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INDIANA UTILITY
REGULATORY COMMISSION

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**

<u>IPL REPLY IN SUPPORT OF PROPOSED ORDER</u>

Petitioner, Indianapolis Power & Light Company ("IPL" or "Company"), by counsel, hereby replies in opposition to the Consumer Parties' Joint Submission of Proposed Order and Post-Hearing brief filed by the Indiana Office of Utility Consumer Counselor ("OUCC"), City of Indianapolis ("City"), and the Industrial Group ("IG") (collectively "CP" or "Consumer Parties").

Indiana law encourages systematic investment to improve transmission and distribution plans such as that approved by the Commission for IPL earlier this year in Cause No. 45264. The approved seven-year TDSIC Plan is comparable in size of other investor-owned electric utility plans and is undertaken for purposes of safety, reliability, and system modernization; these objectives in turn also support economic development in the densely populated and economically important state capital and surrounding area IPL serves. Although the Commission order approving the IPL TDSIC Plan is subject to an appeal brought by the Consumer Parties, IPL has moved forward to defend the order while also making the capital investment found by the Commission to serve the public convenience and necessity.

The instant proceeding seeks to implement the statutory cost recovery for the Company's TDSIC Plan. The Consumer Parties' post hearing filings, which raise new issues for the first time post hearing, contest three issues: indirect cost variance; pretax return – ROE; and pretax return cost of long term debt. Many of the Consumer Parties' claims are already refuted in IPL's Proposed Order and the record evidence. Other claims are inherently contradictory, illogical or otherwise meritless as discussed below. The Consumer Parties' recommendations should be rejected.[1]

Indirect Cost Variance. The record shows, that overall, the TDSIC Project investment to date remains within the Commission-approved cost estimates. Not surprisingly, the variances show both increases and decreases in individual component costs. While the Consumer Parties presented no testimony opposing the Company's cost variances, they contest one aspect of the variance for the first time in their post hearing filing. That variance, a change in the cost allocation methodology for indirect administrative and general ("A&G") costs, is based on a review IPL conducted after the initial cost estimates for the approved Plan were prepared. IPL's review concluded that A&G costs were incurred for construction projects undertaken by internal labor as well as for projects using outsourced labor. Based on the review, IPL updated its cost allocation methodology to allocate such indirect costs to both types of projects. The revised cost allocation methodology provides an equitable distribution and correlation between the A&G costs incurred in support of construction activities. No testimony challenged these conclusions or the process used to reach them. Because the methodology in place at the time the Plan estimates were developed allocated such costs only to construction projects staffed with internal labor, actual costs

[1] This Reply does not attempt to address each and every disputed issue or error in the Consumer Parties' filings and the absence of a specific response to their arguments or factual allegations does not imply acceptance thereof. The Consumer Parties' Proposed Order is cited herein as "CPPO (redline)". The Consumer Parties' post hearing brief is cited herein as "CP Brief".

for this individual component vary from the previous estimate. Despite their repeated insistence that the TDSIC Statute eliminates the risk of cost recovery for the $1.2 billion already preapproved for cost recovery in rates, the Consumer Parties urge the Commission to disallow the indirect cost variance on the grounds that it has not been specifically justified. Notably, they propose to retain for themselves, the benefit of the cost component decreases and do not contest that overall, capital expenditures for the challenged Project remain within the previously approved estimate.

The Consumer Parties' objection, raised for the first time post-hearing, should be rejected. When the Company developed the cost estimates, it reasonably expected that some projects would have actual costs below the estimate while others would come in above the estimated cost. The "best estimate" IPL presented in the Plan docket reflected the cost allocation methodology in place at the time the Plan estimates were developed. The TDSIC Statute does not prohibit a utility from reviewing, updating and standardizing its cost allocation methodology. Such work is reasonably undertaken during the ordinary course of business. Substantial and unrebutted evidence shows the increase in indirect costs is reasonable and warranted under the circumstances presented. Therefore, as further discussed below, the Commission should find and conclude the cost variance has been specifically justified and the Commission should approve it.

<u>Pretax Return – ROE Component.</u> IPL proposes to use its existing Commission-approved ROE in the calculation of the pretax return for the TDSIC Rider. Doing so keeps the T&D investment on par with the Company's other capital investment and is consistent with the policy underlying the TDSIC Statute. The existing ROE was recently agreed to and approved in a full basic rate case. While slightly higher than the ROEs approved by Commission in general rate cases for Indiana Michigan Power Company ("I&M") and Duke Energy Indiana ("DEI") (9.7%), the IPL return (9.99%) remains within the "COE RANGE" of 9.5% to 10.00% found by the

Commission in these two recent cases. As discussed below, recent market volatility indicates that the COE has increased since the COE range was established in these two cases. Furthermore, the Company's Commission-approved ROE is also well within the range of authorized ROEs for comparable electric utilities in comparable operating jurisdictions for 2018 through 2020, which is 9.25% to 10.5%.

Looking at the COE RANGE recognizes there is a difference between establishing a return on equity in a basic rate case (where the issue is investigated in detail and a pinpoint return is balanced with other findings in the case) and assessing whether a previous return has become unreasonable and warrants adjustment outside the context of a basic rate case. In considering the Commission's recent COE ranges, it is reasonable and appropriate to recognize that the underlying market conditions at the time these ranges were established did not reflect the negative economic impact of and market volatility from the COVID 19 pandemic which suggests COE has increased. Furthermore, in May 2019, in a recent rate case for NIPSCO, the Industrial Group witness supported an agreed upon 9.9% ROE because that ROE was consistent with the ROE authorized in NIPSCO's most recent rate case and capital market costs had not changed substantially since the Commission issued its rate decision in July 2016. This inconsistency refutes their contention now that market conditions have changed so much that the Company's existing ROE has become unreasonable and warrants adjustment.

The Consumer Parties recommend the Commission decrease the Company's ROE for purposes of the TDSIC Rider pretax return to 8.4%. A ROE decrease of 159 points is unheard of in Indiana and cannot be viewed as anything but punitive. Adoption of the Consumer Parties' proposal would set IPL's ROE for the TDSIC at a level significantly below other Indiana public utilities. An 8.4% ROE is also well below the range of authorized ROEs considered by similar state jurisdictions for any comparable vertically integrated electric utility.

Nothing justifies this proposed result. IPL has a history of delivering safe, exceptionally reliable service at reasonable rates and its asset management is viewed as exemplary. The Commission has previously found that the plan approval and cost recovery provided by the TDSIC Statute *offsets* the financial challenges a systematic increase in capital expenditures would otherwise have on the utility. The Commission has previously declined to modify a ROE where, as here, the elapsed time between the most recent basic rate case and the Rider filing is close. The Consumer Parties present no legitimate reason for the Commission to change its position.

The additional "other information" Consumer Parties rely on is two-fold. First, they point to comparative bond yields as evidence that the market has changed and COE has decreased to a point where IPL's authorized return is unreasonable. However, this evidence is contested. The record also includes substantial testimony showing a comparison of bond yields between 2020 and 2018 is not appropriate given that capital markets have experienced levels of volatility not seen since the Great Recession of 2008/09 as investors rotate in and out of various asset classes responding to both positive and negative developments regarding the COVID-19 pandemic. The Federal Reserve and U.S. Congress have responded with unprecedented policy measures in an effort to offset the economic effects of COVID-19. Consideration of current market conditions in detail demonstrates a greater risk to equity than the data used by the Commission to assess COE in the recent DEI and I&M cases. While the Consumer Parties urge the Commission to ignore this information, doing so hardly comports with the Commission's role as an impartial fact finding body. Simply put, current market data is being influenced by external factors which make it inappropriate to conduct a comparison of the bond yields in 2020 to prior periods without considering the increased uncertainty and risk in financial markets that caused the federal intervention in the bond market.

Second, while the Consumer Parties presented no calculation showing how their 8.4% is derived, the Consumer Parties argue that their recommended 8.4% ROE is justified due to the structure of the TDSIC Statute, which addresses cost recovery for TDSIC capital investment and TDSIC costs without also adjusting various other components of the revenue requirement used to establish basic rates – namely changes in accumulated depreciation and plant in service. The Commission has previously rejected the argument that the TDSIC Statute directly authorizes an adjustment to the TDSIC to address costs recovered via basic rates. Consequently, the Consumer Parties now urge the Commission to effectuate their objective indirectly via a drastic reduction of the ROE under the guise of the "other information" clause of the pretax return section of the statute. The Commission should reject this end-run around the TDSIC Statute and the policy enacted by the Indiana General Assembly.

The TDSIC statutory structure fairly balances the broader public interest, including the interest of consumers as well as utilities. The challenges to TDSIC filings and long line of appeals brought by consumer parties evince a disdain for this statute. Nevertheless, responsibility for the proper implementation of the TDSIC Statute rests with the Commission. The Indiana Supreme Court made clear in 1929 that the Commission cannot look only at the interest of consumers:

> We repeatedly hear the expression that it is the duty of the Commission to represent the public alone. If, by this remark, it is meant that the Commission is organized but for one purpose, that of antagonistic action toward utilities under any and all circumstances, then one of the great purposes of the law, adequate service by the utility at the least cost to the consumer, might be entirely defeated. The theory of the law creating the Commission body composed of a personnel especially qualified by knowledge, training and experience pertaining to the subject-matter committed to it for award consonant with reasonable fairness and substantial justice according to legislative mandate, and the circumstances shown relative to its effect in the future on the utility's ability to serve the interest and

> convenience of the public, the cost and expense to the parties interested being an element for consideration.

In Re NW. Ind. Tel. Co., 201 Ind. 667, 674-675, 171 N.E. 65, 67-68 (1929).

The extraordinary decrease in ROE recommended by the Consumer Parties suggests a "throw it up and see what sticks" approach whereby an extremely low proposal is made in an attempt to gain some sort of approval under a misguided "split the baby" approach. These tactics should be flatly rejected. Doing so will send a clear message that the TDSIC Statute is not a means to punish utilities and ongoing efforts to disrupt its fair implementation will not be tolerated.

<u>Pretax return – long term debt cost</u>. With respect to long term debt cost, the Consumer Parties make another extraordinary and punitive proposal. They recommend the Commission cherry pick a cost of debt that is more than 100 basis points lower than the actual cost of long term debt in IPL's capital structure. This proposal would effectively replace 94% of the Company's actual cost of long term debt with a cost rate that is not representative of IPL's actual cost of debt and the actual capital structure in IPL's weighted average cost of capital ("WACC").

The Consumer Parties concede their proposal would not present the "public utility's" actual cost of long term debt but urge the Commission to adopt their recommendation under the "other information" clause of the pretax return section of the TDSIC Statute. This proposal cannot reasonably be reconciled with the statutory definition of "pretax return" (which supports use of the public utility's weighted cost of capital), current practice under the statute, or Commission precedent directing the use of the full ratemaking capital structure and rejecting an approach akin to project specific financing. The "other information" clause should not be used as a means to undermine the TDSIC Statute or otherwise punish utilities seeking to utilize it. The "other information" clause is more properly viewed as authority to make a change in the event the "other information" shows the "actual cost rate for the public utility's long term debt" and capital structure are somehow unreasonable, which is not the case here.

Accordingly, and as further discussed below, as well as in the Company's Proposed Order and evidence, the Consumer Parties' recommendations should be rejected. The Commission should instead approve the TDSIC Rider 1 filing as proposed by the Company, including the challenged A&G cost variance and the Company's proposed pretax return. A clean and redline version of the Company's Proposed Order updated to incorporate a reply to the Consumer Parties' post hearing filing is included herewith as Exhibits A and B.

1. Ind. Code § 8-1-39-9(g). In total, the IPL TDSIC Circuit Rebuild Project is approximately $1.5 million under the previously approved cost estimate. Shields Direct at 9-10. Three individual projects have a cost greater than the previously filed individual project cost estimate. One individual Circuit Rebuild project, (1) Center #7, has costs outside the accuracy range of the Class 2 estimate range. Two individual Circuit Rebuild projects, (1) Northwest #9 and (2) Northwest 1, have costs above the Class 2 estimated costs, yet inside the accuracy range of the Class 2 estimate. *Id.* Unimpeached record evidence establishes that the general factors that are driving cost variances are construction labor costs, hydro-vac costs, line clearing costs and indirect costs. *Id.*

Neither OUCC nor Intervenors presented testimony challenging IPL's cost variance. Rather, the Consumer Parties argue for the first time post hearing that the recovery of the variance in indirect cost (A&G cost) for these three projects as well as for IPL's other projects in this proceeding should be denied on the grounds that IPL failed to provide specific justification for the increase in indirect costs. This argument is unfounded.

Unimpeached record evidence establishes what the change is and justifies why it occurred. IPL Witness Shields specifically identified and quantified the change in indirect costs and explained why the increase occurred. Shields Direct at 12; IPL Confidential Attachment JWS-2. This testimony, together with the testimony of Ms. Coklow, establishes that the increase in indirect costs occurred because of a change in IPL's A&G cost allocation methodology that reasonably occurred after the initial cost estimates were prepared. *Id.*

The Consumer Parties' "609%" argument (CPPO (redline) at 27) distorts the context of the cost variance. As the Commission has previously stated: "there is a danger in falling victim to the 'tyranny of large numbers' when we lack sufficient context in which to view them." *Re Duke Energy Ind., Inc.*, Cause No. 43743, Order on Reconsideration at 19, 2011 WL 5088653 at *13 (IURC Oct. 19, 2011), 294 P.U.R.4th 156, 173.

The indirect cost variance of approximately $1.2 million[2] is 9.1% of the previously approved capital expenditures estimated for the 13 in-service TDSIC Circuit Rebuild projects in this filing ($13.5 million).[3] Only three of these individual in-service projects have total costs that exceed the previous estimate for the individual project.[4] Furthermore, in total, the actual cost for these 13 Circuit Rebuild projects ($12 million) is 11.4% ($1.5 million) *less* than the previously approved cost estimate.[5] This means IPL managed the overall Project such that actual direct costs came in approximately $2.8 million (20.9%) under budget. The Consumer Parties' filing unreasonably focuses on one cost category (indirect cost) that is over budget but ignores both the

[2] City IG Joint Exhibit 16 (IPL data response compiling indirect cost variance).
[3] IPL Witness Shields Testimony Page 10 and Confidential Attachment JWS-1 Estimate Variance Column (O) Total for Completed projects as denoted by a Y in Construction Completed Column (S).
[4] Confidential Attachment JWS-1 (estimate variance column (O).
[5] IPL Witness Shields Testimony Page 10.

individual cost category that is under budget (direct cost) and the overall end result for the Project – which also remains under budget.[6]

Ms. Coklow explained what A&G costs are, explained the reason why the A&G cost allocation methodology was revised and established that the change in methodology is well-grounded and equitable. Coklow Direct at 16-17. The Consumer Parties' characterization of this testimony as "simple" and "mere explanation", and CP's effort to otherwise belittle Ms. Coklow's testimony should be rejected. CPPO (redline) at 27. This evidence is both substantial and unimpeached.

IPL's testimony establishes the purpose and process IPL used to establish, review and update its cost allocation methodology and specifically justifies how and why this change occurred:

- A&G costs include labor and benefits for administrative support functions supporting operations, including capital projects that are not directly charged to such projects. Examples include functions such as accounting and finance, legal, safety, HR and employee affairs among others.

- IPL conducts a study to determine the time that supervisory employees devote to construction activities so that only such overhead costs as have a definite relation to construction are capitalized.

- The portion of A&G costs which are determined through the study to be devoted to construction activities are considered as capitalized A&G.

- IPL uses allocation methods to apply capitalized A&G costs across all projects such that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit includes both direct and overhead costs and that the entire cost of the unit includes both direct and overhead costs that have a definite relation to the construction activity.

- Historically IPL applied A&G costs to specific projects based on internal labor associated with each construction project.

[6] The Consumer Parties' proposed disallowance of the indirect cost variance regardless of the end result contradicts their contention that when it comes to cost overruns "the $1.2 billion in TDSIC investments already approved for IPL are not subject to that risk at all." CPPO (redline) at 29.

- Due to the limited internal labor estimated in the TDSIC Plan, the original Plan estimates did not capture any significant A&G costs.
- Subsequently, IPL reviewed its A&G project application methodology as part of a process review and standardization initiative and determined that A&G costs are incurred to support projects independent of whether the project is staffed with internal labor or outsourced labor.
- Accordingly, IPL determined that the application of A&G costs to specific projects based on total construction costs (excluding material) is an appropriate and equitable application of A&G costs to specific projects.
- This methodology provides an equitable distribution and correlation between the A&G costs incurred in support of the construction activities.

Id. Direct at 15-17.

The Consumer Parties' contention that the change in allocation methodology was made "*regardless of staffing*" is not correct. CPPO (redline) at 27. Ms. Coklow's testimony shows the change was made "*because*" a review of staffing determined that A&G costs are incurred when internal labor is used and when outsourced labor is used. Coklow Direct at 16. Given this, it is equitable to allocate such costs to both types of projects.

The process IPL used to review, standardize and update its methodology is unchallenged in the record. Ms. Coklow's testimony that A&G costs are incurred to support projects independent of whether the project is staffed with internal labor or outsourced labor is also unchallenged as is her testimony that the allocation of A&G costs to projects based on total construction costs (excluding material) provides an equitable distribution and correlation between the A&G costs incurred in support of the construction activities. The Commission cannot and should not ignore unimpeached record evidence. *Petition of Ind. Mich. Power Co.*, Cause No. 39314 at 6, 1993 WL 602559 at *3 (IURC Nov. 12, 1993) ("[W]e, as an administrative agency, are not free to simply ignore undisputed evidence.").

The Consumer Parties' contention that approval of the indirect cost variance attributable to IPL's ongoing process review somehow runs afoul of the decision in *NIPSCO,* Cause No. 44403 TDSIC-1, 2015 WL 429990 (IURC Jan. 28, 2015) lacks merit. In the NIPSCO proceeding, the Commission explained:

> To "justify" means "to show to be just or right," "to defend or uphold as warranted or well-grounded," "to show a satisfactory reason or excuse for something done." This does not mean that the utility may simply detail the reasons why the increase occurred. Rather, the utility must explain why the increase in best estimated costs (*i.e.*, costs that were considered to be highly reliable) is reasonable or warranted under the circumstances presented. The requirement that a utility present a best estimate of costs, combined with a need for specific justification before excess costs may be recovered in rates, provides balance to the regulatory process, imposes a degree of rigor in the preapproval process, and protects ratepayers from unjustified cost overruns.

Id. at 20, 2015 WL 429990 at *21 (footnote omitted). As shown above, substantial evidence demonstrates that the evidence comports with the foregoing discussion of the meaning of the words "to justify".

It is not necessary for IPL to prove a prima facie case by a "clear and convincing" evidentiary standard, let alone a "beyond a reasonable doubt" standard. The Commission re-affirmed this position in *NIPSCO*, Cause No. 43526 at 76, 2010 WL 3444546 at *66 (IURC Aug. 25, 2010), stating:

> As we have said before, a petitioner's obligation is to submit "substantial evidence" sufficient for a prima facie case, not to satisfy a "clear and convincing" or "beyond a reasonable doubt" standard.

"A 'prima facie case' is one which presents 'such evidence as is sufficient to establish a given fact and which if not contradicted will remain sufficient.'" *Re Ind. Mich. Power Co.*, Cause

No. 39314 at 4, 1993 WL 602559 at *3 (IURC Nov. 12, 1993).[7] Once IPL has presented a prima facie case for relief, the opponents of the requested relief, such as the OUCC and intervenors, have the burden of going forward with their evidence. *City of Terre Haute v. Terre Haute Water Works Corp.*, 133 Ind. App. 232, 246-47, 180 N.E.2d 110, 117, 43 PUR 3d 278 (1962), citing *Cleveland, etc., R. Co. v. Miller* (1905), 165 Ind. 381, 385, 74 N.E. 509, 510 ("The general rule in Indiana is that 'a *prima facie* case must always stand until it is broken by the defendant's evidence.'"). In the instant case, the Consumer Parties presented no testimony in opposition to IPL's evidence. If there were merit to the argument they raise now, one would assume that one of their witnesses would have said so under oath. City-IG Joint Ex. 16 shows the change in indirect cost occurred for the reason identified in IPL's testimony. This exhibit reinforces IPL's evidence and the Company's transparent and substantial support for its cost information; it does not refute it. Consequently, the Commission should reject the Consumer Parties' contention that the process change lacks sufficient "rigor", "grounding" and justification. CPPO (redline) at 27.

The record shows that in total, the Company has managed the cost of the 13 completed Circuit Rebuild projects at an actual cost that is significantly less than the previously approved estimate. The "best estimate" IPL presented in the Plan docket reflected the cost allocation methodology in place at the time the estimates were prepared. The actual cost reflects the cost allocation methodology in place during the plan implementation. The TDSIC Statute does not prohibit a utility from reviewing, updating and standardizing its cost allocation methodology. Such work is reasonably undertaken during the ordinary course of business. The evidence shows the increase in indirect costs is reasonable and warranted under the circumstances presented.

[7] Also *Plough v. Farmers State Bank of Henry County*, 437 N.E.2d 471, 475 (Ind. Ct. App. 1982); *Floyd v. Jay County Rural Elec. Membership Corp.*, 405 N.E.2d 630, 633 (Ind. Ct. App. 1980); *Rene's Restaurant Corp. v. Fro-Du-Co Corp.*, 210 N.E.2d 385, 387 (Ind. Ct. App. 1965).

Therefore, the Commission should find and conclude that the cost variance has been specifically justified and the Commission should approve it.

2. <u>Pretax Return (Ind. Code § 8-1-39-13).</u>

A. <u>ROE.</u>

1. <u>Risk.</u> The Consumer Parties' position on ROE rests on a "risk reduction" argument the Commission has previously rejected. The Consumer Parties present no basis for the Commission to depart from its previous position. Their arguments rest on factors that reduce risk but ignore factors that increase risk. This is unreasonable and should be rejected.

The Consumer Parties' arguments circle repeatedly around the TDSIC Statute plan approval and periodic automatic adjustment of the utility's basic rates to provide for timely recovery of 80% and 20% deferral of approved costs. They urge the Commission to find that the "reduction in risk to the investor is substantial" as a result of this statutory framework. CPPO (redline) at 29. As an initial matter, the Consumer Parties' relentless attack on TDSIC proceedings, call into question their position that cost recovery is guaranteed. That being said, the reduction in risk is only one side of the coin. In *NIPSCO*, Cause No. 44371 at 17, 2014 WL 1373824 at *13 (IURC Feb. 7, 2014), the Commission correctly found that the security and timeliness of this cost recovery mechanism *offsets* the adverse effect the increase in capital investment would otherwise have on the utility.

A significant increase in capital expenditures challenges IPL's ability to maintain its financial integrity (*e.g.* puts pressure on IPL's ability to satisfy credit metrics (operating cashflow metrics, EDITDA metrics and debt metrics). This in turn impairs the Company's ability to attract capital under reasonable terms and maintain a balanced capital structure. It also jeopardizes the utility's ongoing opportunity to earn its authorized return (*i.e.* a return on investments of enterprises of comparable risk). Put another way, a significant, systematic investment plan increases the utility's risk profile. This *increase* is offset by the statutory approval and cost recovery process. See Rogers Direct at 13.[8]

None of the Consumer Parties' arguments present a legitimate reason for the Commission to ignore the offsetting effect of the TDSIC regulatory framework. The principles underlying the Commission's previous decision are not altered by the mere passage of time as suggested in the CP filing. CPPO (redline) at 31. The financial integrity challenge arises because of the increase in capital expenditures beyond what otherwise would be made. It is not the result of any failure by IPL to manage its system in an economic and efficient manner. *Cf* CPPO (redline) at 29. Additionally, just like the NIPSCO TDSIC case, IPL's authorized ROE is fairly recent and IPL will have at least one additional rate case before the TDSIC Plan expires. The Consumer Parties provide no legitimate reason to ignore this nexus. Standard & Poor's characterization of IPL's TDSIC investment as "low risk regulated growth" (CP Brief at 15), assumes proper application of the TDSIC cost recovery mechanism. S&P has identified a "perceived deterioration" of Indiana's regulatory environment as a factor that would lead to a downgrade. Rogers Direct at 21-22.

