revenues for the test year in the amount of \$40,162 should be deducted in determining the net amount to be recovered by rates and charges. As shown on Joint Settlement

Exhibit 1, the parties also agree that Petitioner's pro forma operating revenues should be increased by \$561,187 in arriving at the pro forma total operating revenues at proposed rates of \$6,594,451, representing a 9.3% increase in rates and charges.

2. Petitioner's Annual Revenue Requirements. Petitioner's annual revenue requirements determined pursuant to IC 8-1.5-3-8 on the evidence of record and agreed to by the parties, are as follows:

a. Cost of Purchased Power. Petitioner's annual revenue requirement for the cost of purchase power is \$4,868,236.

b. Other Operating and Maintenance Expenses. Petitioner's annual revenue requirement for other operating and maintenance expenses, including taxes other than income taxes, is \$1,109,217.

c. Payment in Lieu of Taxes. Petitioner's annual revenue requirement for payment in lieu of taxes is \$42,200.

d. Depreciation Expense. Petitioner's annual revenue requirement for depreciation expense is \$354,949.

e. Return on Plant. Petitioner's annual revenue requirement for a reasonable return on net plant is \$260,011.

f. Non-Operating Revenue. The parties agree that Petitioner's total cash revenue requirement should be offset by the amount of Petitioner's non-operating revenues in the amount of \$40,162.

Petitioner's Annual Revenue Requirement. Petitioner's annual net revenue requirement is \$6,634,613, as detailed below:

Cost of Purchased Power	\$4,868,236
Other Operation and Maintenance Expense	1,109,217
Payment in Lieu of Taxes	42,200
Depreciation	354,949
Return on Plant	<u>260,011</u>
Total Revenue Requirement	\$6,634,613

Less: Non-Operating Revenues	(\$40,162)
Net Revenue Requirements	\$6,594,451

3. Amount of Stipulated Rate Increase. The OUCC and Petitioner agree that Petitioner's current rates and charges should be increased so as to produce additional operating revenues of \$561,187 and total pro forma operating revenues of \$6,634,613, representing a 9.3% increase in rates and charges, as shown in Joint Settlement Exhibit 1.

4. Miscellaneous Terms of Settlement. The increased rates and charges proposed for Commission approval in settlement, and as reflected in Joint Settlement Exhibit 1, include an annual revenue requirement for depreciation expense (extensions and replacements) in the amount of \$354,949. Upon approval of a final, non-appealable order incorporating the terms of this settlement, Petitioner agrees to deposit into its depreciation fund at least 1/12th of \$354,949 (or \$29,579.08) each month in arrears. All funds deposited into this account will be restricted to use in payment of electric utility capital expenditures. Petitioner also agrees to restrict amounts currently in the depreciation fund to electric capital expenditures. The obligation to make the foregoing deposits into the depreciation fund shall continue until Petitioner files a petition with the Commission for another increase in its base rates and charges for service.

Petitioner agrees to submit as a supplemental exhibit in this Cause a copy of the appraisal that was used to establish the value of its electric plant in service, for purposes of determining

annual depreciation expense and a reasonable return on net plant. Petitioner also will submit supplemental testimony describing how it used the appraisal to correct past errors with respect to the amount shown on its books and records as the original cost of its electric plant in service. Finally, Petitioner will submit the Indiana State Board of Accounts audit as a supplemental exhibit in this Cause.

5. Admission of Evidence. The OUCC stipulates to the admission of Petitioner's prefiled testimony and exhibits, and its supplemental testimony and exhibits, and waives cross-examination of Petitioner's witnesses. Petitioner stipulates to the admission of the OUCC's testimony and exhibits, and waives cross-examination of the OUCC's witnesses. The parties will jointly sponsor Joint Settlement Exhibit 1 at the July 29, 2004 hearing. The parties also will jointly sponsor a proposed order implementing the terms of this agreement.