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) and *Bluefield Waterworks & Improvement Co. v. Public Service Commission*, 262 U.S. 679 (1923) establish that just and reasonable rates are rates that provide revenues sufficient to maintain IPL's financial integrity, allow it to attract capital under reasonable terms, and earn a return comparable to

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[8] In their brief, the Consumer Parties contend IPL argues that the TDSIC Plan does not result in any shift in risk. CP Brief at 14. This is not correct. As just explained, IPL argues that the TDSIC Plan approval and statutory cost recovery offsets the increase in risk the Company would otherwise experience. See Rogers Rebuttal at 4, 18-19. This position is consistent with Commission precedent. Rogers Rebuttal at 18-19.

similarly situated companies. This is exactly what the Indiana utility regulatory framework does. The Consumer Parties' suggestion (CPPO (redline) at 28; CP Brief at 11) that these decisions support the dangerously low pretax return they recommend is meritless.

The I&M decision Consumer Parties use to support their argument that trackers reduce risk and warrant a downward adjustment to ROE (CP Brief (at 11) is a basic rate case decision. This issue was raised in the testimony in IPL's recent rate case and was presumably taken into consideration by the participating parties when they negotiated and agreed to a settlement package that included IPL's current 9.99% ROE. No further adjustment is warranted here because IPL's ROE remains within the range of reasonableness and the effect of the TDSIC Plan approval and cost recovery offsets the effect on the Company of the TDSIC capital investment.

The Indiana Court of Appeals decision in *Indiana-American Water Co. v. Office of Utility Consumer Counselor*, 844 N.E.2d 106, 116 (Ind. App. 2006) does not concern the TDSIC Statute. See CP Brief at 12. This decision addressed whether the language of a Commission finding regarding the disallowance of a water utility expense satisfied the Ind. Code § 8-1-2-48(a) standard that such expenses be unnecessary or excessive. While this statute provides the Commission discretion to disallow excessive and unreasonable expenditures for ratemaking purposes, the Consumer Parties' suggestion that the TDSIC Statute is an exception in Indiana utility law is mistaken. Indiana law includes numerous statutes whereby the prudence of a capital investment can be approved before the investment is made, including Ind. Code § 8-1-2-23, Ind. Code ch. 8-1-8.4, 8.5, 8.7 and 8.8.

The Consumer Parties' contention that the TDSIC Statute "effectively eliminates the risks reflected in base rates" is nonsensical. CPPO (redline) at 29. The TDSIC investment is not reflected in base rates. To the extent risk is reduced or eliminated, it is the *increase* in overall risk that would otherwise occur in the absence of the TDSIC Statute. In June 2020, the Consumer Parties' expert testified in Oregon that it would be unreasonable to adjust a utility's risk profile because the use of a proxy group fully captures regulatory risk among other factors. Bulkley Rebuttal at 47-48. Not only does this conflicting opinion call into question the Consumer Parties' position in this case, it corroborates the views of IPL Witnesses Bulkley and Rogers, as well as the view of IPL Witness McKenzie in IPL's most recent rate case. This substantial record evidence refutes the Consumer Parties' proposed conclusion that approval of the Company's TDSIC Plan and use of the statutory cost recovery has created a change in the Company's overall risk profile that would cause investors to specifically and measurably reduce their return requirements.

Accordingly, the Commission should again reject the Consumer Parties' argument that the statutory TDSIC plan approval and cost recovery mechanisms reduce the utility's overall risk profile.[9]

2. Market Conditions and Other CP Arguments. COE and ROE are best determined within a basic rate case. While the TDSIC Statute pretax return allows the Commission to consider "other information" in establishing the pretax return, the Commission has previously declined to adjust the ROE where the elapsed period of time between the TDSIC Rider filing and the basic rate case are close, as is the case here. Moreover, the Company's Commission-authorized ROE remains with the range of reasonableness. Therefore, the Commission should conclude that no adjustment to IPL's ROE is necessary.

[9] The Consumer Parties' suggestion that experience under the Statute supports the conclusion that cost recovery is "automatic" and "virtually guaranteed" (CPPO (redline) at 29) lacks merit given the extensive litigation and appeals undertaken by the consumer parties to disrupt its implementation. This position also fails to recognize that such assurance of cost recovery is not unique to TDSIC plans but is provided under other Indiana statutes as well as laws in other jurisdictions and exists to help offset the financial pressures that large capital expenditures create.

In stark contrast, the Consumer Parties urge the Commission to use the “other information” clause of the statute as a means to punish IPL with a 159 basis point drop in its authorized return. They believe not ”every TDSIC tracker proceeding” should be converted into a full-blown ROE analysis (CPPO (redline) at 28), but provide no practical means for administering this policy, much less a solid foundation for applying this arbitrary “not every time” policy in the instant case.

The Consumer Parties’ suggestion that the bond yields presented by Mr. Gorman are “thorough” (CP Brief at 9) ignores the substantial record evidence establishing that their bond yield data (see CPPO (redline) at 30) is being influenced by external factors which make it inappropriate to conduct a comparison of the bond yields in 2020 to prior periods without considering the increased uncertainty and risk in financial markets. Bulkley Rebuttal at 4, 31-33, 38-52. The Consumer Parties’ focus on comparative bond yields also ignores other market indicators showing the COE has increased. *Id.* In other words, the record evidence shows conflicting expert witness opinions on current market data and how it affects COE. These differences cannot reasonably be reconciled by simply ignoring the substantial record evidence that impeaches the Consumer Parties’ position.

The Consumer Parties identify no reasonable basis for the Commission to cherry pick the market data or otherwise ignore the current market conditions indicating the COE range has increased. Concluding otherwise would not reflect a “measured and careful consideration of [the] issue” which Consumer Parties concede is appropriate. CPPO (redline) at 31.

The Consumer Parties argue that the Commission should disregard Ms. Bulkley’s testimony regarding the impact of the COVID 19 pandemic on the current market because the appropriate ROE is forward-looking. CP Brief at 10. This circular argument is nonsensical. It would be illogical for the Commission to reduce the Company’s ROE based on “current market” information while excluding consideration of the very economic conditions that are driving the current market. Furthermore, nothing in Ms. Bulkley's testimony or the testimony of any other witness suggests her views are intended to compensate the Company for past load reductions. The Consumer Parties' suggestion that her testimony should be swept aside based on the decisions in Cause Nos. 45380/45377, 2020 WL 3630517 (IURC June 29, 2020) (CP Brief at 10 n. 2) is a red herring and should be rejected.

Their effort to refute Ms. Bulkley's calculation of the representative ROE range also lacks merit. CP Brief, at 9 n. 1. Ms. Bulkley's calculation (presented in IPL Confidential Attachment AEB-2R C (Vertically Integrated Authorized ROEs - January 2018 - June 2020 (RRA Ranking ≥ Average / 1) did not include the referenced 2020 decisions because they were issued in jurisdictions with RRA ranking below Indiana's ranking of Average/1.[10]

The Consumer Parties' proposal that the Commission reduce the Company's ROE to 8.4% to take into account the reduction in risk associated with the TDSIC tracker lacks merit for the reasons discussed above.

Their contention that the ROE should be reduced to 8.4% because the TDSIC Statute does not require basic rates to be adjusted to eliminate the return on replaced assets (CPPO (redline) at 30) should also be rejected. Adoption of this proposal would allow the "other information" clause of Section 13 to nullify the clear directive that the costs addressed in the TDSIC Statute are TDSIC capital investment and "TDSIC costs", not other costs reflected in basic rates. The Commission

[10] Notably, two of the decisions (from these dissimilar jurisdictions) identified by the Consumer Parties were issued after Ms. Bulkley conducted and filed her analysis. Ms. Bulkley clearly identified the date of information reflected in her calculation.

should reject this invitation to implement "indirectly" what the statute prohibits the Commission from doing "directly".

The new "dividend" argument presented by Consumer Parties for the first time in their post hearing filing is unfounded. CPPO (redline) at 30; CP Brief at 3. City and IG Exs. 14, 14-C & 15 identify past dividends and reflect a confidential forecast for the remainder of 2020. The viability of that forecast necessarily depends on numerous factors including whether the Commission orders the punitive result urged by the Consumer Parties in this case.

Furthermore, the Consumer Parties' position implies wrongly that dividends are somehow contrary to the prudent management of a utility. This is not so and neither expert ROE witness argued that the Company's dividends are grounds to decrease the ROE in the TDSIC Rider. The payment of dividends is important to maintaining a balanced capital structure. Managing to the balanced capital structure is reasonable and appropriate and provides the opportunity for the Company to earn its authorized ROE. Retaining the equity within IPL as suggested by the Consumer Parties' argument would increase the equity ratio for IPL and this in turn would increase the overall cost to IPL's customers because equity capital costs more than long term debt. The cash that IPL dividends to IPALCO is equity capital that is invested in IPL as needed. That equity investment necessarily assumes that the return will be commensurate with the return that the investor could earn in an alternative investment of comparable risk. The Consumer Parties' 8.4% ROE as well as their other recommendations penalize such investment and cannot be reconciled with this fundamental principle of regulated utility investment. In the words of Walter B. Wriston: "Capital goes where it's welcome and stays where it's well treated."[11]

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[11] https://quotefancy.com/quote/1556127/Walter-Wriston-Capital-goes-where-it-is-welcome-and-stays-where-it-is-well-treated.

The Consumer Parties' suggestion that their recommendations should be adopted because they believe the TDSIC Statutory framework is unfair lacks merit. CPPO (redline) at 30-31. The Indiana General Assembly sets policy; the Commission follows it. The legislature's decision to encourage the systematic investment in transmission and distribution systems through the TDSIC statutory framework reflects a reasonable and balanced consideration of utility and consumer interests. Customers pay for retail electric service, the price of which is necessarily underpinned by the cost of providing that service reflected in the "test year" used to establish rates. The Consumer Parties' contention that the basic rates somehow become unfair when non-TDSIC assets are retired lacks merit. See CPPO (redline) at 30, 31. For example, the record shows the Company's net plant additions outside of the TDSIC Plan investment more than offset the impact of the retirements. Rogers Rebuttal at 20, 24-28. While Mr. Gorman's computation may halve the revenue requirement (CPPO (redline) at 31), a full and fair adjustment to capture the total change in "net plant in-service" would increase the revenue requirement significantly. Rogers Rebuttal at 25-27. Therefore, the Commission should reject the Consumer Parties' position that legislature's decision to limit the TDSIC to "TDSIC capital investment and TDSIC costs" is somehow unfair.

The Consumer Parties' reliance on *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 31 N.E.3d 1 (Ind. Ct. App. 2015) ("*NIPSCO 2015*") is misplaced. CPPO (redline) at 30-31; CP Brief at 16. In that case, the Court of Appeals expressed "significant concerns over the *allegedly* inconsistent treatment of this subject by the Commission" (NIPSCO 2015 at 15 (emphasis added)) but deferred to the Commission's special ratemaking competence. *Id.* In the IPL TDSIC Plan Order, the Commission affirmed and explained its belief that the TDSIC Statute does not allow the Commission to offset the required revenues for the new assets with the retirement of the replaced assets, and in doing so also clarified why the "alleged inconsistency" of concern to the Court of Appeals does not exist. IPL TDSIC Plan Order at 25-27.

While this section of the IPL TDSIC Plan Order also referred back to the Commission's February 17, 2014 Order in Cause No. 44371, at p. 17, that discussion supports the rejection of the Consumer Parties' recommendation, not the adoption of it. The Commission wrote:

> Ind. Code § 8-1-39-13(a) does not preclude us from increasing or decreasing the allowed return on equity, as the Commission is authorized to consider other necessary information in determine the appropriate pretax return. However, we note that NIPSCO's authorized return on equity of 10.2% was approved relatively recently in our 43969 Order on December 21, 2011. Further, we acknowledge the offsetting effects of this tracker's cost recovery security and timeliness and the increased investment being made for the associated projects. Consistent with our finding above on the appropriate capital structure, we decline to lower NIPSCO's authorized return on equity from that approved in its most recent rate case.

Id., 2014 WL 1373824 at *13. Accordingly, the Consumer Parties' contention (CPPO (redline) at 31) that their proposal is "in line" with the Commissions' Order in Cause No. 44371, *NIPSCO 2015* and the statute itself should be rejected. This instant case falls squarely within the quotation of the Commission's standing position above. The passage of time and record evidence reinforce the ongoing validity of this position. Consequently, the Consumer Parties' effort to justify adoption of punitive recommendations based on vague references to the Commission's "experience" "over the past six years" (CPPO (redline) at 31) should also be rejected.

B. <u>IPL's long term debt cost.</u> The Commission should reject the Consumer Parties' proposal to use the "other information" clause to decrease the cost of IPL's long term debt for purposes of the TDSIC Rider pretax return. The Consumer Parties' proposal distorts the purpose of the "other information" clause and undermines the purpose of the TDSIC Statute, which is to encourage systematic investment in T&D infrastructure.

Section 13 directs the Commission to consider the actual cost rate for the *public utility's* long term debt. This language does not support the Consumer Parties' proposal. While Section 13 allows consideration of "other information" the Commission considers "necessary", this provision should not be used to nullify the very clear statutory directives in Sections 3 and 13. The "other information" clause is more properly viewed as authority to make a change in the event the "other information" shows the "actual cost rate for the public utility's long term debt" and capital structure are somehow unreasonable, which is not the case here. The record shows IPL's actual effective cost rate is lower than the corresponding market rate (Rogers Rebuttal at 15 (citing Witness Gorman's Attachment MPG-3)); its capital structure is reasonable and unchallenged. IPL Attachment NHC-5, pg. 3 (showing common equity percentage of ratemaking capital structure is 41.50%; long term debt is 47.95%). Therefore, the Commission should reject the Consumer Parties' proposal that the Commission adopt a marginal cost of long term debt that is more than 100 basis points lower than the actual cost of debt in IPL's capital structure. Rogers Rebuttal at 32.

The Consumer Parties' proposal to cherry pick the cost of the most recent debt issue would replace 94% of the Company's actual cost of long term debt with a cost rate that is not representative of IPL's actual cost of debt and the actual capital structure in IPL's WACC. Not only is this proposed cost disallowance fundamentally unfair, this approach introduces volatility into the calculation of IPL's long term debt that would not otherwise exist under IPL's proposal to follow standing Commission practice. Rogers Rebuttal at 17.

The Consumer Parties' effort to justify their proposed cost disallowance with a "note that IPL is already recovering, through base rates, the cost of its embedded debt as established in the last rate case" (CPPO (redline) at 38) is just another way of arguing that the TDSIC Plan should be treated as if it is being financed separately from the ongoing enterprise when substantial record evidence demonstrates otherwise. The Commission has previously rejected the Consumer Parties' position and directed that the full ratemaking capital structure should be used in the TDSIC rider pretax return. See Rogers Rebuttal at 13-14. It should reject it again in the instant proceeding.

Using the Consumer Parties' reasoning, none of the zero cost capital included in the Company's capital structure in the most recent rate case was used to finance the TDSIC improvements in this case. Thus, adoption of their TDSIC specific incremental financing approach would require the non-investor supplied capital (*i.e.*, zero cost capital) to be excluded from the capital structure and an alternative capital structure and component cost established. *Id.* As Mr. Rogers explained this approach is not practical. *Id.* In other words, regardless of the size of IPL's TDSIC Plan, to identify and assign the financed capital components over the seven year TDSIC period to specific assets is not practical, not required, and not necessary because IPL funds the overall capital needs of the enterprise wide utility and not specific projects.

The Consumer Parties' argument about the total size of the IPL Plan investment over the seven year period is a red herring. CP Brief at 20. The Consumer Parties' comparison ignores the substantial post-test year investment already made by the Company and the ongoing non-TDSIC investment the Company will continue to make over the course of the seven-year plan. The record shows IPL is an ongoing concern that utilizes all of its capital resources in a holistic manner to finance the ongoing concern. IPL is not using project specific financing for the TDSIC Plan. By financing the overall needs of the utility, and not just specific projects, IPL is able to finance itself more efficiently and effectively than if the Company financed individual projects separately.

Rogers Rebuttal at 11.[12] Put another way, the $1.2 billion will be invested over a 7 year time frame in which IPL anticipates other enterprise-wide capital needs. IPL anticipates financing the overall needs of the utility, and not just specific projects and does so because this approach is more efficient and effective than if the Company financed individual projects separately.

CONCLUSION

The Company continues its efforts to successfully manage its Commission-approved TDSIC Plan for the benefit of the Central Indiana service area it serves. The ongoing attacks on the Plan, the Statute and the associated cost recovery are disheartening to say the least. The challenge to the Company's updated A&G cost allocation methodology is erroneous. The punitive end result urged by the Consumer Parties is unfounded.

Aging infrastructure is an issue that affects all states and many industries. Modernizing infrastructure allows our State to benefit from technological change and not lag behind other parts of the country that compete for economic development. The TDSIC Statute is designed to attract important investment to Indiana because the benefits of doing so are substantial – even more so as the community moves through the economic challenges and recovery in the wake of COVID 19.

Allowing cost recovery and a full and fair return on investment furthers the objectives of the TDSIC Statute. Treating TDSIC investment as less important than IPL's other investment will send a message that Indiana does not value capital improvements. Substantial evidence of record shows IPL's ROE remains within the range of reasonableness. The Company's long term debt cost and capital structure are also reasonable, indeed the Company's actual effective cost rate for its long term debt is lower than the corresponding market rate. The statutory 2% cap mitigates the

[12] See also Rogers Rebuttal at 29-30 (showing IPL's seven-year plan of $1.2 billion falls within the range of approved TDSIC plan of the other Indiana investor-owned electric utilities on a total dollar basis and a dollar per customer basis).

impact on customers and the record here shows the rate impact here (0.28%) remains far below this safeguard.

The Company reasonably responded to the Commission's IPL TDSIC Plan Order by including depreciation expense netting in the calculation of the TDSIC Rider revenue requirement. This netting was calculated in the same way IPL implemented such netting for its MATS equipment in a past ECR. This adjustment has the effect of reducing the revenue that would otherwise have been recovered through the IPL TDSIC Rider, effectively reducing IPL's return on the new assets as compared to not reflecting the depreciation credit.

The Company asks the Commission to continue to support the IPL TDSIC Plan and to reject the Consumer Parties' grievous proposals to disrupt its implementation and to otherwise punish the Company for using this statute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 25th day of September, 2020, by email transmission, hand delivery or United States Mail, first class, postage prepaid to:

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DMS 18188020v1

Exhibit A

(*IPL Proposed Order –Revised To Reflect Reply*)
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** **APPROVED:**

ORDER OF THE COMMISSION

Presiding Officer:
David E. Ziegner, Commissioner
Jennifer L. Schuster, Administrative Law Judge

On June 18, 2020, Indianapolis Power & Light Company ("IPL", "Company" or "Petitioner") filed its Verified Petition and Request for Administrative Notice with the Indiana Utility Regulatory Commission ("Commission"), along with the verified direct testimony, attachments and various workpapers of James W. Shields, Jr., Director of IPL TDSIC Plan Development, Chad A. Rogers, Senior Program Manager in IPL Regulatory Affairs, and Natalie Herr Coklow, AES U.S. Service, LLC, Manager in Regulatory Accounting Department.

Also on June 18, 2020, Petitioner filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Motion") requesting that certain information contained within IPL's filing be treated as confidential and exempt from public disclosure. The Presiding Officers granted the Motion and found the information should be treated as confidential on a preliminary basis by docket entry dated June 29, 2020.

The procedural schedule for this Cause was established by docket entry dated July 9, 2020.

Petitions to intervene were filed by the City of Indianapolis ("City") on July 7, 2020 and by the IPL Industrial Group ("IG") on July 28, 2020 (collectively "Intervenors" and together with the OUCC "Consumer Parties").[1] These petitions were granted by docket entries dated July 15, 2020 and August 6, 2020.

On August 17, 2020, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the verified direct testimony and attachment of Wes R. Blakley, OUCC Senior Utility Analyst, and Intervenors filed the verified direct testimony and attachments of Michael P. Gorman, Managing Principal with the firm of Brubaker & Associates, Inc. On August 17, 2020, Intervenors also filed a Joint Motion for Administrative Notice, which motion was subsequently denied (by docket entry dated August 31, 2020) in light of a recent update to the Commission's procedural rules that allows the Commission and parties to cite to Commission orders without the Commission taking administrative notice of them. Intervenors filed Mr. Gorman's workpapers on August 19, 2020.

On August 26, 2020, Petitioner filed the rebuttal testimony, attachments and workpapers of the aforementioned Chad Rogers and Ann E. Bulkley, Senior Vice President of Concentric Energy Advisors. On August 26, 2020, Petitioner also filed a second Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Second Motion") requesting that certain information contained within IPL's filing be treated as confidential and exempt from public disclosure. The Presiding Officers granted the Second Motion and found the information should be treated as confidential on a preliminary basis by docket entry dated September 2, 2020.

On September 9, 2020, IPL filed a third Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Third Motion") requesting that certain information the parties had stipulated should be admitted into evidence be treated as confidential and exempt from public disclosure. No party objected to IPL's Third Motion and it was granted by docket entry dated September 9, 2020.

The Commission set this matter for an Evidentiary Hearing to be held on September 11, 2020, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A docket entry was issued on September 9, 2020, advising that the hearing would be conducted via teleconference and providing related participation information. At the hearing, Petitioner, OUCC and Intervenors participated telephonically by counsel. The testimony and exhibits offered by Petitioner, OUCC and Intervenors were admitted into the record without objection. At the hearing, IPL's request for administrative notice was denied in light of the above referenced update to the Commission's procedural rules (170 IAC 1-1.1-215(f)). No members of the general public sought to participate in these proceedings.

Based upon applicable law and the evidence of record, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Notice of the hearing was given and published by the Commission as required by law. Petitioner is a public utility as that term is defined by Ind. Code §§ 8-1-2-1(a) and 8-1-39-4. Pursuant to Ind. Code ch. 8-1-39, the Commission has jurisdiction over a public utility's petition to approve rate schedules establishing a Transmission, Distribution and Storage System Improvement Charge ("TDSIC") that will allow for the periodic adjustment

[1] The IPL Industrial Group is an ad hoc group of IPL industrial users consisting of Allison Transmission, Inc., IU Health and Messer LLC.

of the public utility's basic rates and charges to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs. Therefore, the Commission has jurisdiction over IPL and the subject matter of this proceeding.

2. **<u>Petitioner's Characteristics.</u>** IPL is a corporation organized and existing under the laws of the state of Indiana, with its principal offices at One Monument Circle, Indianapolis Indiana. IPL is engaged.in rendering electric service in the state of Indiana and owns and operates plant, equipment, and related facilities in Indiana that are in service and used and useful in the generation, transmission, distribution, and furnishing of such service to the public.[2]

3. **<u>Background and Requested Relief.</u>** On March 4, 2020, the Commission issued an Order in Cause No. 45264 ("IPL TDSIC Plan Order") approving IPL's Seven-Year TDSIC Plan. In that order, the Commission found the projects included in IPL's TDSIC Plan are: (a) "eligible improvements" as defined in Ind. Code § 8-1-39-2 and were not included in IPL's most recent rate case; (b) authorized TDSIC treatment for the improvements described in the IPL TDSIC Plan, including costs incurred starting on August 1, 2019; (c) authorized IPL to defer and recover its Plan development and case support costs over a three-year period through a TDSIC tracker to be filed in 2020; (d) approved IPL's request to defer TDSIC Plan costs and to create regulatory assets to record post-in-service allowance for funds used during construction ("AFUDC") (both debt and equity) and depreciation and property tax expenses associated with the projects, until they are recovered through the TDSIC tracker or included in basic rates; approved IPL's request to use the applicable depreciation rates for transmission and distribution assets approved in its most recent rate case (Cause No. 45029) and to recover depreciation expense prospectively; and found that IPL shall remove the gross up for taxes associated with the 20% deferred regulatory asset from future filings. IPL TDSIC Plan Order, at 21, 24-25. The Commission also found it appropriate to explore under the "other information" clause in Ind. Code § 8-1-39-13(a) two concerns which the Commission found were not sufficiently developed in the record in the Plan docket -- namely (i) the OUCC's concern with double recovery of depreciation expense in light of the Commission's ongoing view that the TDSIC Statute does not require the OUCC's netting of depreciation expense, and (ii) the Industrial Group's concerns with the shifting of risks based on plan approval. *Id*. at 27. The Order deferred making any adjustment to IPL's weighted average cost of capital ("WACC") until such a record has an opportunity to be developed in TDSIC 1 or other appropriate forum. *Id.*

The Commission directed IPL to file semi-annual TDSIC trackers: one to update the TDSIC Plan and one to update its TDSIC rate with the first filing to be made by July 1, 2020. *Id.*

4. **<u>Relief Requested.</u>** Pursuant to Ind. Code§ 8-1-39-9(a) Petitioner seeks to establish the "TDSIC rate". The Petition addresses costs incurred under IPL's TDSIC Plan through March 31, 2020. In this TDSIC rate filing, Petitioner requests approval of TDSIC Rider factors to effectuate the timely recovery of 80% of approved capital expenditures and TDSIC costs. IPL proposes that the TDSIC 1 factors, when approved, go into effect starting with the November 2020 billing cycle and remain in effect until different Rider factors are approved, which is expected to be a period of approximately 12 months because IPL will seek approval of new factors in its TDSIC 3 filing. IPL asks the Commission to specifically approve and authorize

[2] See IPL TDSIC Plan Order at 1.

recovery of actual costs that exceed the amount previously approved. IPL also requests authority to defer, as a regulatory asset, the remaining 20% of approved capital expenditures and TDSIC costs for recovery as part of IPL's next general rate case. IPL requests approval to adjust its authorized return for purposes of Ind. Code § 8-1-2-42(d)(3) to reflect the incremental earnings that will result from this TDSIC Rider filing upon Commission approval. IPL's proposed TDSIC Rider was included with IPL Witness Coklow's testimony as Attachment NHC-12 (revised). See Rogers Direct testimony for overview as well as IPL Petition, included therewith as IPL Attachment CAR-6.

5. Evidence Presented.

A. Petitioner's Case-in-Chief.

1. TDSIC Plan Capital Investments at Cut-Off Date. Mr. Shields provided an overview of IPL's approved TDSIC Plan, reported on the overall progress of the approved Projects, presented the TDSIC capital investments as of March 31, 2020, described the capital investments, identified cost variances and justified the variance for specific individual projects that have an actual cost greater than the previously approved estimate. He discussed the projects that were re-sequenced due to construction constraints. Shields Direct at 8.

He showed that total actual capital expenditures as of March 31, 2020 were approximately $45.9 million. Shields Direct at 9. He presented IPL Confidential Attachment JWS-1 which presented the actual cost (both in-service and construction work in progress) of the approved TDSIC Projects.

Mr. Shields described the construction work in progress not placed into service by March 31, 2020, which totaled approximately $28.4 million. *Id.* at 15-16.

2. Cost Estimate Variances. Mr. Shields stated that each TDSIC Plan Project consists of individual projects. *Id.* at 10. He said IPL presented cost estimates for the individual projects in the Plan case and added that the AACE Cost Estimate Classification System assigns an expected accuracy range for each estimates class. He said the accuracy range for Class 2 estimates is +20% and -15%. *Id.* He added that when IPL developed project cost estimates, the Company reasonably expected that some projects would have actual costs below the estimate while others would come in above the estimated cost. *Id.*

Mr. Shields explained that at the *Project type* level, the effect of positive cost variances at the individual project level are absorbed by negative cost variances from other projects. *Id*. at 10 (emphasis added). He said, for example, of the 13 individual Circuit Rebuild projects that were completed by March 31, 2020, just three have an actual cost greater than the estimated cost. *Id*. He added that the 13 Circuit Rebuild projects have an aggregated estimated cost of $13,518,672 compared to an aggregated actual cost of $11,975,571. He said this results in $1,543,101 under estimated cost. *Id*.

Mr. Shields presented IPL Confidential Attachment JWS-1, which identified the cost variances between the approved project costs and the actual costs as of March 31, 2020. Mr. Shields stated that as shown in this attachment, one individual Circuit Rebuild project, (1) Center #7, has costs outside the accuracy range of the Class 2 estimate range. Two individual Circuit

Rebuild projects, (1) Northwest #9 and (2) Northwest 1, have costs above the Class 2 estimated costs, yet inside the accuracy range of the Class 2 estimate.

Mr. Shields presented IPL Confidential Attachment JWS-2 which presented individual project cost element variances for the three projects that have actual costs greater than estimated costs. He discussed the general cost factors driving individual project cost variances, identifying them as construction labor costs, hydro-vac costs, line clearing costs and indirect costs stemming from the change in IPL's administrative and general cost allocation methodology addressed by IPL Witness Coklow. *Id.* at 10-12.

Ms. Coklow explained what A&G costs are, explained the purpose and process IPL used to establish, review and update its cost allocation methodology and specifically justified how and why this change occurred. Coklow Direct at 16-17. She said IPL conducts a study to determine the time that supervisory employees devote to construction activities so that only such overhead costs as have a definite relation to construction are capitalized. She said IPL uses allocation methods to apply capitalized A&G costs across all projects such that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit includes both direct and overhead costs that have a definite relation to the construction activity. She said historically IPL applied A&G costs to specific projects based on internal labor associated with each construction project. She explained that IPL reviewed its A&G project application methodology as part of a process review and standardization initiative and determined that A&G costs are incurred to support projects independent of whether the project is staffed with internal labor or outsourced labor. She stated that IPL determined that the application of A&G costs to specific projects based on total construction costs (excluding material) is an appropriate and equitable application of A&G costs to specific projects. This methodology provides an equitable distribution and correlation between the A&G costs incurred in support of the construction activities. Coklow Direct at 15-17.

Mr. Shields further explained that the variance on Center #7 Circuit Rebuild project was driven by overhead construction labor costs, material costs variance, and indirect costs. *Id.* at 12-13. He explained that the variance on Center #9 Circuit Rebuild project was driven by construction labor, line clearing and indirect costs. *Id.* at 13-14. He explained that the variance on Northwest #1 Circuit Rebuild project was driven by line clearing and indirect costs. *Id.* at 14-15.

3. <u>TDSIC Filing Calendar and Updating Cost Estimates.</u> Mr. Rogers provided an overview of IPL's planned TDSIC Rider calendar. *Id.* at 8. He and Mr. Shields also testified that the COVID-19 pandemic is causing increased risk to the completion of the necessary engineering work to convert all Year 3 Class 3 and 4 cost estimates to Class 2 estimates for the December 2020 filing. *Id.* at 8-9; Shields at 7. Mr. Shields said state and local "stay-at-home" orders have limited the ability to make field visits to assess the engineering needed to complete the Class 2 estimates. Shields at 7. He and IPL Witness Rogers explained that IPL plans to file TDSIC 2 as scheduled in December 2020 with the completed cost estimates; the Company proposes to file supplemental information that will include the remaining Class 2 cost estimates for Year 3 projects when complete. *Id.* at 7; Rogers Direct at 9.

4. TDSIC Revenue Requirement. Mr. Rogers explained that IPL's TDSIC 1 filing in this proceeding comports with the TDSIC Statute and the ratemaking and accounting treatment approvals in the Order approving IPL's TDSIC Plan. Rogers Direct at 2-8, 10-11.

More specifically, he showed that IPL used the customer class revenue allocation factors based on firm load approved in IPL's most recent basic rate case order as required by Section 9(a)(1). *Id.* at 6. He explained that the TDSIC projects included for recovery are eligible transmission and distribution system improvements under Ind. Code § 8-1-39-2. *Id.* at 6-7. He added that none of the TDSIC projects included for recovery in this Cause were in IPL's rate base in IURC Cause No. 45029 (IPL's most recent rate case). *Id.* at 7. He added that the final order in IPL's most recent rate case (Cause No. 45029) is dated October 31, 2018, which is more than nine months prior to the filing of this TDSIC as required by Ind. Code § 8-1-39-9(d). He also said IPL intends to petition the Commission for review and approval of its basic rates and charges prior to the expiration of the 7-year TDSIC Plan as required by Ind. Code § 8-1-39-9(e).

Mr. Rogers testified that IPL has recorded the 20% deferral related to income taxes to a separate regulatory asset account to facilitate the treatment ordered by the Commission. Rogers at 11. IPL Witness Coklow identified the portion of the deferral for income tax and presented the balance separately on IPL Attachment NHC-10. Mr. Rogers said IPL will continue to reflect the deferred regulatory asset related to income tax recovery on this schedule which can then be excluded from the gross up of taxes in a future rate case filing. *Id*.

Mr. Rogers stated that IPL included its TDSIC Plan as part of this filing as required by Section 9(a)(2). Rogers Direct at 6. He explained that IPL's TDSIC Plan was a comprehensive exhibit in the Plan docket and added that Appendix 8.7 to this exhibit sets forth the cost estimates and year detail and plan projects by FERC account (sortable list). For administrative efficiency, Mr. Rogers proposed that going forward, IPL's TDSIC Rider filings include Appendix 8.7 only to comply with the Section 9(a) requirement that the petition include the public utility's TDSIC Plan. He said IPL Witness Shields sponsors IPL Confidential Attachment JWS-1, which reconciles the cost estimates presented in Appendix 8.7 of IPL's approved TDSIC Plan with actual TDSIC capital costs as of March 31, 2020. *Id.*

Ms. Coklow presented the accounting schedules and utilized the accounting treatment approved in the IPL TDSIC Plan Order in determining the applicable TDSIC Rider factors. Coklow Direct at 2-3; Rogers Direct at 10. She also explained how Plan development costs and depreciation and property tax expenses are treated in the calculation of the revenue requirement. *Id.* at 3. Ms. Coklow testified that the TDSIC projects for which IPL is seeking recovery in this filing total approximately $38 million and $8 million for distribution and transmission projects, respectively (inclusive of AFUDC and net of removal costs). *Id.* at 7.

Mr. Rogers also addressed the "other information" solicited in the IPL TDSIC Plan Order regarding the appropriate pretax return. Rogers Direct at 11-24. First, he addressed the OUCC's concern that the TDSIC Rider revenues for new assets should be offset with the discontinued depreciation expense on the retirement of the replaced assets. *Id.* at 11-12 (citing IPL TDSIC Plan Order pp. 8-9, 26-27). He said to address the OUCC concern and to reduce controversy, IPL calculated depreciation expense on the retired and replaced assets and has included that depreciation expense amount as a credit to the depreciation expense recovery sought in this filing. *Id.* at 12. He noted that the netting of depreciation expense is presented on IPL Attachment NHC-6 Line 2. *Id.*; see also Coklow Direct at 7-8. Mr. Rogers said this netting of depreciation expense is calculated in the same way IPL has implemented the netting of depreciation in past Environmental Compliance Cost Recovery Adjustment filings for Mercury Air Toxics Standard ("MATS") equipment. *Id.* He added that the effect of this adjustment is a reduction in the revenue that would otherwise have been recovered through the TDSIC Rider, effectively reducing IPL's return on the new assets as compared to not reflecting the depreciation credit. *Id.* Mr. Rogers stated that this treatment sufficiently addresses the concern of netting depreciation expense on the assets retired as part of the TDSIC Plan. He added that no adjustment to the pretax return is necessary. *Id.*

Second, Mr. Rogers addressed the IG's concern, identified in the IPL TDSIC Plan Order (pp. 10 and 27), that the TDSIC mechanism "shifts risks based on plan approval". He noted that in the Plan case, the IG witness provided no analysis to support his summary contention that "IPL's [Return on Equity ("ROE")] approved in its most recent rate case reflects the risk of utility without a TDSIC plan and TDSIC plan pre-approval greatly reduces IPL's risk profile." Rogers Direct at 12 (quoting IPL TDSIC Plan Order at 10).

Mr. Rogers explained that he understood the term "risk profile" as used by the IG witness in the Plan case to refer to the threats to which an organization is exposed. *Id.* at 13. He stated that in the Plan case, the IG witness' viewpoint was that unlike the status quo, once the TDSIC Plan is approved, IPL will no longer face risk of disallowances or non-recovery -- the only check and balance is with the Commission when the TDSIC Plan is presented for approval. *Id.*

Mr. Rogers disagreed that it is appropriate to look only at risk-reducing factors and not also take into consideration factors that increase risk, such as the size of the capital expenditure needed to respond to the statutory objective of using a multi-year investment plan to address infrastructure needs systemically, which in turn provides efficiency and other benefits. *Id.* He said the undertaking of IPL's TDSIC Plan increases capital expenditures beyond what would otherwise be undertaken. *Id.*

Mr. Rogers testified that Commission approval of IPL's TDSIC Plan does not mean the Company will no longer face any risk of disallowance or non-recovery. *Id.* at 13-14. While he agreed that the 80% timely cost recovery provided by the statute is important to maintaining the financial health of the utility, he disagreed that the statutory "TDSIC treatment" means the Company will no longer face any risk of disallowance or non-recovery or that there are no other checks and balances. *Id.* Quoting the IPL TDSIC Plan Order, he said "[a]ctual capital expenditures and TDSIC costs that exceed the approved capital expenditures and TDSIC costs require specific justification by the public utility and specific approval by the commission before being authorized for recovery in customer rates." *Id.* He noted that the IG has appealed the IPL TDSIC Plan Order and added that the IG's appeals of other cases have resulted in other TDSIC orders being vacated. *Id.* He concluded that while the Company is moving forward with the TDSIC Plan, doing so is not without risk given the pending appeal. *Id.*

Mr. Rogers also disagreed that Commission approval of the IPL TDSIC Plan is "unlike the status quo" as indicated by the IG witness in the Plan proceeding. *Id.* at 14. He said, the

TDSIC Statute has been part of Indiana's utility regulatory framework since 2013 and many other Indiana energy utilities have used this statute. In this regard, the Commission's March 2020 approval of the IPL Plan is not a departure from Indiana's existing a regulatory scheme. *Id.* He added that Indiana has long allowed utilities to obtain pre-approval of investments. Ind. Code § 8-1-2-23. *Id.* He viewed the TDSIC Statute as changing the timeliness of cost recovery and said that even then, this change is limited to 80% of capital expenditures and TDSIC costs and is also tied to requirements that the utility defer 20% of its costs and file a basic rate case before expiration of the plan. *Id.* Mr. Rogers said Indiana's utility regulatory framework does not otherwise impose a requirement on how often a utility must file a general rate case. He said that to the extent the TDSIC Statute changed the so-called status quo for Indiana ratemaking for T&D capital investment, it did so in two ways (*i.e.* timely cost recovery and required general rate case). *Id.* at 15. He added that it is unreasonable to consider the impact of the timely cost recovery mechanism in a vacuum – and stated that when viewed holistically, a downward adjustment to IPL's TDSIC Rider pretax return is not warranted. *Id.*

Mr. Rogers disagreed that the ratemaking provisions of the TDSIC Statute warrant an adjustment to the Company's Commission's authorized pre-tax return. *Id.* He said IPL's basic rates and charges have been reviewed in two recent cases (Cause Nos. 44576 and 45029) and added that the Commission's decisions in these cases were issued March 15, 2016 and October 31, 2018, respectively, well after the enactment of the TDSIC Statute. *Id.* He stated that the general rate case the Company is required to file under the TDSIC Statute will provide another opportunity for the Commission to review the Company's rates and charges, including its authorized return. *Id.* He said the TDSIC Statute is designed to incentivize the expeditious investment in, and improvement and modernization of, Indiana's energy delivery system infrastructure. *Id.* He was not aware of any instance where the Commission reduced the pre-tax return in a TDSIC Rider where the utility involved had at least one recent rate case. *Id.*

Mr. Rogers reiterated that the netting of depreciation expense reflected in IPL's proposed revenue requirement reduces the revenue IPL will receive and reasonably responds to the Commission's Order. *Id.* at 15-16. He said this netting has the effect of reducing IPL's pre-tax return; no other downward adjustment should be made. *Id.*

Mr. Rogers said the fact that IPL operates under certain rate adjustment mechanisms (also referred to as trackers) does not distinguish it from other firms in the electric utility industry. *Id.* at 16. He explained that in IPL's most recent rate case, IPL's ROE witness explained that the existence of trackers is already reflected in the forward-looking cost of equity analysis because such mechanisms are industry wide. *Id.* He showed that in IPL's rate case, IPL Witness McKenzie summarized the regulatory adjustment mechanisms available to the proxy group of electric utilities used to estimate the cost of equity, which included infrastructure cost trackers that allow for recovery of new capital investment outside of a traditional rate case as well as a variety of other adjustment clauses. *Id.* He explained that the evidence in the rate case was that while the mechanisms approved for IPL by the Commission would be regarded as supportive, investors would not view the risks of IPL as lower than the proxy group in these important respects. *Id.* at 17.

Mr. Rogers concluded it would be incorrect to conclude that approval of the Company's TDSIC Plan and use of the statutory cost recovery has created a change in the Company's overall risk profile that would cause investors to specifically and measurably reduce their return requirements. *Id.*

Mr. Rogers pointed out that the settlement in IPL's recent rate case did not ignore that a TDSIC was available to IPL. *Id.* To the contrary, the parties (including IG) settled on TDSIC allocation factors, which were included in the Commission order approving the Settlement, (Cause No 45029 Settling Parties Joint Exhibit 1 Settlement Attachment E). *Id.*

Mr. Rogers added that when paired with the introduction of a TDSIC Plan, the approval of a TDSIC rate mechanism is credit supportive and maintains the Company's opportunity to earn its previously authorized return. *Id.* He said that *without* an approved mechanism to timely recover capital investment and TDSIC costs related to IPL's TDSIC Plan investment, IPL's opportunity to earn its authorized return and maintain the metrics used to establish its credit rating would diminish. *Id.*

Mr. Rogers reconciled his views with Commission precedent, explained that IPL's TDSIC is best described as a tracker that adjusts rates for incremental investment and serves to adjust the base-line earnings for post rate case changes and address issues primarily associated with regulatory lag. *Id.* at 17-18. He said the TDSIC is not a tracker that addresses the risk of volatile earnings. *Id.* at 18. He stated that because the TDSIC tracker is a means of reducing regulatory lag, the approval of the TDSIC should be viewed as maintaining (not reducing) IPL's risk profile. He said the TDSIC Rider is a tool that supports IPL's opportunity to earn its previously authorized return. *Id.* Finally, Mr. Rogers explained that a Commission decision to reduce IPL's pre-tax return would be contrary to the policy underlying the TDSIC Statute as it would not reasonably incentivize investment in energy delivery infrastructure. *Id.* at 19.

Mr. Rogers supported his views by showing the financial community monitors the Company's financial condition and the Commission's ratemaking decisions. *Id.* at 19-20. He stated that the regulatory environment is one of the most important factors considered in both debt and equity investors' assessments of risk. *Id.* He explained for example, that Moody's states that 32.50% of the weight it gives to various factors considered in its ratings determinations are focused on cash flow because "[f]inancial strength, including the ability to service debt and provide a return to shareholders, is necessary for a utility to attract capital at a reasonable cost in order to invest in its generation, transmission and distribution assets, so that the utility can fulfill its service obligations at a reasonable cost to rate-payers." *Id.* citing Moody's Investors Service, *Rating Methodology; Regulated Electric and Gas Utilities*, June 23, 2017, pp. 4, 20. He added that S&P has explained that the regulatory structure is one of the most important factors in its credit rating analyses. *Id.* at 19.

Mr. Rogers testified that a downward adjustment to IPL's pretax return appears inconsistent with the policy objectives underpinning the TDSIC Statute and fails to recognize the impact that significant capital investments have on the utility's financial health and the ongoing ability to maintain credit metrics. *Id.* He added that a Commission decision to make a downward adjustment to IPL's pre-tax return would be a departure from the Commission's previous actions and could be viewed as a penalty on the Company for its efforts to pursue the goals of the TDSIC Statute in the largest City in the State of Indiana. *Id.* at 20-21. He explained that while Moody's has rated IPL's outlook as "stable", this outlook is based on expectation that Indiana's credit supportive regulatory environment will continue. Moody's has identified a "perceived deterioration" of Indiana's regulatory environment as a factor that would lead to a downgrade." *Id.* at 21-22.

Mr. Rogers explained that the rating agencies are consistent in viewing utilities that have access to tracking mechanisms as credit supportive as it is a sign of a constructive regulatory environment, one of the key considerations given by the rating agencies when assessing utilities. *Id.* at 22-23.

Mr. Rogers said IPL utilized a WACC of 6.68% which is calculated using IPL's capital structure as of March 31, 2020, actual cost of long-term debt and preferred stock, and IPL's cost of common equity of 9.99% determined by the Commission in IPL's most recent general rate proceeding. *Id.* at 24. He said the WACC used to calculate pretax return is calculated by IPL witness Coklow in IPL Attachment NHC-5. *Id.* Mr. Rogers concluded that the "other information" identified in the Commission's IPL TDSIC Plan Order as warranting exploration does not warrant an adjustment to the WACC. *Id.*

Finally, Mr. Rogers and Ms. Coklow estimated the effect of IPL's TDSIC Plan on retail rates and charges over the plan term. *Id.* at 25-26. They showed the aggregate increase in IPL's total retail revenues as a result of this TDSIC Rider is approximately 0.3% and thus demonstrated such increase is less than the 2% statutory TDSIC limit set forth in Ind Code § 8-1-7 39-14. Rogers Direct at 27; Coklow Direct at 15 (identifying specific percentage to be 0.28%). IPL witness Coklow also presented the proposed TDSIC 1 factors and impact of TDSIC 1 factors on residential bills. *Id.* at 17-18. She said an average residential customer using 1,000 kWh per month will experience an increase of $0.44 or 0.38% of such bill, relative to the basic rates and charges approved in IPL's last general rate proceeding (Cause No. 45029) and the TDSIC adjustment factor currently approved ($0.00000). *Id.* at 18.

B. <u>OUCC's Case-in-Chief.</u> Mr. Blakley addressed IPL's proposal to adjust its electric rates through a TDSIC mechanism, commented about specific issues addressed in the IPL TDSIC Plan Order related to the current TDSIC tracker proceeding, and addressed IPL's TDSIC revenue requirement calculation. Blakley at 1.

With respect to the concern raised in the Plan case regarding netting of depreciation expense, Mr. Blakley testified that the OUCC accepts IPL's adjustment to depreciation expense. *Id.* at 4-5. Mr. Blakley agreed that the netting of depreciation expense reflected in IPL's proposal has the effect of reducing IPL's pre-tax return.*Id.* at 5.