6. Mutual Conditions on Settlement Agreement. Petitioner and the OUCC agree for purposes of establishing new rates and charges for Petitioner that the terms and conditions set forth in this Joint Stipulation and Agreement are supported by the evidence and based on the parties' independent review of the evidence, represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation in a final Commission order ("Final Order") without modification or further condition, which may be unacceptable to either party. If the Commission does not approve this Joint Stipulation and Agreement in its entirety and incorporate it into a Final Order as provided above, it shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties. Petitioner and the OUCC represent that there are no other agreements in existence between them relating to the matters covered by this Joint Stipulation and Agreement which in any way affect this Agreement.

7. Non-Precedential. As a condition precedent to the Joint Stipulation and Agreement, the parties condition their agreement on the Commission providing assurance in the

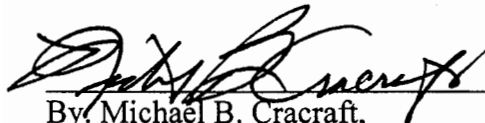
Final Order issued herein that it is not the Commission's intent to allow this Joint Stipulation and Agreement or the Order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of the Joint Stipulation and Agreement. The parties agree that this Joint Stipulation and Agreement shall not be construed nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues. This Joint Stipulation and Agreement is solely the result of compromise in the settlement process and except as provided herein is without prejudice to and shall not constitute a waiver of any position that either of the parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceedings and, failing approval by this Commission, shall not be admissible in any subsequent proceedings.

8. Authority to Stipulate. The undersigned have represented and agreed that they are fully authorized to execute this Joint Stipulation and Agreement on behalf of their designated clients who will be bound thereby.

Respectfully submitted,

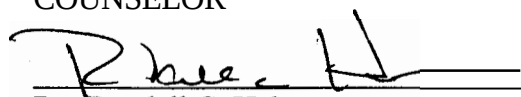
Dated: July 22, 2004

CITY OF TIPTON, INDIANA


By: Michael B. Cracraft,
Attorney for the City of Tipton

Dated: July 22, 2004

INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR


By: Randall C. Helmen

JOINT SETTLEMENT
EXHIBIT 1

TIPTON MUNICIPAL ELECTRIC UTILITY
PRO FORMA REVENUE REQUIREMENTS
BASED UPON THE 12 MONTHS ENDED DECEMBER 31, 2003

	ORIGINAL PROPOSAL PETITIONER	JOINT STIPULATION SETTLEMENT
PRO FORMA PURCHASED POWER EXPENSE	\$4,868,236	\$4,868,236
PRO FORMA OPERATION & MAINTENANCE EXPENSES	<u>1,106,423</u>	<u>1,109,217</u> *
TOTAL PRO FORMA O & M	5,974,659	5,977,453
DEPRECIATION- WITHOUT SUBSTATION (TEST YEAR AMOUNT)	354,949	354,949
PAYMENT IN LIEU OF TAXES	42,200	42,200
RETURN ON NET PLANT \$4,727,477 5.50% *	<u>260,011</u>	<u>260,011</u>
TOTALS	6,631,819	6,634,613
LESS TEST YEAR NON-OPERATING REVENUE	<u>0</u>	<u>(40,162)</u>
NET AMOUNT TO BE RECOVERED BY RATES AND CHARGES	6,631,819	6,594,451
TEST YEAR BASE RATE OPERATING REVENUES	<u>5,998,896</u>	<u>6,033,264</u>
REVENUE DEFICIT (EXCESS) *	<u>\$632,923</u>	<u>\$561,187</u>
REVENUE DEFICIT (EXCESS) - PERCENT	<u>10.58%</u>	<u>9.30%</u>
 NORMALIZED TEST YEAR REVENUES SUBJECT TO RATE ADJMT.	 <u>\$5,998,896</u>	 <u>\$6,033,264</u>

* INCLUDES TAXES OTHER THAN INCOME TAXES 3126,729