Mr. Blakley testified that the OUCC disagrees with IPL that the depreciation netting addresses the risk reduction IPL receives related to the TDSIC tracker. *Id.* He said the OUCC supports the positions taken by City of Indianapolis' witness Mr. Michael Gorman on that issue. *Id.*

Mr. Blakley reviewed IPL's TDSIC revenue requirement and verified that rate calculation and rate impact. *Id.* at 6-7. He said that should the Commission approve the City of Indianapolis' adjustment to the WACC, the Commission should require IPL to recalculate the factor. *Id.* at 7-8.

C. Intervenors' Case-in-Chief. Mr. Gorman presented testimony addressing IPL's development of its TDISC tracker adjustment, specifically addressing IPL's proposed weighted average cost of capital, IPL's incremental cost of debt, and issues he identified with IPL's proposed limited netting of depreciation expenses. Mr. Gorman contended IPL's authorized return on equity from its last rate case is not fair and reasonable for use in the TDSIC rate adjustment factor. Gorman at 2. He proposed the Commission require the ROE component of the WACC used to set the TDSIC adjustment factor be adjusted downward to 8.4% to reflect current capital market costs of common equity, IPL's reduced investment risk created by the implementation of a TDSIC tracker mechanism, and what he viewed as inadequacies in IPL's depreciation netting proposal. *Id.* at 2, 7. Mr. Gorman explained that his 8.4% recommendation reflected a ROE of 9.4% to address the change in market capital costs since IPL's last rate case and an additional 100 basis point decrease to reflect the other factors noted above. *Id.* at 7, 12-13.

Mr. Gorman first testified regarding his recommendation to adjust IPL's proposed return on equity to better reflect its TDISC risk and current market costs. Mr. Gorman said the most pronounced and observable evidence of declining capital market costs since IPL's last rate case is to observe changes in utility bond yields. *Id.* at 6. Mr. Gorman testified that the return on equity authorized in IPL's most recent general rate proceeding is significantly in excess of current market capital costs noting that bond yields have dropped considerably since IPL's general base rate case. *Id.* at 4 and Attachment MPG-2. Mr. Gorman said the Commission's authorized returns have dropped correspondingly from the 9.99% authorized for IPL in 2018 to the 9.7% for other Indiana utilities in 2020. Mr. Gorman said the 9.4% return on equity is fair because it reflects current industry average authorized returns on equity for electric utility companies. *Id.* at 7, 24-36. He explained in detail the observable market evidence of utility cost of equity supporting his recommendations for a TDSIC specific return on equity. *Id.* at 15, 28-33.

Mr. Gorman recommended a further downward adjustment to IPL's proposed return on equity to 8.4% to reflect inadequacies in IPL's depreciation proposal as well as the risk elimination from the TDISC Plan approval. *Id.* at 7. Mr. Gorman contended this further 100 basis point downward adjustment to the ROE should be made because 1) all trackers, including the TDSIC, reduce a utility's risk profile (*id.* at 7-8); and 2) within the scope of the approved TDSIC Plan, the risk of rate recovery and successful realization of anticipated benefits has shifted away from IPL and now rests on IPL's customers (*id.* at 9). Quoting S&P, he said tracker mechanisms reduce cost recovery risk, and benefit IPL through credit supportive regulatory mechanisms. *Id.* at 10-12. Mr. Gorman contended that the reduced return on equity could not undermine the purpose of the TDSIC statute to incentivize system investments, because the statute allows the Commission to adjust the pretax return. *Id. 12.* Mr. Gorman testified that the 8.4% ROE addresses the inadequacy of IPL's proposed netting of depreciation, which he viewed as addressing only a portion of the double recovery arising from continued base rate recovery for removed assets concurrent with the TDSIC recovery for replacement assets. *Id.* at 13.

Mr. Gorman recommended the Commission reject IPL's allegation that its limited netting of depreciation expense in producing an adjusted revenue requirement for TDSIC investments is sufficient to avoid other adjustments to IPL's pre-tax return. He explained that IPL's proposal, while consistent with the previous recommendation of the OUCC, is not balanced. He stated that a balanced depreciation netting would include adjustments to the operating income component of the TDSIC revenue requirement, based on the Company's proposal to offset increases in depreciation expense for new TDSIC assets, with the elimination of depreciation expense for TDSIC assets that are retired. Gorman at 2. Mr. Gorman said a complete and balanced netting adjustment would have the TDSIC revenue requirement reflect a roll-forward of accumulated depreciation reserve, in tracking net plant changes for TDSIC investments, as a means to ensure that the operating income level entitlement included in the TDSIC is no more than a just and reasonable amount on net TDSIC plant in-service investments. Gorman at 3. He testified that IPL's rate base investments should track changes in net plant investment, including gross plant additions that increase rate base, as well as increases in accumulated depreciation expense reserves that decrease rate base. He said if this were done, the TDSIC adjustment factor would accurately capture the operating income needed for changes in the Company's "net plant" in-service for distribution and transmission related TDSIC investments. *Id.* at 3, 16-20. In Mr. Gorman's view IPL has grossly over-calculated its TDSIC revenue requirement by failing to reflect changes to its "net plant in-service" due to the build-up of accumulated depreciation in the FERC accounts where assets installed as part of the Company's TDSIC Plan will be recorded. *Id.* at 20-21.

Mr. Gorman also expressed concerns with IPL's development of a revenue requirement for distribution and transmission TDSIC investments, which reflect the incomplete proposal IPL has made to address double recovery. Mr. Gorman explained the full elimination of double recovery would involve tracking changes in net plant investments and, in contrast, IPL's proposal overstates the revenue requirement, allowing IPL to earn a return on rate base without taking into account both the increases and decreases. *Id.* at 16. Mr. Gorman said that IPL's incomplete netting proposal justifies, in part, a reduction to IPL's weighted average cost of capital for purposes of determining the pretax return on IPL's investments. *Id*. Mr. Gorman also made recommendations regarding the 20% of the TDSIC revenue requirement subject to deferral, recommending that it should be based on the after-tax components of the TDSIC revenue requirement reflecting reductions for income tax deductibility of the carrying charge debt interest expense, depreciation and any other tax deductible costs and that the after tax balance should be subject to a carrying charge. *Id.* at 17.

Mr. Gorman explained how he developed the amount of depreciation expense to reflect the change in accumulated depreciation reserve. *Id.* at 21-22. He claimed the Company only identified the specific FERC accounts that are related to distribution TDSIC plant investment and requested the Commission order the Company to identify the FERC accounts that relate to the transmission TDSIC investments, so that it is possible to calculate annual depreciation expense and the roll forward of accumulated depreciation reserve for transmission plant in the same manner that he did for distribution TDSIC plant here. *Id.* at 22.

He contended his proposed adjustments to IPL's TDSIC revenue requirement will better reflect the Company's actual incremental costs associated with its TDSIC Plan, and will better balance the interest of just and reasonable rates with IPL's recovery of its incremental TDSIC costs. Gorman at 3.

Mr. Gorman also proposed to reflect IPL's incremental cost of debt in the WACC used to develop the TDSIC adjustment factor rather than the Company's embedded debt cost. He said, market evidence indicates that the cost of new debt issuances to support IPL's incremental investment in TDSIC investments is lower than the Company's embedded cost of debt which is already being recovered in its base rates. He contended that IPL's incremental debt issue cost should be used in setting the TDSIC adjustment factor. Gorman at 2-3, 13-15. He recommended the cost of debt be set at 3.937%, which reflects IPL's most recent debt issuance in November, 2018. Mr. Gorman proposed the Commission direct IPL to adjust its revenue requirement calculations in subsequent TDSIC adjustment proceedings to reflect all debt issues starting with the 12-month period ending March 30, 2020 up until filing of the next base rate case, or until the end of the seven-year proposed TDSIC tracker. *Id.* at 15.

D. <u>IPL Rebuttal.</u> Mr. Rogers and Ms. Bulkley replied to the OUCC and Intervenor challenges to the Company's proposed revenue requirement.

1. <u>Pretax Return – "Other Information".</u>

a. <u>WACC -- Cost of Long Term Debt.</u> Mr. Rogers disagreed with Mr. Gorman's proposal that the incremental or marginal cost of debt be used in the calculation of the Company's WACC used in the calculation of the TDSIC pretax return. Rogers Rebuttal at 8.

He explained that Witness Gorman's proposal conflicts with the plain language of the governing statute. Mr. Rogers testified that "pretax return", a defined term in the statute, means revenues necessary (among other things) to "(1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements;" Ind. Code § 8-1-39-3. *Id.* at 9. He said "[w]eighted cost of capital" has long been a term recognized by this Commission as meaning the actual (and not a hypothetical) capital structure. *Id.* He added that the TDSIC Statute enunciates the "public utility's" capital structure and the "actual cost rates for the public utility's long-term debt" as considerations. He said, the statute does not refer to the incremental cost of debt for the eligible projects. Rather, it refers to the actual cost rates for the "public utility's" long term debt in the "public utility's" "weighted" capital structure. *Id.* at 10 (explaining that even where there was a specific rate case commitment by Northern Indiana Public Service Company ("NIPSCO") to finance a rate base addition with new debt authorized by the Commission for such purpose, the rate adjustments to reflect the capital additions were always based on the actual regulatory capital structure at the time. *Id.* (citing e.g., NIPSCO, IURC Cause No. 42150-ECR 23 (4/30/2014)).

Mr. Rogers stated that IPL has used the actual capital structure as of the rider cutoff date. Rogers Rebuttal at 9. He said, the Company's long term debt balance is a component of that capital structure. *Id.* He testified that the actual cost rate for that long term debt component of IPL's capital structure is the 4.98% used in the WACC calculation. *Id.* Mr. Rogers stated that an artificial lowering of that rate to the incremental (marginal) rate would not reflect the actual cost rates for the public utility's long term debt in IPL's capital structure. *Id.*

Mr. Rogers clarified that IPL will update the capital structure component balances and the actual cost rates for IPL's long term debt to calculate the WACC and pretax return for each subsequent TDSIC rider rate filing. *Id.*

Mr. Rogers explained that Witness Gorman's proposal is inconsistent with how rate base additions are financed. Rogers Rebuttal at 8, 11. Mr. Rogers stated that IPL finances capital needs to support the enterprise-wide investment needs of the entire utility, not individually for specific projects. *Id.* at 11. He stated that by financing the overall needs of the utility, and not just specific projects, IPL is able to finance itself more efficiently and effectively than if the Company financed individual projects separately. *Id.* He added that financing transactions come with, among other expenses; underwriting, legal, and rating agency fees. *Id.* He explained that if IPL were to do project specific financing, the Company would have to enter into financing transactions on a much more frequent basis, incurring the expenses described above each time. He said, this would be an inefficient way of financing and would add overall cost for both IPL and its customers. *Id.* He stated that IPL finances the aggregate need of the utility over time and seeks to limit the number of financing transactions in an effort to reduce the financing expenses incurred. *Id.* He said the appropriate cost of this capital mix is reflected in the standard calculation of the WACC using the utility's capital structure components, actual cost of long term debt component, and a cost of common equity determined by the Commission. *Id.* at 11.

Mr. Rogers said that to do as Witness Gorman proposes, which is to pick and choose various components of the capital structure and tie it to specific assets, is not practical. *Id.* Mr. Rogers explained that Witness Gorman is proposing that IPL utilize a cost of approximately 6% of its long term debt as IPL's actual cost of long term debt and ignore the remaining approximately 94% of long term debt. *Id.* He said, this is not representative of IPL's actual cost of long term debt and actual WACC. *Id.*

Mr. Rogers testified that use of IPL's actual cost of debt helps to smooth and reduce volatility that would be caused by using Witness Gorman's proposal where significantly more of the cost of debt calculation would be based on future debt offerings at uncertain and unpredictable interest rates. *Id.* at 12-13. He explained that if adopted, Witness Gorman's proposed approach would introduce volatility into the calculation of IPL's long term debt cost because Mr. Gorman's proposal would severely limit the number of debt issuances that are used to determine the cost of debt and would subject more of the calculation to future interest rate environments that, at a minimum, are unpredictable and could potentially be higher. *Id.* at 12. Mr. Rogers explained that using Witness Gorman's proposal, IPL's cost of debt calculation could hypothetically be limited to only two debt offerings, one of which would be based on a future issuance at an interest rate that is uncertain and one that currently only makes up $105 million. *Id.* Mr. Rogers said that using Mr. Gorman's proposal, the TDSIC pretax return would be calculated using a WACC that includes the cost rate of only 6% of IPL's $1.8 billion in total actual long term debt. *Id.* He added that should interest rates experience a significant increase between now and the timing of the IPL's next debt offering, which is uncertain at this point, this would lead to an outsized impact on the overall cost of debt. *Id.* He said there would only be two series of debt in the calculation leading to a much larger impact on the TDSIC cost of long term debt as compared to the impact it would have when using IPL's actual cost of debt associated with IPL's entire actual capital structure, which is comprised of a much larger pool of debt offerings. *Id.*

Mr. Rogers testified that the Company does not directly finance specific projects. *Id.* at 13. He said that as of the rider cutoff date, IPL has issued no new long term debt under the authorization granted in Cause No. 45115. *Id.* He added that when IPL does issue new debt, it will be to fund the overall investment needs of the Company, not specifically the TDSIC Plan. *Id.* He explained that specifically identifying the financed capital components and assigning them to specific investments is not practical nor required for utility ratemaking. *Id.* He testified that if a utility were to identify the specific capital components raised for a specific investment such as the TDSIC Plan, it would also be necessary to identify the incremental other components such as equity, deferred tax, prepaid pension asset, and other components of the rate making capital structure. *Id.* He added that it is not practical or necessary to maintain an alternative capital structure and component cost for the individual projects such as the TDSIC investment since, as discussed, IPL funds the overall cash needs of the utility, not specific projects. *Id.* He added that Section 13 of the TDSIC Statute directs the Commission to consider *the public utility's* capital structure and the *public utility's* actual cost of long term debt. *Id.* at 13-14. In his view, this language does not support the view that project specific financing should be used. *Id.*

Mr. Rogers explained that use of the marginal debt cost is inconsistent with the Commission's previous directive that the full ratemaking capital structure should be used in the TDSIC Rider pretax return. *Id.* at 14-15. He showed that in the Commission's February 17, 2014 Order in NIPSCO's TDSIC (IURC Cause No. 44371, p. 17) the Commission rejected a proposal to use the investor-supplied capital structure for the TDSIC rider pretax return and directed the utility to use the full ratemaking capital structure. *Id*. at 14-15. Mr. Rogers explained that if Witness Gorman's argument and reasoning were to be accepted, then it would mean the zero cost capital should be removed from the calculation of WACC as well. *Id.*

Mr. Rogers stated that the Company is calculating its WACC using its actual cost rates for long term debt in a manner consistent with the TDSIC Statute (Ind. Code § 8-1-39-13(a)(3)), IPL's rate cases and existing Environmental Compliance Cost Recovery Adjustment ("ECR") capital rider, and other Indiana investor-owned electric utilities' TDSIC rate proceedings. Rogers Rebuttal at 8, 15-16. He added that to force IPL to reflect the marginal cost of debt in its WACC would be an unfair change in ratemaking practice from these other utilities. *Id.* at 15. He added that this deviation may be viewed unfavorably by rating agencies who take notice when there is disparate treatment of individual utilities within the same state commission jurisdiction. *Id.*

Mr. Rogers testified that the cost of each series of IPL's debt reflects the market rates that were achievable at the time of the issuance based on the interest rate environment at that time. *Id.* at 16. Pointing to Witness Gorman's Attachment MPG-3, Mr. Rogers said IPL's actual effective cost rate is lower than the corresponding market rate. *Id.* He stated that IPL monitors its actual cost of debt and considers refinancing if the economics of a refinancing are favorable. *Id.* He explained that the payment of make-whole premiums would serve to increase the overall cost to IPL and its customers and cannot be ignored in the decision to refinance long term debt. *Id.* Finally, Mr. Rogers explained that Witness Gorman's proposal to use the marginal cost of debt instead of the Company's actual cost of long term debt used in its actual capital structure increases pretax return during periods of rising interest rates. *Id.* at 17.

b. <u>WACC -- ROE.</u> Mr. Roger's disagreed with Witness Gorman's recommendation that the pretax return for TDSIC purposes should be lowered to reflect the reduction in risk arising from the preapproved rate recovery of the TDSIC investment. *Id.* at 17. Mr. Rogers explained that a reasonable and supported rate of return was settled and approved in IPL's most recent rate case (IURC Cause No. 45029 Order p. 27), which contemplated a TDSIC filing. *Id.* Mr. Rogers reiterated that capital investment trackers were considered to be widely available to the proxy group used to determine the ROE in IPL's general rate case and therefore approval of the Company's TDSIC Plan and use of the statutory cost recovery has not created a change in the risk considered in determining IPL's cost of equity in its most recent rate case. *Id.* at 17-18.

Mr. Rogers explained that the duration between IPL's TDSIC 1 rider and its most recent rate case order is similar to (slightly less than) that of NIPSCO's TDSIC in 2014 wherein the Commission rejected a proposal to reduce NIPSCO's authorized ROE outside the context of a basic rate case. *Id.* at 18-19. Quoting this decision, Mr. Rogers showed that the Commission's decision recognizes that the impact on the utility of the increase in the utility investment is offset by the cost recovery assurance and the 80% timely cost recovery provided in this statute. *Id.*

In reply to Mr. Gorman's characterization of TDSIC cost recovery as "accelerated", Mr. Rogers explained that regardless of recovery mechanism (TDSIC or rate case) the duration of recovery of the TDSIC investment is over the life that underpins the depreciation rates determined in IPL's depreciation studies. *Id.* at 19.

Mr. Rogers also explained that Mr. Gorman's proposal is not limited to TDSIC investments, explaining that Mr. Gorman's adjustment proposal for accumulated depreciation extends beyond the TDSIC assets and would use the TDSIC Statute to alter cost recovery for non-TDSIC investments. *Id.* at 19-20.

Ms. Bulkley explained that Mr. Gorman supports his initial ROE recommendation of 9.40% by noting that utility bond yields and authorized ROEs have declined since IPL's most recent basic rate case proceeding in 2018. Bulkley Rebuttal at 4, 32. She replied however that a comparison of bond yields between 2020 and 2018 is not appropriate given that capital markets have experienced levels of volatility not seen since the Great Recession of 2008/09 as investors rotate in and out of various asset classes responding to both positive and negative developments regarding the COVID-19 pandemic. Bulkley Rebuttal at 4, 31-33, 52. She said the Federal Reserve and U.S. Congress have responded with unprecedented policy measures in an effort to offset the economic effects of COVID-19. *Id.* She concluded that current market data is being influenced by external factors which make it inappropriate to conduct a comparison of the bond yields in 2020 to prior periods without considering the increased uncertainty and risk in financial markets. *Id.* also 38-52. Ms. Bulkley discussed current market conditions in detail and said recent market information demonstrates a greater risk to equity than the data used by the Commission to set the ROE in the recent Duke Energy Indiana ("DEI") and Indiana Michigan Power Company ("I&M") cases. *Id.* at 40. She added therefore, that relying on current market data would likely suggest that the COE range has increased since the Commission established ROEs in those cases. *Id.* She concluded based on this data, that Mr. Gorman's proposal to reduce the TDSIC ROE to reflect current market conditions, is unsupported. *Id.*

Ms. Bulkley noted that in his Direct Testimony, Mr. Gorman relies on the average authorized ROE for electric utilities in 2020 to develop the market ROE for IPL's TDSIC of 9.40% but in response to a data request, he clarified that his recommended ROE for the TDSIC is 8.40% and should not be considered as a 9.40% ROE with a reduction of 100 basis points. *Id.* at 4. She said, considering the authorized ROEs between 2018 and 2020 for comparable electric utilities Mr. Gorman's ROE recommendation of 8.40% is well below the range of authorized ROEs considered by any state regulator for any vertically integrated electric utility. *Id.* at 4-5, 51-52. She added that IPL's current Commission-authorized ROE is within the COE range of reasonableness of 9.50% to 10.00% that the Commission developed in its most recent rate order for I&M and DEI. *Id.* at 51. She explained that when IPL's ROE is compared to comparable electric utilities in comparable operating jurisdictions for 2018 through 2020, the Company's Commission approved ROE is well within the range of authorized ROEs. *Id.* at 51-52.

Ms. Bulkley added that a reduction of 159 basis points from IPL's ROE that was authorized in its most recent basic rate case is unprecedented and is inconsistent with the ROEs set by the Commission in the pretax returns for TDSIC mechanisms that have been implemented by other Indiana utilities. *Id.* at 5, 7, 10-11, 52. She said adoption of Mr. Gorman's recommendation would reflect a dramatic change in the Commission's implementation of the TDSIC mechanism and would be viewed negatively by rating agencies. *Id.*

Ms. Bulkley also replied to Mr. Gorman's conclusion that authorized ROEs have been trending downward in recent years due to declining capital costs. *Id.* at 5. She explained that the average authorized ROE for electric utilities across the U.S. have been relatively stable since 2015. *Id.* at 5, 19, 51. She added that Mr. Gorman's calculation of the average authorized ROE for 2020 is biased downwards by the inclusion of an authorized ROE for a company which reflects a 100-basis point ROE penalty for management efficiency. *Id.* at 5, 17.

Ms. Bulkley testified that Mr. Gorman's analysis is further biased by a) his inclusion of all electric rate cases as opposed to relying on rate cases for comparable companies operating in comparable regulatory jurisdictions and b) his reliance on the average authorized ROE as opposed to considering the range of ROEs that have been authorized for electric utilities. Bulkley Rebuttal at 5, 17-18. She explained that a review of recently authorized ROE data, screening for those cases that are most comparable to IPL (*i.e.*, vertically integrated) who operate in comparable jurisdictions (*i.e.*, jurisdictions with a comparable ranking to Indiana from Regulatory Research Associates) the range of recently authorized ROEs is from 9.25% to 10.50%, demonstrating that IPL's currently authorized ROE of 9.99% is reasonable and appropriate in the current market environment. *Id.* at 5-6.

Ms. Bulkley also explained that IPL's current Commission authorized ROE of 9.99% is within the range of COE (*i.e.*, 9.50% to 10.00%) that the Commission viewed as reasonable in its recent basic rate orders for I&M (Cause No. 45235) and DEI (Cause No. 45253). *Id*. at 6. She said Mr. Gorman's recommendation of 8.40% is well below the Commission's range of reasonableness in those cases. *Id.* at 3-6, 9, 51-52. She said this is important because Mr. Gorman's ROE is below the range of reasonableness in the recent I&M and DEI cases even before the effects of COVID-19 are considered which have resulted in unprecedented risk and uncertainty in the financial markets. *Id.* at 6, 25-30, 32-38. Ms. Bulkley also explained that the Tax Cuts and Job Act ("TCJA") has been identified by the credit rating agencies as credit negative due to the increase to the financial risk of the utilities sector. *Id.* at 42. She stated that at a time when the credit rating agencies have concerns about the financial coverage ratios resulting from the TCJA and the effects of COVID-19, and are suggesting that higher ROEs and thicker equity ratios would be appropriate to provide greater financial stability, a reduction in the TDSIC

ROE of 159 basis points, as proposed by Mr. Gorman, would likely be viewed negatively by rating agencies. *Id.*

Ms. Bulkley responded to Mr. Gorman's contention that the TDSIC shifts recovery risk and disagreed with the premise that the TDSIC tracking mechanism warrants a change in IPL's ROE. Bulkley Rebuttal at 45-49. She pointed out that Mr. Gorman recently testified in Oregon that it was not reasonable to adjust the return for regulatory risk, explaining that the total investment risk assessment of the utility in comparison to the proxy group (which includes regulatory and financial risk), is fully absorbed into the market's perception of the utility's risk and thus the use of the proxy group fully captures the utility's investment risk. *Id.* at 47. She stated that Mr. Gorman's position in this IPL TDSIC Rider proceeding is not consistent with his position taken in June 2020 in the Oregon rate case. *Id*.

Ms. Bulkley said the TDSIC Rider allows utilities that have significant projected capital investment plans to begin to recover those significant capital investments between rate cases. *Id.* at 6, 51. She said the TDSIC Statute also requires a utility using the TDSIC cost recovery mechanism to file a basic rate case before the expiration of the TDSIC plan. *Id.* at 6. She testified that once the utility has a basic rate proceeding, the TDSIC investments are included in basic rates and are recovered through traditional ratemaking mechanisms. *Id.* She added that the statutory TDSIC mechanism (*i.e.*, plan approval and associated cost recovery) is structured to reduce regulatory lag associated with recovery in between rate proceedings. *Id.* at 6, 48-49, 51. She concluded that there is no basis for Mr. Gorman's proposal to reduce IPL's TDSIC ROE for the implementation of the capital tracking mechanism. *Id.*at 6, 19, 51.

Ms. Bulkley testified that the Commission has historically not revised the ROE for a TDSIC tracker. *Id.* at 7, 24. She said the Commission has not reduced a TDSIC ROE as drastically as the 159 basis points that Mr. Gorman has proposed in this proceeding. *Id.* She added that the purpose of the TDSIC Statute is to incentivize companies such as IPL to invest in capital to improve and modernize their transmission and distribution systems. *Id.* She explained that a ROE for IPL's TDSIC rider that is 159 basis points below the Company's currently authorized ROE would be contrary to this purpose, which is to create incentives for capital investments. *Id.* at 7, 24, 29-30. She concluded that it is unlikely that the credit rating agencies would view such a change as credit supportive for IPL. *Id.* at 7, 24-25.

c. Depreciation Expense Netting. Mr. Rogers explained that IPL has completely addressed the double recovery concern raised by the OUCC in the Plan case by voluntarily reflecting netting of depreciation expense in the TDSIC Rider revenue requirement. Rogers Rebuttal at 3-4, 20-23. He explained that Witness Gorman's proposal that the Commission go beyond the OUCC's stated concern in the IPL Plan case, is unreasonable and should be rejected. *Id.* at 4, 21-23.

d. Accumulated Depreciation. Mr. Rogers explained that IPL has appropriately reflected accumulated depreciation on TDSIC projects in the TDSIC revenue requirement. *Id*. at 23. He showed that IPL's proposed schedules do and will continue to reflect accumulated depreciation as a reduction to Utility Plant for TDSIC projects as of the TDSIC cutoff date for each TDSIC filing. *Id.* 24.

Mr. Rogers testified that Witness Gorman's proposed adjustment to net plant investment goes beyond adjusting the WACC and is contrary to the TDSIC Statute. Rogers Rebuttal at 23, 24. Mr. Rogers explained it would not be appropriate to consider increases or decreases in net plant not related to the TDSIC Plan within the TDSIC Rider. *Id.* at 24. He stated that, as shown on IPL Attachment CAR-2 (included with his direct testimony) there are estimated to be approximately eleven FERC accounts that will house the TDSIC investment asset activity. *Id.* He said that in addition to TDSIC investment assets, IPL will record numerous other asset additions to these accounts as part of normal utility operations and infrastructure investment that are not related to TDSIC. *Id.* He explained that these FERC accounts house numerous other existing assets that IPL has placed in service over the past several years also not related to TDSIC. *Id.* Mr. Rogers testified that it is not appropriate to reflect these additions nor their changes in accumulated depreciation in a TDSIC rider filing. *Id.* He explained that the TDSIC is defined by statute to provide for timely recovery of 80 % of approved capital expenditures and TDSIC costs (IC 8-1-39-9). *Id.* He said, TDSIC costs means certain costs incurred with respect to eligible transmission and, distribution system improvements. (IC 8-1-39-7). *Id.* He said, the other costs in the referenced FERC accounts are not eligible costs and there is no requirement in the TDSIC Statute that requires IPL to capture the total change in "net plant in-service" for the non-TDSIC costs in the same FERC accounts in which IPL's TDSIC Plan investments are being made as proposed by Witness Gorman (pp. 17-18). *Id.* Mr. Rogers stated that the "other information" provision in Section 13 of the statute should not be used to expand the scope of the statute. *Id.* at 25.

Mr. Rogers added that Witness Gorman's proposal to reflect the accumulated depreciation on non-TDSIC assets in the FERC accounts used to record the TDSIC assets is incomplete because the proposal ignores the fact that IPL has recorded net plant additions to those same FERC accounts which more than offset the impact of the accumulated depreciation. *Id.* at 25, 26-27. Mr. Rogers explained that while IPL disagrees that any adjustment needs made to the TDSIC investment rate base for non-TDSIC assets recorded to the same FERC accounts that house TDSIC investment assets, if the Commission determines an adjustment is to be made, the adjustment would need to reflect all changes in net utility plant, including net additions. *Id*. at 27. Mr. Rogers stated that the impact of a complete adjustment would result in an increase to the revenue requirement and resulting rider factors as compared to what IPL has proposed. *Id.*

Mr. Rogers testified that Witness Gorman argues that IPL should reduce the TDSIC investment to determine the "net plant in-service" for purposes of calculating the TDSIC revenue requirement and Mr. Gorman utilizes the same argument to justify a reduction in IPL's WACC. *Id*. at 25. Mr. Rogers explained that neither of these adjustments are necessary or appropriate and added that reflecting the adjustment in both places would be a double counting. *Id.* at 25-27.

e. <u>Other Matters.</u> Mr. Rogers explained that IPL had previously provided the FERC accounts where all (both distribution and transmission) TDSIC plant will be recorded. *Id.* at 28-29. He showed that Mr. Gorman's contention otherwise is unfounded. *Id.* Mr. Rogers added that in future TDSIC rider proceedings, IPL will continue to provide the FERC accounts used to record the TDSIC investment assets for 1) the assets placed in service as of the cutoff date and 2) the forecasted assets over the TDSIC Plan period for purposes of calculating the projected effects of the Plan on retail rates and charges. *Id.*

Mr. Rogers responded to Mr. Gorman's characterization of the IPL TDSIC Plan as "massive" and showed the Company's Plan falls within the range of the approved TDSIC plans of other Indiana investor-owned electric utilities on a total dollar basis and a dollar per customer basis. *Id.* at 29-30.

Mr. Rogers explained that IPL has reflected the revenue requirement components on an after-tax basis in the TDSIC revenue requirement as Witness Gorman suggests. *Id.* at 30-31. He stated that IPL is following essentially the same accounting Vectren uses in the TDSIC rate filings (Cause No. 44910). *Id.* at 31. He added that IPL is also following the same accounting for the TDSIC rate filings that is utilized and approved in IPL's long-standing ECR rate filings. *Id.* at 31. Mr. Rogers stated that to address the Commission finding in the IPL TDSIC Plan Order that IPL should remove the gross up for taxes associated with the 20% deferred regulatory asset from future filings, IPL is breaking out the tax gross-up separately as shown on IPL's Attachment NHC-10 and will continue to do so through IPL's next base rate case. *Id.* at 31. Mr. Rogers concluded that Witness Gorman's criticism should be rejected. *Id.*

Mr. Rogers disagreed with Witness Gorman contention that "[i]f IPL recovers the after-tax balance, it can be adjusted by the deferred balance for income tax in developing a revenue requirement cost recovery when the deferral balance is reflected in IPL's revenue requirement in its next rate case". Rogers Rebuttal at 31. Mr. Rogers explained that the regulatory deferral of 20% of the TDSIC revenue requirement is subject to tax in the year the activity is recorded. *Id.* He said one of the changes in tax law included in the TCJA was a change to the timing of when revenue must be reported as taxable income. He said this change requires that revenue must be reported as taxable income no later than the time when the income is reported for financial accounting purposes (IRC Section 451(b)(1)). He explained that when the regulatory deferral is recorded, revenue is also recorded which results in the annual activity in the regulatory deferral being treated as currently taxable. He said, consequently, there are no deferred taxes related to the deferral of 20% of the revenue requirement. He stated that because IPL will be paying income taxes on the 20% revenue requirement deferral when it is recorded, it is appropriate for it to be grossed up so that the utility is made whole. *Id.* at 31-32.

6. Statutory Requirements. We begin our discussion with a review of the governing statutory requirements. This is appropriate because the Commission is a creature of statute and, as such, must confine itself to implementing the legislature's policy, not debating or attempting to rewrite it. *Ind. Bell Tel. Co. v. Ind. Util. Reg. Comm'n*, 715 N.E.2d 351, 354 n.3 (Ind. 1999) (The Commission is a creature of statute and has no powers beyond those specifically granted it by the General Assembly).

Ind. Code § 8-1-39-9(a) permits a public utility that provides electric utility service to file with the Commission rate schedules establishing a TDSIC that will allow periodic adjustment of the utility's basic rates and charges to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs. This subsection provides that the petition must: (1) use the customer class revenue allocation factor based on firm load approved in the public utility's most recent retail base rate case order; (2) include the utility's TDSIC Plan; and (3) identify projected effects of the Plan on retail rates and charges. Ind. Code § 8-1-39-9(c) provides that the public utility shall defer the remaining 20% of approved capital expenditures and TDSIC costs, including depreciation, AFUDC, and post-in-service carrying costs, and shall recover those deferred capital expenditures and TDSIC costs as part of its next general rate case. Ind. Code § 8-1-39-9(d) provides that a public utility may not file a petition within nine months after the Commission issues an order changing the utility's basic rates and charges with respect to the same type of utility service. Ind. Code § 8-1-39-9(e) provides that a public utility that implements a TDSIC under this chapter shall, before the expiration of its TDSIC Plan, petition the Commission for review and approval of its basic rates and charges. Ind. Code § 8-1-39-9(f) provides that a public utility may file a petition for periodic relief under this section not more than once every six months. Ind. Code § 8-1-39-9(g) provides that actual capital expenditures and TDSIC costs that exceed the approval capital expenditures and TDSIC costs require specific justification by the public utility and specific approval by the Commission before being authorized for recovery in customer rates.

Ind. Code § 8-1-39-12(c) provides that if the Commission determines that the petition satisfies the requirements of Ind. Code ch. 39 and the capital expenditures and TDSIC costs are reasonable, the Commission shall approve the petition, including (1) capital expenditures; (2) timely recovery of TDSIC costs through a TDSIC and (3) if requested, authority to defer TDSIC costs under Ind. Code § 8-1-39-9(c).

Ind. Code § 8-1-39-13(a) provides that for purposes of calculating the TDSIC costs of a public utility, the Commission shall determine an appropriate pretax return for the public utility. In determining the appropriate pretax return, the statute directs the Commission may consider the following factors: (1) the current state and federal income tax rates. (2) the public utility's capital structure. (3) the actual cost rates for the public utility's long term debt and preferred stock. (4) the public utility's cost of common equity determined by the Commission in the public utility's most recent general rate proceeding. (5) other information that the Commission determines is necessary. Ind. Code § 8-1-39-3 defines "pretax return" to mean the TDSIC revenue necessary to: (1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements; (2) pay state and federal income taxes imposed on the net operating income calculated under subdivision (1); and (3) pay state utility receipts taxes associated with TDSIC revenues. Ind. Code § 8-1-39-13(b) provides the Commission shall adjust a public utility's authorized return for purposes of Ind. Code § 8-1-2-42(d)(3) to reflect incremental earnings from an approved TDSIC.

Finally, Ind. Code § 8-1-39-14 provides that the Commission may not approve a TDSIC that would result in an average aggregate increase in a public utility's total retail revenues of more than two percent in a 12 month period.

7. <u>Commission Discussion and Findings.</u>

A. <u>Indiana Code § 8-1-39-9(a).</u> IPL seeks approval of a TDSIC that will allow for the periodic adjustment of the Company's basic rates and charges to provide for timely recovery of 80% of the approved capital expenditures and TDSIC costs. Mr. Rogers and Ms. Coklow showed that IPL's Petition uses the customer class revenue allocation factors based on firm load agreed to and approved in IPL's most recent retail base rate case order. Rogers Direct at 6; IPL Attachment NHC-2. IPL's Petition also included a copy of IPL's Commission-approved TDSIC Plan and this was admitted to the record as IPL Attachment CAR-6. *Id.* As shown by this exhibit and discussed by Mr. Rogers, the TDSIC Plan document included with his attachment is a comprehensive exhibit. Mr. Rogers said Appendix 8.7 to this exhibit sets forth the cost estimates and year detail and plan projects by FERC account (sortable list). He said that for administrative efficiency, IPL proposes that going forward, IPL's TDSIC Rider filings include only Appendix 8.7 to comply with the Section 9(a) requirement that the Petition include the public utility's TDSIC Plan. IPL Witness Shields sponsored IPL Confidential Attachment JWS-1, which reconciles the cost estimates presented in Appendix 8.7 with actual TDSIC capital costs as of March 31, 2020. Finally, Mr. Rogers identified the projected effects of the Plan on retail rates and charges. Rogers Direct at 25-27. We find these proposals to be reasonable and appropriate and they are approved. We further find that IPL has complied with Indiana Code § 8-1-39-9(a).

B. **Indiana Code § 8-1-39-9(c).** IPL's TDSIC provides for timely recovery of 80% of approved capital expenditures and TDSIC costs. The Company proposes to defer the remaining 20% of approved capital expenditures and TDSIC costs, including depreciation, AFUDC, and post-in-service carrying costs, and to recover those deferred capital expenditures and TDSIC costs as part of its next general rate case. Ms. Coklow supported the TDSIC revenue requirement calculations, explaining among other things how Plan development costs, depreciation, and property tax expenses are treated in the calculation. Mr. Gorman contended that the amount of the TDSIC revenue requirement that should be included in the regulatory deferral should be based on the after-tax components of the TDSIC revenue requirement. Gorman Direct at 17; Rogers Rebuttal at 30-31. The record shows that IPL has reflected the revenue requirement components on an after-tax basis in the TDSIC revenue requirement. This is reflected in the calculation of the revenue conversion rates on IPL Schedule NHC-5, page 1. Rogers Rebuttal at 30-31. IPL is following essentially the same accounting Vectren uses in the TDSIC rate filings (Cause No. 44910). Furthermore, IPL is also following the same accounting for the TDSIC rate filings that is utilized and approved in IPL's long-standing ECR rate filings. To address the Commission finding in the IPL TDSIC Plan Order that IPL should remove the gross up for taxes associated with the 20% deferred regulatory asset from future filings, IPL is breaking out the tax gross-up separately as shown on IPL's Attachment NHC-10 and will continue to do so through IPL's next base rate case. As Mr. Rogers explained, the regulatory deferral of 20% of the TDSIC revenue requirement is subject to tax in the year the activity is recorded. Rogers Rebuttal at 31. Consequently, there are no deferred taxes related to the deferral of 20% of the revenue requirement. Because income taxes are paid based on the 20% revenue requirement deferral when it is recorded, it is appropriate for it to be grossed up so that the utility is made whole. *Id.* As discussed below, we find IPL's proposed WACC should be used in the TDSIC. We further find the Company's proposed cost recovery is reasonable and the filing comports with the governing statute. Accordingly, in accordance with Ind. Code § 8-1-39-12(c), the Commission approves the Company's Petition, including (1) capital expenditures; and (2) timely recovery of TDSIC costs through a TDSIC, and authorizes the requested deferral and subsequent recovery through rates under Ind. Code § 8-1-39-9(c).

C. **Indiana Code § 8-1-39-9(d).** Petitioner filed its Petition in this TDSIC-1 on June 18, 2020. The final order in IPL's most recent rate case (Cause No. 45029) is dated October 31, 2018. The Commission finds that the Verified Petition in this Cause was filed more than nine months after the Commission's most recent order changing the Company's basic rates and charges in accordance with Ind. Code § 8-1-39-9(d).

D. <u>Indiana Code § 8-1-39-9(e).</u> Mr. Rogers testified that the Company intends to petition the Commission for review and approval of its basic rates and charges prior to the expiration of its approved seven (7) year plan. The Commission finds Petitioner is in compliance with Ind. Code § 8-1-39-9(e).

E. <u>Indiana Code § 8-1-39-9(f).</u> Ind. Code § 8-1-39-9(f) states that "[a] public utility may file a petition under this section not more than one (1) time every six (6) months." This is the first TDSIC filing made by IPL. Mr. Rogers and Mr. Shields discussed the Company's plans regarding the staggering of its TDSIC rate and plan update filings. They also discussed the impact of COVID 19 on the ongoing engineering of future projects and the Company's December 2020 plan update filing. The witnesses for the other parties did not challenge these matters. The Commission finds that IPL's proposals are reasonable and consistent with the timeline for TDSIC filings set forth in the IPL TDSIC Plan Order (p. 27) and with Ind. Code § 8-1-39-9(f).

F. <u>Ind. Code § 8-1-39-9(g).</u> Mr. Shields provided the total actual capital expenditures associated with IPL's TDSIC Plan as of the March 31, 2020 cut-off date for this filing and the in-service costs for the TDSIC projects placed into service by March 31, 2020. Shields Direct at 9. Mr. Shields provided the construction work in progress costs for the TDSIC projects not placed into service by March 31, 2020 and described these projects. *Id.* at 15-16.

Mr. Shields identified and specifically justified the individual projects that have a cost greater than the Class 2 expected accuracy range. *Id.* at 9-10. He showed that one individual Circuit Rebuild project, (1) Center #7, has costs outside the accuracy range of the Class 2 estimate range, and two individual Circuit Rebuild projects, (1) Northwest #9 and (2) Northwest 1, have costs above the Class 2 estimated costs, yet inside the accuracy range of the Class 2 estimate. *Id.* Mr. Shields explained that at the Project type level, the effect of positive cost variances at the individual project level are absorbed by negative cost variances from other projects. *Id.* at 10. He said, for example, of the 13 Circuit Rebuild projects that were completed by March 31, 2020, just three have actual cost greater than the estimated cost. *Id.* He added that the 13 Circuit Rebuild projects have an aggregated estimated cost of $13,518,672 compared to an aggregated actual cost of $11,975,571. He said this results in $1,543,101 under the estimated cost. *Id.*

He testified that for the Circuit Rebuild projects that have been completed the general factors that are driving cost variances are construction labor costs, hydro-vac costs, line clearing costs and indirect costs (due to a change in the Company's cost allocation methodology for A&G costs). *Id.* He specifically justified these cost variances, discussing the general cost factors driving the individual cost variances and the cost variances for each of the identified projects. *Id.* at 10-15.

Ms. Coklow explained what A&G costs are, explained the reason why the A&G cost allocation methodology was revised, and established that the change in methodology is well-grounded and equitable. Coklow Direct at 16-17. This testimony shows the purpose and process IPL used to establish, review and update its cost allocation methodology and specifically justifies how and why this change occurred. This testimony shows that IPL uses allocation methods to apply capitalized A&G costs across all projects such that each one shall bear its equitable proportion of such costs and so that the entire cost of a project includes both direct and overhead costs that have a definite relation to the construction activity. This testimony shows that IPL determined that A&G costs are incurred to support projects independent of whether the project is staffed with internal labor or outsourced labor; and the application of A&G costs to specific projects based on total construction costs (excluding material) is an appropriate and equitable application of A&G costs to specific projects.

No witness challenged these cost variances. In particular, no witness challenged the rigor or timing of the process Ms. Coklow described or the conclusions IPL drew from its review. Consequently, IPL presented no rebuttal on this issue.

In their post hearing filing, the Consumer Parties argued for the first time, that the variance in indirect costs (*i.e.* A&G costs) should be rejected on the grounds that IPL failed to provide specific justification for the increase in indirect costs.

The Consumer Parties' characterize the indirect cost variance as a "609%" increase in indirect cost. CPPO (redline) at 27. This distorts the context of the cost variance. As the Commission has previously stated: "there is a danger in falling victim to the 'tyranny of large numbers' when we lack sufficient context in which to view them." *Re Duke Energy Indiana, Inc.*, Cause No. 43743 (IURC 10/19/2011), 294 P.U.R.4th 156, 173. The indirect cost variance of approximately $1.2 million is 9.1% of the previously approved capital expenditures estimated for the 13 in-service TDSIC Circuit Rebuild projects in this filing. Only three of these individual in-service projects have total costs that exceed the previous estimate for the individual project and the variance for one of these three is inside the accuracy range for the previous estimate. Furthermore, in total, the actual cost for these 13 Circuit Rebuild projects is 11.4% ($1.5 million) *less* than the previously approved cost estimate. This means IPL has managed the Project such that actual direct costs came in approximately $2.8 million (20.9%) <u>under budget</u>. The Consumer Parties focus unreasonably on one cost category (indirect cost) that is over budget but ignore both the individual cost category that is under budget (direct cost) and the overall end result, which also remains under budget.

Ms. Coklow explained what A&G costs are, explained the reason why the A&G cost allocation methodology was revised and established that the change in methodology is well-grounded and equitable. Coklow Direct at 16-17. IPL's testimony establishes the purpose and process IPL used to establish, review and update its cost allocation methodology and specifically justifies how and why this change occurred. *Id.* at 15-17.

The Consumer Parties' contention that the change in allocation methodology was made "*regardless of staffing*" is not correct. CPPO (redline) at 27. Ms. Coklow's testimony shows the change was made "*because*" a review of staffing determined that A&G costs are incurred when internal labor is used and when outsourced labor is used. Coklow Direct at 16.

The "best estimate" IPL presented in the Plan docket reflected the cost allocation methodology in place at the time. The TDSIC Statute does not prohibit a utility from reviewing and updating its cost allocation methodology. Such work seems reasonably undertaken during the ordinary course of business and no record evidence demonstrates otherwise.

We find the unchallenged evidence presented by IPL presents a well-grounded and satisfactory reason for the change in the Company's A&G cost allocation methodology and is reasonable under the circumstances presented. We find the evidence of record comports with our discussion of the meaning of the words "to justify" in *NIPSCO*, Cause No. 44403-TDSIC-1 (IURC 1/28/2015) at 20.

In accordance with Ind. Code § 8-1-39-9(g), we further find that the cost variances on the identified projects are supported by substantial evidence and have been specifically justified. We specifically approve these cost variances and authorize the recovery of these costs in customer rates.

G. **Ind. Code § 8-1-39-13(a).** Ind. Code § 8-1-39-3 defines "pretax return" to mean the TDSIC revenue necessary to: (1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements; (2) pay state and federal income taxes impose on the net operating income calculated under subdivision (1); and (3) pay state utility receipts taxes associated with TDSIC revenues. In determining the appropriate pretax return, the statute directs the Commission may consider the following factors: (1) the current state and federal income tax rates. (2) the public utility's capital structure. (3) the actual cost rates for the public utility's long term debt and preferred stock. (4) the public utility's cost of common equity determined by the Commission in the public utility's most recent general rate proceeding. (5) other information that the Commission determines is necessary. In the IPL TDSIC Plan Order and in accordance with the above referenced "other information" subdivision, the Commission determined it necessary to receive additional evidence to address two concerns raised in the Plan docket. IPL TDSIC Plan Order at 27.

The first identified concern is the OUCC's concern regarding double recovery of depreciation expense because the statute does not require that the TDSIC Rider revenues for new assets should be offset with the discontinued depreciation expense on the retirement of the replaced assets. IPL TDSIC Plan Order at 25-27 (noting Mr. Blakley recommended that IPL be required to recognize the retirement of replaced assets as a reduction in depreciation expense in its TDSIC tracker, and concluding that the definition of pretax return in Ind. Code § 8-1-39-3 requires that revenues be provided for the eligible TDSIC improvements (as defined by Ind. Code § 8-1-39-2), but does not require, or even suggest, any deduction or netting of replaced assets). See Rogers Direct at 11.

The second identified concern is the Industrial Group's concern with the shifting of risks based on plan approval. IPL TDSIC Plan Order at 27. As shown by the IPL TDSIC Plan Order (p. 10), the Industrial Group's witness, Mr. Collins, contended that "IPL's ROE approved in its most recent rate case reflects the risk of utility without a TDSIC plan and TDSIC plan pre-approval greatly reduces IPL's risk profile." Rogers Direct at 12. In the Plan case, the Company contended that this concern was premature, explaining that IPL did not seek approval of revenue requirement at that time. As a result, the Company did not attempt to rebut this concern in the Plan case. *Id.*

In the IPL TDSIC Plan Order, the Commission found it appropriate to wait until a future proceeding to explore how and to what extent to reasonably adjust IPL's WACC to address these identified concerns. We discuss these matters below.

1. <u>Depreciation Expense.</u> To address the OUCC's concern from the Plan case and to reduce controversy, IPL calculated depreciation expense on the retired and replaced assets and has included that depreciation expense amount as a credit to the depreciation expense recovery sought in this filing. Rogers Direct at 11-12. The netting of depreciation expense is presented on IPL Attachment NHC-6 Line 2. *Id.* Mr. Rogers explained that this netting of depreciation is calculated in the same way IPL has implemented the netting of depreciation in past Environmental Compliance Cost Recovery Adjustment filings for Mercury Air Toxics Standard ("MATS") equipment. He added that the effect of this adjustment is a reduction in the revenue that would otherwise have been recovered through the TDSIC rider, effectively reducing IPL's return on the new assets as compared to not reflecting the depreciation credit. *Id.* at 12, 15-16, 24.

OUCC witness Blakley testified that the OUCC accepts IPL's proposed adjustment to depreciation expense. Pub. Ex. 1 at 5. He also agreed that the netting of depreciation expense reflected in IPL's proposal has the effect of reducing IPL's pre-tax return. *Id.*

We agree that IPL's proposed netting of depreciation expense addresses the concern raised by the OUCC in the Plan case regarding the netting of depreciation expense on the assets retired due to the TDSIC Plan. Accordingly, as further discussed below, we find that no adjustment to the pretax return is necessary to address this concern.

Mr. Gorman contended that while IPL's proposal is consistent with the previous recommendation of the OUCC, it is incomplete because it only adjusts operating expense. Gorman at 3, 23-24. Mr. Gorman's recommended downward adjustment of IPL's Commission-approved ROE to 8.4% is based in part on his view that IPL's depreciation proposal is inadequate. Gorman, at 7-8, 12. While Mr. Gorman discussed an adjustment to the TDSIC revenue requirement to reflect changes to the Company's rate base impacting both the return on, and of, IPL's plant in-service (*id.*at 23), the Consumer Parties clarified in their post hearing filing that they do not seek a revision to IPL's netting proposal on top of determining a TDSIC-specific return. Rather, the Consumer Parties propose an 8.4% ROE for TDSIC purposes in addition to IPL's proposal for netting depreciation expense. Consumer Parties Post-Hearing Brief, at 8.[3] Mr. Rogers disagreed with Mr. Gorman, explaining among other things, how IPL completely addressed the double recovery concern raised by the OUCC in the Plan case by voluntarily reflecting netting of depreciation expense in the of the TDSIC Rider revenue requirement. Rogers Rebuttal at 3-4. He concluded that Witness Gorman's proposal that the Commission go beyond the OUCC's stated concern in the IPL Plan case is unreasonable and should be rejected. *Id.*

Accordingly, as this evidence shows, we cannot reasonably find, as the Consumer Parties' urge us to do, that: "There is no disagreement that IPL's proposal represents only a partial adjustment to account for double recovery of depreciation." CPPO (redline) at 31. The

[3] Mr. Gorman's testimony (p. 23) stated: "IPL's proposal is an incomplete adjustment to the TDSIC revenue requirement. The adjustment I describe above would reflect changes to the Company's rate base impacting both the return on, and of, IPL's plant in-service for purposes of the TDSIC revenue requirement". See also Gorman at 3, lines 8-24. To avoid any doubt about the Commission's position, we find such adjustments unreasonable. They are not permissible under the TDSIC Statute and their adoption would be inconsistent with the intention and purpose thereof.

Consumer Parties' proposal that the Commission adopt their punitive ROE "[i]n light of the fact that there is no dispute over this point" (*id.)*, distorts the record evidence and is unreasonable. Accordingly, we reject the Consumer Parties' argument and recommendation.

As stated above, Ind. Code § 8-1-39-13(a)(5) permits consideration of "other information that the Commission determines is necessary." (emphasis added). In the IPL TDSIC Plan Order, the concern identified as warranting further exploration was the concern regarding depreciation expense raised by the OUCC in the Plan docket. There is no dispute that IPL's depreciation expense netting proposal addresses this OUCC concern. Mr. Gorman's concern exceeds the scope of the "other information" identified by the Commission as warranting exploration.

As explained above, the IPL TDSIC Plan Order is addressed to two concerns related to the calculation of the pre-tax return. This Order did not invite proposals to adjust other components of the revenue requirement. To the contrary, the IPL TDSIC Plan Order affirmed the Commission's view that the statutory reference to "other information" concerns the WACC:

> We continue to believe that the TDSIC statute does not allow the Commission to offset the required revenues for the new assets with the retirement of the replaced assets. As we explained in our February 17, 2014 Order in NIPSCO, Cause No. 44371, the definition of pretax return in Ind. Code § 8-1-39-3 requires that revenues be provided for the eligible TDSIC improvements (as defined by Ind. Code § 8-1-39-2), but does not require, or even suggest, any deduction or netting of replaced assets. In addition, TDSIC costs as defined by Ind. Code § 8-1-39-7 includes this pretax return. It is also true that Ind. Code § 8-l-39-13(a)(5) allows the Commission to consider "other information" in determining the appropriate pretax return. However, in reconciling the statutory language of Ind. Code §§ 8-1-39-3 and 8-1-39-13, the "other information" can only reasonably be read as addressing the weighted average cost of capital ("WACC") rate rather than the investment amount in eligible TDSIC improvements.

IPL TDSIC Plan Order at 26.

The record shows that no TDSIC investment assets were in plant in service in IPL's most recent basic rate case. Consequently, the Company's basic rates do not reflect costs associated with the TDSIC Plan investment. Mr. Gorman's argument regarding the roll forward and inclusion of accumulated depreciation on non-TDSIC assets that reside in the same FERC accounts as TDSIC assets would effectively use the TDSIC Statute to alter cost recovery for non-TDSIC Investments. See Rogers Rebuttal at 20. The TDSIC is defined by statute to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs (Ind. Code § 8-1-39-9). TDSIC cost means certain costs incurred with respect to eligible transmission, distribution, and storage system improvements. (Ind. Code § 8-1-39-7). The other costs in those FERC accounts are not eligible costs. We find the TDSIC Statute is not intended to capture the total change in "net plant in-service" for the non-TDSIC costs in the same FERC accounts in which IPL's TDSIC Plan investments are being made as proposed by Mr. Gorman (pp. 17-18). We decline to use the "other information" provision in Section 13 of the statute to expand the scope of the statute or override this intention. Accordingly, we find it would be unreasonable to adjust the TDSIC revenue requirement to reflect Mr. Gorman's concerns. We further find and conclude that the Consumer Parties' proposal to reduce the Company's ROE in an effort to capture changes associated with non-TDSIC assets is unreasonable and should be denied.

We further find that no adjustment to the pretax return is reasonable or appropriate. First, to conclude otherwise would effectively use the "other information" clause of Section 13 to accomplish indirectly what we have declined to order directly. Second, we reject the suggestion that the TDSIC ratemaking framework is somehow unfair because it focuses on TDSIC costs and not on adjustments to basic rates and charges. As shown by Mr. Rogers' rebuttal, Mr. Gorman's testimony does not reasonably consider the substantial additional non-TDSIC plant investment made by the Company that is not reflected in its rates and charges for service. As described by Mr. Rogers, Witness Gorman's proposal to reflect the accumulated depreciation on non-TDSIC assets in the FERC accounts used to record the TDSIC assets is incomplete and ignores that IPL has recorded net plant additions to those same FERC accounts which more than offset the impact of the accumulated depreciation. Rogers Rebuttal at 20, 23-27. Accordingly, we find it unreasonable and unnecessary to adjust the Company's pre-tax return to address Mr. Gorman's concern.

Finally, IPL has stated that it will continue to provide the FERC accounts used to record the TDSIC investment assets for 1) the assets placed in service as of the cutoff date and 2) the forecasted assets over the TDSIC Plan period for purposes of calculating the projected effects of the plan on retail rates and charges. Rogers Rebuttal at 28-29. This appears reasonable and we so find.

2. Shifting of Risks Based on Plan Approval. In the Commission's February 17, 2014 Order in NIPSCO's TDSIC (IURC Cause No. 44371, p. 17), the Commission acknowledged the offsetting effects of the tracker's cost recovery security and timeliness and impact on the utility of the increased investment being made for the associated projects. Rogers Rebuttal at 18-19. In the NIPSCO proceeding, the Commission declined to adjust the ROE component of the pretax return. While we decided to take another look at this issue in the instant case, we are not persuaded that Commission approval of IPL's TDSIC Plan and implementation of the statutory TDSIC cost recovery mechanism warrants a downward adjustment to the ROE approved by the Commission in the Company's most recent rate case.

As explained by Mr. Rogers, it is not appropriate to look only at risk-reducing factors and ignore factors that increase risk, such as the size of the capital expenditure needed to respond to the statutory objective of using a multi-year investment plan to address infrastructure needs systemically, which in turn provides efficiency and other benefits. The undertaking of IPL's TDSIC Plan increases capital expenditures beyond what would otherwise be undertaken. Without an approved TDSIC tracker, this would put pressure on IPL's 1) ability to satisfy credit metrics (operating cashflows metrics, EBITDA metrics, and debt metrics), 2) ability to issue debt at attractive rates, and 3) ability to maintain a balanced capital structure. Timely cost recovery through the TDSIC helps to offset these pressures.

Put another way, when paired with the introduction of a TDSIC Plan, the approval of a TDSIC rate mechanism is credit supportive and maintains the Company's opportunity to earn its previously authorized return. *Without* an approved mechanism to timely recover capital investment and TDSIC costs related to IPL's TDSIC Plan investment, IPL's opportunity to earn its authorized return and maintain the metrics used to establish its credit rating would diminish.

The Commission disagrees with the suggestion that the Company will face zero risk of disallowance or non-recovery or that there are no other checks and balances. As explained in the IPL TDSIC Plan Order (p. 23):

> After approval of a TDSIC plan, Ind. Code § 8-1-39-9 establishes procedures for TDSIC trackers, providing that "[a]ctual capital expenditures and TDSIC costs that exceed the approved capital expenditures and TDSIC costs require specific justification by the public utility and specific approval by the commission before being authorized for recovery in customer rates."

While IPL did not have a TDSIC Plan and tracking mechanism in effect at the time of its last rate case, the TDSIC Statute has been part of Indiana's utility regulatory framework since 2013. In this regard, the Commission's March 2020 approval of the IPL TDSIC Plan is not a departure from Indiana's existing a regulatory scheme. Furthermore, the proxy group used in IPL's most recent rate case to establish IPL's cost of equity also had various tracking mechanisms available, including trackers for new capital investment. Rogers Direct at 16-17. Thus, it would be incorrect to conclude that approval of the Company's TDSIC Plan and use of the statutory cost recovery has created a change in the Company's overall risk profile that would cause investors to specifically and measurably reduce their return requirements.

Accordingly, we decline to impose a downward adjustment to the ROE agreed to and approved by the Commission in the Company's most recent rate case based on the premise that the Company's risk profile has been reduced by the Commission's approval of the TDSIC Plan and the associated statutory cost recovery.

3. Market Changes and Other Concerns. Mr. Gorman also contended that the Company's Commission authorized return should be adjusted downward to account for current capital market costs. *E.g.* Gorman, at 5, 7, 12.

As an initial matter, we note that this is not "other information" the Commission determined to be necessary in the IPL TDSIC Plan Order. Intervenors were granted leave to participate in accordance with the Commission's rule on intervention, which among other things provides that Intervenors will not unduly broaden the issues.

As explained below, we disagree that Mr. Gorman's discussion of changes in economic conditions demonstrates that the ROE from IPL's most recent rate case is unreasonable.

First, the Commission's recent ROE findings in general rate cases for other Indiana electric utilities (I&M and DEI) depended on facts and circumstances in their specific utility case as well as the balancing that generally goes on in a general rate case. Witness Gorman's suggestion to look to the final ROE award in these other company cases gives a distorted picture of the reasonable range of the cost of equity for IPL.

Second, there is a difference between establishing a return on equity in a basic rate case and assessing whether a previous return warrants a downward adjustment. We find it is appropriate to recognize that there is a zone of reasonableness for returns. The record shows that IPL's 9.99 % ROE agreed to and approved in its most recent rate case is within the COE range of 9.50% to 10.00% the Commission recently established in the I&M and DEI basic rate cases. Bulkley Rebuttal at 9. The record also shows that IPL's current Commission-authorized return is reasonable based on range of recent returns of similar utilities in comparable jurisdictions. Bulkley Rebuttal at 21-23. We note that Mr. Gorman's calculation of the average authorized ROE for 2020 is biased downward by the inclusion of an authorized ROE for a company which reflects a 100-basis point ROE penalty. Bulkley Rebuttal at 12-13. There is no legitimate reason for punitive action against IPL in this case. As recognized in the IPL TDSIC Plan Order, IPL has a history of delivering safe, exceptionally reliable service at reasonable rates. IPL TDSIC Plan Order at 11, also 9, 10, 15, 23.

We find Mr. Gorman's comparison of bond yields between 2020 and 2018 does not adequately recognize that capital markets have experienced levels of volatility not seen since the Great Recession of 2008/09 as investors rotate in and out of various asset classes responding to both positive and negative developments regarding the COVID-19 pandemic. The Consumer Parties' proposal (CP Post-Hearing Brief at 10) that we base our decision on the current market bond yields without regard to the underlying economic factors driving those yields lacks merit. It would be illogical for the Commission to reduce the Company's ROE based on "current market" information while excluding the economic conditions driving the current market. Furthermore, the Commission in an impartial fact-finding body. Ind. Code § 8-1-1-5. We find no reason to ignore the market data Ms. Bulkley presented which supports the conclusion that the COE is increasing, not decreasing. Bulkley Rebuttal at 11-12, 30-42. Additionally, just last year, Mr. Gorman testified to this Commission that an agreed 9.99% ROE was reasonable because capital market costs had not changed substantially since July 2016. *Id.* at 18. He made no attempt to reconcile his prior testimony with his testimony in the instant proceeding that suggests otherwise.

The Consumer Parties' post hearing argument that IPL's projected dividend payments indicate the COVID 19 pandemic has not adversely affected the Company's access to capital markets is also unpersuasive. CPPO (redline) at 30. As an initial matter, this is mere argument of counsel, not evidence.[4] As explained below, we find the Consumer Parties' new argument is not sufficiently supported by record evidence and decline to accept it. While the record includes the amount of IPL's past dividends and projected dividend for the remainder of 2020, this data does not prove the pandemic has not adversely affected the Company's access to capital markets. The record shows that IPL has not attempted to access capital during this period. The Commission notes that the concern is not whether the Company can do so at all, but rather the Company is positioned to do so at a reasonable cost. Also, the viability of the Company's forecast necessarily depend on numerous factors including whether the Commission orders the punitive result urged by the Consumer Parties in this case. Furthermore, the Consumer Parties' position implies that dividends are somehow contrary to the prudent management of a utility. Yet, no evidence supports this position. Mr. Gorman did not argue that the Company's dividends are grounds to decrease the ROE in the TDSIC Rider. The payment of dividends is important to maintaining a

[4] Mere argument of counsel is no substitute for substantial evidence, and the Commission must base its decision on the record. *See Monon R.R. v. Public Serv. Comm'n*, 241 Ind. 142, 170 N.E.2d 441, 442 (1960) (quoting *Public Serv. Comm'n v. Indiana Bell Tel. Co.*, 235 Ind. 1, 27, 130 N.E.2d 467 (1955)); *see also Keuster v. Inman*, 758 N.E.2d 96, 100 (Ind. Ct. App. 2001) (distinguishing evidence from argument of counsel).

balanced capital structure. Retaining the equity within IPL as suggested by the Consumer Parties' argument would increase the equity ratio for IPL and this in turn would increase the overall cost to IPL's customers because the cost of equity is greater than the cost of long term debt.

Mr. Gorman has recommended an 8.40% ROE for IPL's TDSIC rider without providing any analytical support for a reduction of 159-basis points from IPL's currently authorized 9.99% ROE from the Company's most recent basic rate case. Mr. Gorman's 9.4% market change recommendation is slightly greater than Mr. Gorman's recommended ROE of 9.35% in IPL's most recent basic rate case which would actually imply an increase in capital market costs. Bulkley Rebuttal at 12-13. As discussed above, the TDSIC Statute is addressed to TDSIC capital expenditures and TDSIC costs. We reaffirm our position that the statute does not directly authorize the Commission to decrease this cost recovery to capture changes in basic rates. As also discussed above, the Consumer Parties' contention (CPPO (redline) at 31) that there is no disagreement on these matters lacks merit. *Cf.* Rogers Rebuttal at 3-4. Accordingly, we decline to use the "other information" clause to accomplish indirectly what the TDSIC Statute does not allow us to do directly.

Third, the Commission has not previously ordered a reduction in the ROE component of a TDSIC Rider pretax return for a company that has had regular rate cases. Bulkley Rebuttal at 24, 26-28. A sudden departure from past Commission practice may be viewed negatively by credit ratings agencies. The Commission's decision on the pretax return in a TDSIC rider may affect how credit rating agencies and the market perceive the risk associated with the TDSIC rider, which in turn could affect the ability of Indiana utilities to obtain financing for the TDSIC plans on reasonable terms. While the IPL TDSIC Plan Order sought certain "other information" to consider in establishing the Rider pretax return, we disagree with the Consumer Parties' assertion (CPPO (redline) at 31) that our decision to further explore these issues somehow nullifies these concerns. Furthermore, Ms. Bulkley testified that the TCJA has been identified by the credit rating agencies as credit negative due to the increase to the financial risk of the utilities sector. Bulkley Rebuttal at 42.

In Cause No. 44371, which was a NIPSCO TDSIC rider case, the Commission declined to make an adjustment to the TDSIC ROE. In that case, the Commission noted that NIPSCO's authorized ROE was fairly recently determined in December 2011, which was only two years and a few months prior to the decision in the TDSIC case. In addition, the Commission noted the offsetting effects of the security and timeliness of the tracker's recovery mechanism and the investment that was being made. In the NIPSCO case, the Commission did not agree with Mr. Gorman's position that the TDSIC ROE needed to be adjusted for market conditions or that the TDSIC tracking mechanism necessarily reduces the risk of the utility. Bulkley Rebuttal at 13.

We decline to reach a different conclusion in the instant case. IPL has had two recent rate cases and will file at least one other case before the end of the TDSIC Plan. The Commission order approving the settlement in IPL's most recent rate case is relatively recent (October 31, 2018), approximately two years prior to the Order in the instant proceeding. The duration between IPL's TDSIC 1 Rider and its most recent rate case order is similar to (slightly less than) that of NIPSCO's TDSIC in 2014 wherein the Commission rejected a proposal to reduce NIPSCO's authorized ROE outside the context of a basic rate case. Rogers Rebuttal at 18.

IPL has and continues to be a solid provider of electric service. The record shows IPL strives to maintain comparatively low residential rates and has a solid track record of providing reliable service. IPL was commended for its performance in IPL's Asset Management Collaborative process and its asset management has been viewed as "exemplary". Rogers Rebuttal at 32. This too weighs against a decision to adopt the Consumer Parties' proposals.

Accordingly, the Commission declines to order a change in the Company's Commission approved ROE for purposes of calculating the pretax return in the TDSIC Rider.

4. Long Term Cost of Debt. Mr. Gorman proposes the Commission should require IPL to use the Company's marginal cost of debt in the calculation of the WACC used in the TDSIC Rider rate (p. 14). This is not an issue identified in the IPL TDSIC Plan Order as warranting consideration.

As discussed below, this proposal conflicts with the plain language of the governing statute, is inconsistent with the calculation of pretax return in the context of other rate adjustment mechanisms and is inconsistent with how rate base additions are financed. The Company is calculating its WACC using its actual cost rates for long term debt in a manner consistent with the TDSIC Statute (Ind. Code § 8-1-39-13(a)(3)), IPL's rate cases, its existing ECR capital rider, and other Indiana investor-owned electric utilities' TDSIC rate proceedings. Rogers Rebuttal at 8.

While Ind. Code § 8-1-39-13 allows consideration of "other information the commission determines is necessary", this provision should not be used to nullify the very clear statutory directives in Sections 3 and 13. "Pretax return" is a defined term in the statute. It means revenues necessary (among other things) to "(1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements;" Ind. Code § 8-1-39-3. "Weighted cost of capital" has long been a term recognized by this Commission as meaning the actual (and not a hypothetical) capital structure. Indeed, the TDSIC Statute enunciates the "public utility's" capital structure and the "actual cost rates for the *public utility's* long-term debt" (emphasis added) as considerations. The statute does not refer to the incremental cost of debt for the eligible projects. It refers to the actual cost rates for the "public utility's" long term debt in the "public utility's" "weighted" capital structure. This language does not support the view that an approach more in line with project specific financing approach should be used.

The "other information" clause is more properly viewed as authority to make a change in the event the "other information" shows the "actual cost rate for the public utility's long term debt" and capital structure are somehow unreasonable, which is not the case here. In fact, the record shows IPL's actual effective cost rate is lower than the corresponding market rate. Rogers Rebuttal at 15 (citing Witness Gorman's Attachment MPG-3). Mr. Gorman is proposing that IPL utilize a cost associated with approximately 6% of its long term debt as the public utility's actual cost of long term debt. Mr. Gorman's proposal ignores the remaining approximately 94% of the public utility's long term debt. We find the incremental cost identified by Mr. Gorman is not representative of IPL's actual cost of long term debt and actual WACC. Rogers Rebuttal at 11.

We find that lowering IPL's cost of long term debt to the incremental (marginal) rate as proposed by Mr. Gorman would not reflect the actual cost rates for the public utility's long term debt in IPL's capital structure. IPL proposes to update the capital structure component balances and the actual cost rates for IPL's long term debt to calculate the WACC and pretax return for each subsequent TDSIC rider rate filing. Rogers Rebuttal at 9. We further find that Mr. Gorman's proposal, which ignores all preexisting debt, will not produce IPL's weighted cost of capital multiplied by the TDSIC investments as required by Ind. Code § 8-1-39-3. *Id.* at 9-10.

IPL has used the actual ratemaking capital structure as of the rider cutoff date. See IPL Attachment NHC-5, pg. 3 (showing common equity percentage of ratemaking capital structure is 41.50%; long term debt is 47.95%). The Company's long term debt balance is a component of that capital structure. The actual cost rate for the long term debt component of IPL's capital structure is the 4.98% used in IPL's WACC calculation. IPL's long term debt is comprised of debt issuances that were issued between 2004-2018 totaling $1.8 billion. Each of IPL's series of debt reflects market interest rates at the time of its respective offering. Witness Gorman has proposed to use the debt cost rate of IPL's 2018 debt offering, totaling $105 million, and then adjusting based on the actual cost rate of future financings needed to fund the TDSIC program. If adopted, Witness Gorman's proposed approach would introduce volatility into the calculation of IPL's long term debt cost. Rogers Rebuttal at 12. The use of IPL's actual cost of debt helps to smooth and reduce volatility that would be caused by using Witness Gorman's proposal. *Id.* at 13.

The record shows that IPL does not directly finance specific projects. Rogers Rebuttal at 13. IPL finances capital needs to support the enterprise-wide investment needs of the entire utility, not individually for specific projects. *Id.* at 11.

Mr. Gorman's proposal to use the marginal debt cost is inconsistent with the Commission's previous directive that the full ratemaking capital structure should be used in the TDSIC Rider pretax return. Rogers Rebuttal at 13-14. In the Commission's February 17, 2014 Order in NIPSCO's TDSIC (IURC Cause No. 44371, p. 17), the Commission rejected a proposal to use the investor-supplied capital structure for the TDSIC rider pretax return and directed the utility to use the full ratemaking capital structure. The Commission explained:

> The pre-approval of TDSIC projects and the timely recovery of TDSIC costs are regulatory tools that work to enhance the assurance and timeliness of cash flow to cover investments that utility investors fund. It seems reasonable that such investors would likely have a different risk-return expectation when making an investment in a standalone project versus an investment in an ongoing enterprise. NIPSCO presented no evidence that it expects to finance its TDSIC projects outside of its normal utility funding process. *Accordingly, we are not persuaded that a capital structure more in line with project specific financing is appropriate.* The regulatory capital structure for NIPSCO as an enterprise includes equity, debt and zero cost capital. *We believe NIPSCO and other Indiana utilities are better viewed as an ongoing concern that utilizes all of their capital resources in a holistic manner to finance that ongoing concern, including resources which have no cost attached.* This view and methodology is consistent with other long-standing capital investment trackers such as the ECRs. Accordingly, the

> Commission finds that NIPSCO shall calculate WACC in a manner consistent with its last rate case and ECR proceedings, which includes zero cost capital in the capital structure.

Id. (emphasis added). If Witness Gorman's argument were to be accepted, then it would mean the zero cost capital should be removed from the calculation of WACC as well and an alternative capital structure and component cost established. Rogers Rebuttal at 11, 15. However, as Mr. Rogers explained, this approach is not practical. *Id.*

The Consumer Parties' effort to distinguish the instant case based on comparison of the total cost of IPL's seven-year TDSIC plan to the test year rate base in the Company's last rate case is unpersuasive. CP Brief, at 20. The Consumer Parties' comparison ignores the substantial post-test year investment already made by the Company and the ongoing non-TDSIC investment the Company will continue to make over the course of the seven-year plan. Moreover, the record shows that IPL is an ongoing concern that utilizes all of its capital resources in a holistic manner to finance the ongoing concern. By financing the overall needs of the utility, and not just specific projects, IPL is able to finance itself more efficiently and effectively than if the Company financed individual projects separately. Rogers Rebuttal at 11.

The record reflects that in their TDSIC filings, NIPSCO (IURC Cause No. 44733), DEI (IURC Cause No. 44720), and Vectren (IURC Cause No. 44910) are each using their actual capital structure and actual cost of long term debt for all long term debt in their capital structure and not a marginal or incremental long term debt rate. To force IPL to reflect the marginal cost of debt in its WACC would be an unfair change in ratemaking practice from these other utilities. Further, this deviation may be viewed unfavorably by rating agencies who take notice when there is disparate treatment of individual utilities within the same state commission jurisdiction. Rogers Rebuttal at 15.

As stated above, a change in practice is not warranted by IPL's cost of debt. The cost of each series of IPL's debt reflects the market rates that were achievable at the time of the issuance based on the interest rate environment at that time. Rogers Rebuttal at 16. This is evidenced in Witness Gorman's Attachment MPG-3. As explained by Mr. Rogers, IPL's actual effective cost rate is generally lower than the corresponding market rate. Rogers Rebuttal at 16.

The record shows that IPL monitors its actual cost of debt and considers refinancing if the economics of a refinancing are favorable. There are often substantial make-whole premiums that would be required to be paid in order for IPL to re-finance the vast majority of its outstanding debt. Like other utilities, IPL typically issues long term fixed rate debt. This is an attractive way to finance utility investments as it gives long term interest rate certainty to both IPL and its customers. In order to refinance this debt early, a make-whole payment has to be made to the debt-holders that effectively makes the holders "whole" on what they would have otherwise been owed had the debt been outstanding until its maturity date. The payment of this make-whole premium would serve to increase the overall cost to IPL and its customers and cannot be ignored in the decision to refinance long term debt. Rogers Rebuttal at 16.

Accordingly, we reject Mr. Gorman's proposal. We approve IPL's use of its actual capital structure as of the rider cutoff date and IPL's proposed use of the public utility's actual cost rate for the long term debt component of IPL's capital structure in the calculation of the pretax return for the TDSIC Rider.

H. **Code § 8-1-39-13(b).** IPL requests approval to adjust Petitioner's authorized return for purposes of Ind. Code § 8-1-2-42(d)(3) to reflect the incremental earnings that will result from this TDSIC Rider filing. This request comports with the governing statute and is hereby approved.

I. **Ind. Code § 8-1-39-14 (Average Aggregate Increase in Total Retail Revenues).** Mr. Rogers and Ms. Coklow addressed the calculation of the aggregate increase in IPL's total retail revenues as a result of this TDSIC Rider filing and demonstrated that such increase is less than the 2% statutory TDSIC limit set forth in Ind. Code § 8-1-39-14. Rogers Direct at 25; Coklow Direct 15. As shown on IPL Attachment NHC-11, the TDSIC 1 filing results in an average aggregate increase of 0.28% in total retail revenues. Accordingly, the Commission finds that Petitioner's proposed TDSIC-1 factors will not result in an average aggregate increase in total retail revenues of more than 2% in a 12-month period.

J. **Confidential Information.** As noted above, IPL filed three Motions for Protection and Nondisclosure of Confidential and Proprietary Information in this Cause, each of which was supported by an affidavit showing that certain information to be submitted to the Commission is trade secret information as defined in Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. The Presiding Officers found the information which is the subject of each Motion should be held confidential on a preliminary basis, after which the information was submitted under seal. After review of the information and consideration of the affidavits, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. IPL's actual capital expenditures and TDSIC costs, including specifically the individual project costs that exceed the previously approved individual project cost estimates, are approved by the Commission and authorized for recovery in customer rates.

2. IPL is authorized to recover 80% of the capital expenditures and TDSIC costs incurred in connection with its TDSIC Plan and to defer 20% of the eligible and approved capital expenditures and requested TDSIC costs incurred in connection with the TDSIC Plan, including ongoing carrying charges on all deferred costs, for recovery in its next general rate case.

3. IPL is authorized to record ongoing carrying charges based on the full AFUDC rate calculated in accordance with the return on equity authorized in Cause No. 45029 on all deferred capital expenditures and TDSIC costs until such costs are recovered in IPL's base rates as a result of its next general rate case.

4. IPL's requested TDSIC factors and associated revisions to its tariff, as set forth in IPL Attachment NHC-12 Revised are approved to be effective for bills rendered by IPL for the first billing cycle following approval of this Order and continuing until replaced by different factors approved in a subsequent filing.

5. Prior to implementing the approved TDSIC factors, Petitioner shall file the applicable rate schedules under this Cause for approval by the Commission's Energy Division.

6. IPL is authorized to adjust its net operating income to reflect the approved earnings associated with the TDSIC for purposes of Ind. Code § 8-1-2-42(d)(3).

7. The information filed in this Cause pursuant to IPL's Motions for Protective Order is deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 8-1-2-29, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:
APPROVED:

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

____
Mary Becerra, Secretary of the Commission

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Exhibit B

(IPL Proposed Order –Revised To Reflect Reply)

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** **APPROVED:**

ORDER OF THE COMMISSION

Presiding Officer:
David E. Ziegner, Commissioner
Jennifer L. Schuster, Administrative Law Judge

On June 18, 2020, Indianapolis Power & Light Company ("IPL", "Company" or "Petitioner") filed its Verified Petition and Request for Administrative Notice with the Indiana Utility Regulatory Commission ("Commission"), along with the verified direct testimony, attachments and various workpapers of James W. Shields, Jr., Director of IPL TDSIC Plan Development, Chad A. Rogers, Senior Program Manager in IPL Regulatory Affairs, and Natalie Herr Coklow, AES U.S. Service, LLC, Manager in Regulatory Accounting Department.

Also on June 18, 2020, Petitioner filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Motion") requesting that certain information contained within IPL's filing be treated as confidential and exempt from public disclosure. The Presiding Officers granted the Motion and found the information should be treated as confidential on a preliminary basis by docket entry dated June 29, 2020.

The procedural schedule for this Cause was established by docket entry dated July 9, 2020.

Petitions to intervene were filed by the City of Indianapolis ("City") on July 7, 2020 and by the IPL Industrial Group ("IG") on July 28, 2020 (collectively "Intervenors" and together with the OUCC "Consumer Parties").[1] These petitions were granted by docket entries dated July 15, 2020 and August 6, 2020.

[1] The IPL Industrial Group is an ad hoc group of IPL industrial users consisting of Allison Transmission, Inc., IU Health and Messer LLC.

On August 17, 2020, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the verified direct testimony and attachment of Wes R. Blakley, OUCC Senior Utility Analyst, and Intervenors filed the verified direct testimony and attachments of Michael P. Gorman, Managing Principal with the firm of Brubaker & Associates, Inc. On August 17, 2020, Intervenors also filed a Joint Motion for Administrative Notice, which motion was subsequently denied (by docket entry dated August 31, 2020) in light of a recent update to the Commission's procedural rules that allows the Commission and parties to cite to Commission orders without the Commission taking administrative notice of them. Intervenors filed Mr. Gorman's workpapers on August 19, 2020.

On August 26, 2020, Petitioner filed the rebuttal testimony, attachments and workpapers of the aforementioned Chad Rogers and Ann E. Bulkley, Senior Vice President of Concentric Energy Advisors. On August 26, 2020, Petitioner also filed a second Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Second Motion") requesting that certain information contained within IPL's filing be treated as confidential and exempt from public disclosure. The Presiding Officers granted the Second Motion and found the information should be treated as confidential on a preliminary basis by docket entry dated September 2, 2020.

On September 9, 2020, IPL filed a third Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Third Motion") requesting that certain information the parties had stipulated should be admitted into evidence be treated as confidential and exempt from public disclosure. No party objected to IPL's Third Motion and it was granted by docket entry dated September 9, 2020.

The Commission set this matter for an Evidentiary Hearing to be held on September 11, 2020, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A docket entry was issued on September 9, 2020, advising that the hearing would be conducted via teleconference and providing related participation information. At the hearing, Petitioner, OUCC and Intervenors participated telephonically by counsel. The testimony and exhibits ~~prefiled~~offered by Petitioner, OUCC and Intervenors were admitted into the record without objection. At the hearing, IPL's request for administrative notice was denied in light of the above referenced update to the Commission's procedural rules (170 IAC 1-1.1-215(f)). No members of the general public sought to participate in these proceedings.

Based upon applicable law and the evidence of record, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Notice of the hearing was given and published by the Commission as required by law. Petitioner is a public utility as that term is defined by Ind. Code §§ 8-1-2-1(a) and 8-1-39-4. Pursuant to Ind. Code ch. 8-1-39, the Commission has jurisdiction over a public utility's petition to approve rate schedules establishing a Transmission, Distribution and Storage System Improvement Charge ("TDSIC") that will allow for the periodic adjustment of the public utility's basic rates and charges to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs. Therefore, the Commission has jurisdiction over IPL and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** IPL is a corporation organized and existing under the laws of the state of Indiana, with its principal offices at One Monument Circle, Indianapolis Indiana. IPL is engaged.in rendering electric service in the state of Indiana and owns and operates plant, equipment, and related facilities in Indiana that are in service and used and useful in the generation, transmission, distribution, and furnishing of such service to the public.[2]

3. **Background and Requested Relief.** On March 4, 2020, the Commission issued an Order in Cause No. 45264 ("IPL TDSIC Plan Order") approving IPL's Seven-Year TDSIC Plan. In that order, the Commission found the projects included in IPL's TDSIC Plan are: (a) "eligible improvements" as defined in Ind. Code § 8-1-39-2 and were not included in IPL's most recent rate case; (b) authorized TDSIC treatment for the improvements described in the IPL TDSIC Plan, including costs incurred starting on August 1, 2019; (c) authorized IPL to defer and recover its Plan development and case support costs over a three-year period through a TDSIC tracker to be filed in 2020; (d) approved IPL's request to defer TDSIC Plan costs and to create regulatory assets to record post-in-service allowance for funds used during construction ("AFUDC") (both debt and equity) and depreciation and property tax expenses associated with the projects, until they are recovered through the TDSIC tracker or included in basic rates; approved IPL's request to use the applicable depreciation rates for transmission and distribution assets approved in its most recent rate case (Cause No. 45029) and to recover depreciation expense prospectively; and found that IPL shall remove the gross up for taxes associated with the 20% deferred regulatory asset from future filings. IPL TDSIC Plan Order, at 21, 24-25. The Commission also found it appropriate to explore under the "other information" clause in Ind. Code § 8-1-39-13(a) two concerns which the Commission found were not sufficiently developed in the record in the Plan docket -- namely (i) the OUCC's concern with double recovery of depreciation expense in light of the Commission's ongoing view that the TDSIC Statute does not require the OUCC's netting of depreciation expense, and (ii) the Industrial Group's concerns with the shifting of risks based on plan approval. *Id.* at 27. The Order deferred making any adjustment to IPL's weighted average cost of capital ("WACC") until such a record has an opportunity to be developed in TDSIC 1 or other appropriate forum. *Id.*

The Commission directed IPL to file semi-annual TDSIC trackers: one to update the TDSIC Plan and one to update its TDSIC rate with the first filing to be made by July 1, 2020. *Id.*

4. **Relief Requested.** Pursuant to Ind. Code§ 8-1-39-9(a) Petitioner seeks to establish the "TDSIC rate". The Petition addresses costs incurred under IPL's TDSIC Plan through March 31, 2020. In this TDSIC rate filing, Petitioner requests approval of TDSIC Rider factors to effectuate the timely recovery of 80% of approved capital expenditures and TDSIC costs. IPL proposes that the TDSIC 1 factors, when approved, go into effect starting with the November 2020 billing cycle and remain in effect until different Rider factors are approved, which is expected to be a period of approximately 12 months because IPL will seek approval of new factors in its TDSIC 3 filing. IPL asks the Commission to specifically approve and authorize recovery of actual costs that exceed the amount previously approved. IPL also requests authority to defer, as a regulatory asset, the remaining 20% of approved capital expenditures and TDSIC costs for recovery as part of IPL's next general rate case. IPL requests approval to adjust its authorized return for purposes of Ind. Code § 8-1-2-42(d)(3) to reflect the incremental earnings

[2] See IPL TDSIC Plan Order at 1.

that will result from this TDSIC Rider filing upon Commission approval. IPL's proposed TDSIC Rider was included with IPL Witness Coklow's testimony as Attachment NHC-12 (revised). See Rogers Direct testimony for overview as well as IPL Petition, included therewith as IPL Attachment CAR-6.

5. Evidence Presented.

A. Petitioner's Case-in-Chief.

1. TDSIC Plan Capital Investments at Cut-Off Date. Mr. Shields provided an overview of IPL's approved TDSIC Plan, reported on the overall progress of the approved Projects, presented the TDSIC capital investments as of March 31, 2020, described the capital investments, identified cost variances and justified the variance for specific individual projects that have an actual cost greater than the previously approved estimate. He discussed the projects that were re-sequenced due to construction constraints. Shields Direct at 8.

He showed that total actual capital expenditures as of March 31, 2020 were approximately $45.9 million. Shields Direct at 9. He presented IPL Confidential Attachment JWS-1 which presented the actual cost (both in-service and construction work in progress) of the approved TDSIC Projects.

Mr. Shields described the construction work in progress not placed into service by March 31, 2020, which totaled approximately $28.4 million. *Id.* at 15-16.

2. Cost ~~estimate variances~~Estimate Variances. Mr. Shields stated that each TDSIC Plan Project consists of individual projects. *Id.* at 10. He said IPL presented cost estimates for the individual projects in the Plan case and added that the AACE Cost Estimate Classification System assigns an expected accuracy range for each estimates class. He said the accuracy range for Class 2 estimates is +20% and -15%. *Id.* He added that when IPL developed project cost estimates, the Company reasonably expected that some projects would have actual costs below the estimate while others would come in above the estimated cost. *Id.*

Mr. Shields explained that at the *Project type* level, the effect of positive cost variances at the individual project level are absorbed by negative cost variances from other projects. *Id*. at 10 (emphasis added). He said, for example, of the 13 individual Circuit Rebuild projects that were completed by March 31, 2020, just three have an actual cost greater than the estimated cost. *Id*. He added that the 13 Circuit Rebuild projects have an aggregated estimated cost of $13,518,672 compared to an aggregated actual cost of $11,975,571. He said this results in $1,543,101 under estimated cost. *Id*.

Mr. Shields presented IPL Confidential Attachment JWS-1, which identified the cost variances between the approved project costs and the actual costs as of March 31, 2020. Mr. Shields stated that as shown in this attachment, one individual Circuit Rebuild project, (1) Center #7, has costs outside the accuracy range of the Class 2 estimate range. Two individual Circuit Rebuild projects, (1) Northwest #9 and (2) Northwest 1, have costs above the Class 2 estimated costs, yet inside the accuracy range of the Class 2 estimate.

Mr. Shields presented IPL Confidential Attachment JWS-2 which presented individual project cost element variances for the three projects that have actual costs greater than estimated costs. He discussed the general cost factors driving individual project cost variances, identifying them as construction labor costs, hydro-vac costs, line clearing costs and indirect costs stemming from the change in IPL's administrative and general cost allocation methodology addressed by IPL Witness Coklow. *Id.* at 10-12~~; Coklow Direct at 15-17 (explaining that~~.

Ms. Coklow explained what A&G costs are, explained the purpose and process IPL used to establish, review and update its cost allocation methodology and specifically justified how and why this change occurred. Coklow Direct at 16-17. She said IPL conducts a study to determine the time that supervisory employees devote to construction activities so that only such overhead costs as have a definite relation to construction are capitalized. She said IPL uses allocation methods to apply capitalized A&G costs across all projects such that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit includes both direct and overhead costs that have a definite relation to the construction activity. She said historically IPL applied A&G costs to specific projects based on internal labor associated with each construction project. She explained that IPL reviewed its A&G project application methodology as part of a process review and standardization initiative and determined that A&G costs are incurred to support projects independent of whether the project is staffed with internal labor or outsourced labor. She stated that IPL determined that the application of A&G costs to specific projects based on total construction costs (excluding material) is an appropriate and equitable application of A&G costs to specific projects~~; this~~. This methodology provides an equitable distribution and correlation between the A&G costs incurred in support of the construction activities~~)~~. Coklow Direct at 15-17.

Mr. Shields further explained that the variance on Center #7 Circuit Rebuild project was driven by overhead construction labor costs, material costs variance, and indirect costs. *Id.* at 12-13. He explained that the variance on Center #9 Circuit Rebuild project was driven by construction labor, line clearing and indirect costs. *Id.* at 13-14. He explained that the variance on Northwest #1 Circuit Rebuild project was driven by line clearing and indirect costs. *Id.* at 14-15.

3. TDSIC Filing Calendar and Updating Cost Estimates. Mr. Rogers provided an overview of IPL's planned TDSIC Rider calendar. *Id.* at 8. He and Mr. Shields also testified that the COVID-19 pandemic is causing increased risk to the completion of the necessary engineering work to convert all Year 3 Class 3 and 4 cost estimates to Class 2 estimates for the December 2020 filing. *Id.* at 8-9; Shields at 7. Mr. Shields said state and local "stay-at-home" orders have limited the ability to make field visits to assess the engineering needed to complete the Class 2 estimates. Shields at 7. He and IPL Witness Rogers explained that IPL plans to file TDSIC 2 as scheduled in December 2020 with the completed cost estimates; the Company proposes to file supplemental information that will include the remaining Class 2 cost estimates for Year 3 projects when complete. *Id.* at 7; Rogers Direct at 9.

4. TDSIC Revenue Requirement. Mr. Rogers explained that IPL's TDSIC 1 filing in this proceeding comports with the TDSIC Statute and the ratemaking and accounting treatment approvals in the Order approving IPL's TDSIC Plan. Rogers Direct at 2-8, 10-11.

More specifically, he showed that IPL used the customer class revenue allocation factors based on firm load approved in IPL's most recent basic rate case order as required by Section 9(a)(1). *Id.* at 6. He explained that the TDSIC projects included for recovery are eligible transmission and distribution system improvements under Ind. Code § 8-1-39-2. *Id.* at 6-7. He added that none of the TDSIC projects included for recovery in this Cause were in IPL's rate base in IURC Cause No. 45029 (IPL's most recent rate case). *Id.* at 7. He added that the final order in IPL's most recent rate case (Cause No. 45029) is dated October 31, 2018, which is more than nine months prior to the filing of this TDSIC as required by Ind. Code § 8-1-39-9(d). He also said IPL intends to petition the Commission for review and approval of its basic rates and charges prior to the expiration of the 7-year TDSIC Plan as required by Ind. Code § 8-1-39-9(e).

Mr. Rogers testified that IPL has recorded the 20% deferral related to income taxes to a separate regulatory asset account to facilitate the treatment ordered by the Commission. Rogers at 11. IPL Witness Coklow identified the portion of the deferral for income tax and presented the balance separately on IPL Attachment NHC-10. Mr. Rogers said IPL will continue to reflect the deferred regulatory asset related to income tax recovery on this schedule which can then be excluded from the gross up of taxes in a future rate case filing. *Id*.

Mr. Rogers stated that IPL included its TDSIC Plan as part of this filing as required by Section 9(a)(2). Rogers Direct at 6. He explained that IPL's TDSIC Plan was a comprehensive exhibit in the Plan docket and added that Appendix 8.7 to this exhibit sets forth the cost estimates and year detail and plan projects by FERC account (sortable list). For administrative efficiency, Mr. Rogers proposed that going forward, IPL's TDSIC Rider filings include Appendix 8.7 only to comply with the Section 9(a) requirement that the petition include the public utility's TDSIC Plan. He said IPL Witness Shields sponsors IPL Confidential Attachment JWS-1, which reconciles the cost estimates presented in Appendix 8.7 of IPL's approved TDSIC Plan with actual TDSIC capital costs as of March 31, 2020. *Id.*

Ms. Coklow presented the accounting schedules and utilized the accounting treatment approved in the IPL TDSIC Plan Order in determining the applicable TDSIC Rider factors. Coklow Direct at 2-3; Rogers Direct at 10. She also explained how Plan development costs and depreciation and property tax expenses are treated in the calculation of the revenue requirement. *Id.* at 3. Ms. Coklow testified that the TDSIC projects for which IPL is seeking recovery in this filing total approximately $38 million and $8 million for distribution and transmission projects, respectively (inclusive of AFUDC and net of removal costs). *Id.* at 7.

Mr. Rogers also addressed the "other information" solicited in the IPL TDSIC Plan Order regarding the appropriate pretax return. Rogers Direct at 11-24. First, he addressed the OUCC's concern that the TDSIC Rider revenues for new assets should be offset with the discontinued depreciation expense on the retirement of the replaced assets. *Id.* at 11-12 (citing IPL TDSIC Plan Order pp. 8-9, 26-27). He said to address the OUCC concern and to reduce controversy, IPL calculated depreciation expense on the retired and replaced assets and has included that depreciation expense amount as a credit to the depreciation expense recovery sought in this filing. *Id.* at 12. He noted that the netting of depreciation expense is presented on IPL Attachment NHC-6 Line 2. *Id.*; see also Coklow Direct at 7-8. Mr. Rogers said this netting of depreciation expense is calculated in the same way IPL has implemented the netting of depreciation in past Environmental Compliance Cost Recovery Adjustment filings for Mercury

Air Toxics Standard ("MATS") equipment. *Id.* He added that the effect of this adjustment is a reduction in the revenue that would otherwise have been recovered through the TDSIC Rider, effectively reducing IPL's return on the new assets as compared to not reflecting the depreciation credit. *Id.* Mr. Rogers stated that this treatment sufficiently addresses the concern of netting depreciation expense on the assets retired as part of the TDSIC Plan. He added that no adjustment to the pretax return is necessary. *Id.*

Second, Mr. Rogers addressed the IG's concern, identified in the IPL TDSIC Plan Order (pp. 10 and 27), that the TDSIC mechanism "shifts risks based on plan approval". He noted that in the Plan case, the IG witness provided no analysis to support his summary contention that "IPL's [Return on Equity ("ROE")] approved in its most recent rate case reflects the risk of utility without a TDSIC plan and TDSIC plan pre-approval greatly reduces IPL's risk profile." Rogers Direct at 12 (quoting IPL TDSIC Plan Order at 10).

Mr. Rogers explained that he understood the term "risk profile" as used by the IG witness in the Plan case to refer to the threats to which an organization is exposed. *Id.* at 13. He stated that in the Plan case, the IG witness' viewpoint was that unlike the status quo, once the TDSIC Plan is approved, IPL will no longer face risk of disallowances or non-recovery -- the only check and balance is with the Commission when the TDSIC Plan is presented for approval. *Id.*

Mr. Rogers disagreed that it is appropriate to look only at risk-reducing factors and not also take into consideration factors that increase risk, such as the size of the capital expenditure needed to respond to the statutory objective of using a multi-year investment plan to address infrastructure needs systemically, which in turn provides efficiency and other benefits. *Id.* He said the undertaking of IPL's TDSIC Plan increases capital expenditures beyond what would otherwise be undertaken. *Id.*

Mr. Rogers testified that Commission approval of IPL's TDSIC Plan does not mean the Company will no longer face any risk of disallowance or non-recovery. *Id.* at 13-14. While he agreed that the 80% timely cost recovery provided by the statute is important to maintaining the financial health of the utility, he disagreed that the statutory "TDSIC treatment" means the Company will no longer face any risk of disallowance or non-recovery or that there are no other checks and balances. *Id.* Quoting the IPL TDSIC Plan Order, he said "[a]ctual capital expenditures and TDSIC costs that exceed the approved capital expenditures and TDSIC costs require specific justification by the public utility and specific approval by the commission before being authorized for recovery in customer rates." *Id.* He noted that the IG has appealed the IPL TDSIC Plan Order and added that the IG's appeals of other cases have resulted in other TDSIC orders being vacated. *Id.* He concluded that while the Company is moving forward with the TDSIC Plan, doing so is not without risk given the pending appeal. *Id.*

Mr. Rogers also disagreed that Commission approval of the IPL TDSIC Plan is "unlike the status quo" as indicated by the IG witness in the Plan proceeding. *Id.* at 14. He said, the TDSIC Statute has been part of Indiana's utility regulatory framework since 2013 and many other Indiana energy utilities have used this statute. In this regard, the Commission's March 2020 approval of the IPL Plan is not a departure from Indiana's existing a regulatory scheme. *Id.* He added that Indiana has long allowed utilities to obtain pre-approval of investments. Ind. Code § 8-1-2-23. *Id.* He viewed the TDSIC Statute as changing the timeliness of cost recovery and said that even then, this change is limited to 80% of capital expenditures and TDSIC costs and is also tied to requirements that the utility defer 20% of its costs and file a basic rate case before expiration of the plan. *Id.* Mr. Rogers said Indiana's utility regulatory framework does not otherwise impose a requirement on how often a utility must file a general rate case. He said that to the extent the TDSIC Statute changed the so-called status quo for Indiana ratemaking for T&D capital investment, it did so in two ways (*i.e.* timely cost recovery and required general rate case). *Id.* at 15. He added that it is unreasonable to consider the impact of the timely cost recovery mechanism in a vacuum – and stated that when viewed holistically, a downward adjustment to IPL's TDSIC Rider pretax return is not warranted. *Id.*

Mr. Rogers disagreed that the ratemaking provisions of the TDSIC Statute warrant an adjustment to the Company's Commission's authorized pre-tax return. *Id.* He said IPL's basic rates and charges have been reviewed in two recent cases (Cause Nos. 44576 and 45029) and added that the Commission's decisions in these cases were issued March 15, 2016 and October 31, 2018, respectively, well after the enactment of the TDSIC Statute. *Id.* He stated that the general rate case the Company is required to file under the TDSIC Statute will provide another opportunity for the Commission to review the Company's rates and charges, including its authorized return. *Id.* He said the TDSIC Statute is designed to incentivize the expeditious investment in, and improvement and modernization of, Indiana's energy delivery system infrastructure. *Id.* He was not aware of any instance where the Commission reduced the pre-tax return in a TDSIC Rider where the utility involved had at least one recent rate case. *Id.*

Mr. Rogers reiterated that the netting of depreciation expense reflected in IPL's proposed revenue requirement reduces the revenue IPL will receive and reasonably responds to the Commission's Order. *Id.* at 15-16. He said this netting has the effect of reducing IPL's pre-tax return; no other downward adjustment should be made. *Id.*

Mr. Rogers said the fact that IPL operates under certain rate adjustment mechanisms (also referred to as trackers) does not distinguish it from other firms in the electric utility industry. *Id.* at 16. He explained that in IPL's most recent rate case, IPL's ROE witness explained that the existence of trackers is already reflected in the forward-looking cost of equity analysis because such mechanisms are industry wide. *Id.* He showed that in IPL's rate case, IPL Witness McKenzie summarized the regulatory adjustment mechanisms available to the proxy group of electric utilities used to estimate the cost of equity, which included infrastructure cost trackers that allow for recovery of new capital investment outside of a traditional rate case as well as a variety of other adjustment clauses. *Id.* He explained that the evidence in the rate case was that while the mechanisms approved for IPL by the Commission would be regarded as supportive, investors would not view the risks of IPL as lower than the proxy group in these important respects. *Id.* at 17.

Mr. Rogers concluded it would be incorrect to conclude that approval of the Company's TDSIC Plan and use of the statutory cost recovery has created a change in the Company's overall risk profile that would cause investors to specifically and measurably reduce their return requirements. *Id.*

Mr. Rogers pointed out that the settlement in IPL's recent rate case did not ignore that a TDSIC was available to IPL. *Id.* To the contrary, the parties (including IG) settled on TDSIC allocation factors, which were included in the Commission order approving the Settlement, (Cause No 45029 Settling Parties Joint Exhibit 1 Settlement Attachment E). *Id.*

Mr. Rogers added that when paired with the introduction of a TDSIC Plan, the approval of a TDSIC rate mechanism is credit supportive and maintains the Company's opportunity to earn its previously authorized return. *Id.* He said that *without* an approved mechanism to timely recover capital investment and TDSIC costs related to IPL's TDSIC Plan investment, IPL's opportunity to earn its authorized return and maintain the metrics used to establish its credit rating would diminish. *Id.*

Mr. Rogers reconciled his views with Commission precedent, explained that IPL's TDSIC is best described as a tracker that adjusts rates for incremental investment and serves to adjust the base-line earnings for post rate case changes and address issues primarily associated with regulatory lag. *Id.* at 17-18. He said the TDSIC is not a tracker that addresses the risk of volatile earnings. *Id.* at 18. He stated that because the TDSIC tracker is a means of reducing regulatory lag, the approval of the TDSIC should be viewed as maintaining (not reducing) IPL's risk profile. He said the TDSIC Rider is a tool that supports IPL's opportunity to earn its previously authorized return. *Id.* Finally, Mr. Rogers explained that a Commission decision to reduce IPL's pre-tax return would be contrary to the policy underlying the TDSIC Statute as it would not reasonably incentivize investment in energy delivery infrastructure. *Id.* at 19.

Mr. Rogers supported his views by showing the financial community monitors the Company's financial condition and the Commission's ratemaking decisions. *Id.* at 19-20. He stated that the regulatory environment is one of the most important factors considered in both debt and equity investors' assessments of risk. *Id.* He explained for example, that Moody's states that 32.50% of the weight it gives to various factors considered in its ratings determinations are focused on cash flow because "[f]inancial strength, including the ability to service debt and provide a return to shareholders, is necessary for a utility to attract capital at a reasonable cost in order to invest in its generation, transmission and distribution assets, so that the utility can fulfill its service obligations at a reasonable cost to rate-payers." *Id.* citing Moody's Investors Service, *Rating Methodology; Regulated Electric and Gas Utilities*, June 23, 2017, pp. 4, 20. He added that S&P has explained that the regulatory structure is one of the most important factors in its credit rating analyses. *Id.* at 19.

Mr. Rogers testified that a downward adjustment to IPL's pretax return appears inconsistent with the policy objectives underpinning the TDSIC Statute and fails to recognize the impact that significant capital investments have on the utility's financial health and the ongoing ability to maintain credit metrics. *Id.* He added that a Commission decision to make a downward adjustment to IPL's pre-tax return would be a departure from the Commission's previous actions and could be viewed as a penalty on the Company for its efforts to pursue the goals of the TDSIC Statute in the largest City in the State of Indiana. *Id.* at 20-21. He explained that while Moody's has rated IPL's outlook as "stable", this outlook is based on expectation that Indiana's credit supportive regulatory environment will continue. Moody's has identified a "perceived deterioration" of Indiana's regulatory environment as a factor that would lead to a downgrade." *Id.* at 21-22.

Mr. Rogers explained that the rating agencies are consistent in viewing utilities that have access to tracking mechanisms as credit supportive as it is a sign of a constructive regulatory environment, one of the key considerations given by the rating agencies when assessing utilities. *Id.* at 22-23.

Mr. Rogers said IPL utilized a WACC of 6.68% which is calculated using IPL's capital structure as of March 31, 2020, actual cost of long-term debt and preferred stock, and IPL's cost of common equity of 9.99% determined by the Commission in IPL's most recent general rate proceeding. *Id.* at 24. He said the WACC used to calculate pretax return is calculated by IPL witness Coklow in IPL Attachment NHC-5. *Id.* Mr. Rogers concluded that the "other information" identified in the Commission's IPL TDSIC Plan Order as warranting exploration does not warrant an adjustment to the WACC. *Id.*

Finally, Mr. Rogers and Ms. Coklow estimated the effect of IPL's TDSIC Plan on retail rates and charges over the plan term. *Id.* at 25-26. They showed the aggregate increase in IPL's total retail revenues as a result of this TDSIC Rider is approximately 0.3% and thus demonstrated such increase is less than the 2% statutory TDSIC limit set forth in Ind Code § 8-1-7 39-14. Rogers Direct at 27; Coklow Direct at 15 (identifying specific percentage to be 0.28%). IPL witness Coklow also presented the proposed TDSIC 1 factors and impact of TDSIC 1 factors on residential bills. *Id.* at 17-18. She said an average residential customer using 1,000 kWh per month will experience an increase of $0.44 or 0.38% of such bill, relative to the basic rates and charges approved in IPL's last general rate proceeding (Cause No. 45029) and the TDSIC adjustment factor currently approved ($0.00000). *Id.* at 18.

B. <u>OUCC's Case-in-Chief.</u> Mr. Blakley addressed IPL's proposal to adjust its electric rates through a TDSIC mechanism, commented about specific issues addressed in the IPL TDSIC Plan Order related to the current TDSIC tracker proceeding, and addressed IPL's TDSIC revenue requirement calculation. Blakley at 1.

With respect to the concern raised in the Plan case regarding netting of depreciation expense, Mr. Blakley testified that the OUCC accepts IPL's adjustment to depreciation expense. *Id.* at 4-5. Mr. Blakley agreed that the netting of depreciation expense reflected in IPL's proposal has the effect of reducing IPL's pre-tax return.*Id.* at 5.

Mr. Blakley testified that the OUCC disagrees with IPL that the depreciation netting addresses the risk reduction IPL receives related to the TDSIC tracker. *Id.* He said the OUCC supports the positions taken by City of Indianapolis' witness Mr. Michael Gorman on that issue. *Id.*

Mr. Blakley reviewed IPL's TDSIC revenue requirement and verified that rate calculation and rate impact. *Id.* at 6-7. He said that should the Commission approve the City of Indianapolis' adjustment to the WACC, the Commission should require IPL to recalculate the factor. *Id.* at 7-8.

C. <u>Intervenors' Case-in-Chief.</u> <u>Mr. Gorman presented testimony addressing IPL's development of its TDISC tracker adjustment, specifically addressing IPL's proposed weighted average cost of capital, IPL's incremental cost of debt, and issues he identified with</u>

IPL's proposed limited netting of depreciation expenses. Mr. Gorman contended IPL's authorized return on equity from its last rate case is not fair and reasonable for use in the TDSIC rate adjustment factor. Gorman at 2. He proposed the Commission require the ROE component of the WACC used to set the TDSIC adjustment factor be adjusted downward to 8.4% to reflect current capital market costs of common equity, IPL's reduced investment risk created by the implementation of a TDSIC tracker mechanism, and what he viewed as inadequacies in IPL's depreciation netting proposal. *Id.* at 2, 7. Mr. Gorman explained that his 8.4% recommendation reflected a ROE of 9.4% to address the change in market capital costs since IPL's last rate case and an additional 100 basis point decrease to reflect the other factors noted above. *Id.* at 7, 12-13.

Mr. Gorman first testified regarding his recommendation to adjust IPL's proposed return on equity to better reflect its TDISC risk and current market costs. Mr. Gorman said the most pronounced and observable evidence of declining capital market costs since IPL's last rate case is to observe changes in utility bond yields. *Id.* at 6. Mr. Gorman testified that the return on equity authorized in IPL's most recent general rate proceeding is significantly in excess of current market capital costs noting that bond yields have dropped considerably since IPL's general base rate case. *Id.* at 4 and Attachment MPG-2. Mr. Gorman said the Commission's authorized returns have dropped correspondingly from the 9.99% authorized for IPL in 2018 to the 9.7% for other Indiana utilities in 2020. Mr. Gorman said the 9.4% return on equity is fair because it reflects current industry average authorized returns on equity for electric utility companies. *Id.* at 7, 24-36. He explained in detail the observable market evidence of utility cost of equity supporting his recommendations for a TDSIC specific return on equity. *Id.* at 15, 28-33.

Mr. Gorman recommended a further downward adjustment to IPL's proposed return on equity to 8.4% to reflect inadequacies in IPL's depreciation proposal as well as the risk elimination from the TDISC Plan approval. *Id.* at 7. Mr. Gorman contended ~~his~~this further 100 basis point downward adjustment to the ROE should be made because 1) all trackers, including the TDSIC, reduce a utility's risk profile (*id.* at 7-8); and 2) within the scope of the approved TDSIC Plan, the risk of rate recovery and successful realization of anticipated benefits has shifted away from IPL and now rests on IPL's customers (*id.* at 9). Quoting S&P, he said tracker mechanisms reduce cost recovery risk, and benefit IPL through credit supportive regulatory mechanisms. *Id*. at 10-12. Mr. Gorman contended that the reduced return on equity could not undermine the purpose of the TDSIC statute to incentivize system investments, because the statute allows the Commission to adjust the pretax return. *Id. 12.* Mr. Gorman ~~also proposed to reflect IPL's incremental cost of debt in the WACC used to develop the TDSIC adjustment factor rather than the Company's embedded debt cost. He said, market evidence indicates that the cost of new debt issuances to support IPL's incremental investment in TDSIC investments is lower than the Company's embedded cost of debt which is already being recovered in its base rates. He contended that IPL's incremental debt issue cost should be used in setting the TDSIC adjustment factor. Gorman at 2-3, 13-15. He recommended the cost of debt be set at 3.937%, which reflects IPL's most recent debt issuance in November, 2018. Mr. Gorman proposed the Commission direct IPL to adjust its revenue requirement calculations in subsequent TDSIC adjustment proceedings to reflect all debt issues starting with the 12-month period ending March 30, 2020 up until filing of the next base rate case, or until the end of the seven-year proposed TDSIC tracker~~testified that the 8.4% ROE addresses the inadequacy of IPL's proposed netting of depreciation, which he viewed as addressing only a portion of the double recovery arising from continued base rate recovery for removed assets concurrent with the TDSIC recovery for replacement assets. *Id.* at ~~15.~~13.

Mr. Gorman recommended the Commission reject IPL's allegation that its limited netting of depreciation expense in producing an adjusted revenue requirement for TDSIC investments is sufficient to avoid other adjustments to IPL's pre-tax return. He explained that IPL's proposal, while consistent with the previous recommendation of the OUCC, is not balanced. He stated that a balanced depreciation netting would include adjustments to the operating income component of the TDSIC revenue requirement, based on the Company's proposal to offset increases in depreciation expense for new TDSIC assets, with the elimination of depreciation expense for TDSIC assets that are retired. Gorman at 2. Mr. Gorman said a complete and balanced netting adjustment would have the TDSIC revenue requirement reflect a roll-forward of accumulated depreciation reserve, in tracking net plant changes for TDSIC investments, as a means to ensure that the operating income level entitlement included in the TDSIC is no more than a just and reasonable amount on net TDSIC plant in-service investments. Gorman at 3. He testified that IPL's rate base investments should track changes in net plant investment, including gross plant additions that increase rate base, as well as increases in accumulated depreciation expense reserves that decrease rate base. He said if this were done, the TDSIC adjustment factor would accurately capture the operating income needed for changes in the Company's "net plant" in-service for distribution and transmission related TDSIC investments. *Id.* at 3, 16-20. In Mr. Gorman's view IPL has grossly over-calculated its TDSIC revenue requirement by failing to reflect changes to its "net plant in-service" due to the build-up of accumulated depreciation in the FERC accounts where assets installed as part of the Company's TDSIC Plan will be recorded. *Id.* at 20-21.

Mr. Gorman also ~~testified that the amount~~expressed concerns with IPL's development of ~~the TDSIC~~a revenue requirement ~~that should be included in the regulatory~~for distribution and transmission TDSIC investments, which reflect the incomplete proposal IPL has made to address double recovery. Mr. Gorman explained the full elimination of double recovery would involve tracking changes in net plant investments and, in contrast, IPL's proposal overstates the revenue requirement, allowing IPL to earn a return on rate base without taking into account both the increases and decreases. *Id.* at 16. Mr. Gorman said that IPL's incomplete netting proposal justifies, in part, a reduction to IPL's weighted average cost of capital for purposes of determining the pretax return on IPL's investments. *Id.* Mr. Gorman also made recommendations regarding the 20% of the TDSIC revenue requirement subject to deferral, recommending that it should be based on the after-tax components of the TDSIC revenue requirement~~. Gorman at 17. He said, specifically, the incremental regulatory asset should reflect~~ reflecting reductions for income tax deductibility of the carrying charge debt interest expense, depreciation ~~expense,~~ and any other tax deductible costs~~. *Id.*~~ and that the after tax balance should be subject to a carrying charge. *Id.* at 17.

Mr. Gorman explained how he developed the amount of depreciation expense to reflect the change in accumulated depreciation reserve. *Id.* at 21-22. He claimed the Company only identified the specific FERC accounts that are related to distribution TDSIC plant investment and requested the Commission order the Company to identify the FERC accounts that relate to the transmission TDSIC investments, so that it is possible to calculate annual depreciation expense and the roll forward of accumulated depreciation reserve for transmission plant in the same manner that he did for distribution TDSIC plant here. *Id.* at 22.

He contended his proposed adjustments to IPL's TDSIC revenue requirement will better reflect the Company's actual incremental costs associated with its TDSIC Plan, and will better balance the interest of just and reasonable rates with IPL's recovery of its incremental TDSIC costs. Gorman at 3.

Mr. Gorman also proposed to reflect IPL's incremental cost of debt in the WACC used to develop the TDSIC adjustment factor rather than the Company's embedded debt cost. He said, market evidence indicates that the cost of new debt issuances to support IPL's incremental investment in TDSIC investments is lower than the Company's embedded cost of debt which is already being recovered in its base rates. He contended that IPL's incremental debt issue cost should be used in setting the TDSIC adjustment factor. Gorman at 2-3, 13-15. He recommended the cost of debt be set at 3.937%, which reflects IPL's most recent debt issuance in November, 2018. Mr. Gorman proposed the Commission direct IPL to adjust its revenue requirement calculations in subsequent TDSIC adjustment proceedings to reflect all debt issues starting with the 12-month period ending March 30, 2020 up until filing of the next base rate case, or until the end of the seven-year proposed TDSIC tracker. *Id.* at 15.

D. IPL Rebuttal. Mr. Rogers and Ms. Bulkley replied to the OUCC and Intervenor challenges to the Company's proposed revenue requirement.

1. Pretax Return – "Other Information".

a. WACC -- Cost of Long Term Debt. Mr. Rogers disagreed with Mr. Gorman's proposal that the incremental or marginal cost of debt be used in the calculation of the Company's WACC used in the calculation of the TDSIC pretax return. Rogers Rebuttal at 8.

He explained that Witness Gorman's proposal conflicts with the plain language of the governing statute. Mr. Rogers testified that "pretax return", a defined term in the statute, means revenues necessary (among other things) to "(1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements;" Ind. Code § 8-1-39-3. *Id.* at 9. He said "[w]eighted cost of capital" has long been a term recognized by this Commission as meaning the actual (and not a hypothetical) capital structure. *Id.* He added that the TDSIC Statute enunciates the "public utility's" capital structure and the "actual cost rates for the public utility's long-term debt" as considerations. He said, the statute does not refer to the incremental cost of debt for the eligible projects. Rather, it refers to the actual cost rates for the "public utility's" long term debt in the "public utility's" "weighted" capital structure. *Id.* at 10 (explaining that even where there was a specific rate case commitment by Northern Indiana Public Service Company ("NIPSCO") to finance a rate base addition with new debt authorized by the Commission for such purpose, the rate adjustments to reflect the capital additions were always based on the actual regulatory capital structure at the time. *Id.* (citing e.g., NIPSCO, IURC Cause No. 42150-ECR 23 (4/30/2014)).

Mr. Rogers stated that IPL has used the actual capital structure as of the rider cutoff date. Rogers Rebuttal at 9. He said, the Company's long term debt balance is a component of that capital structure. *Id.* He testified that the actual cost rate for that long term debt component of IPL's capital structure is the 4.98% used in the WACC calculation. *Id.* Mr. Rogers stated that an artificial lowering of that rate to the incremental (marginal) rate would not reflect the actual cost rates for the public utility's long term debt in IPL's capital structure. *Id.*

Mr. Rogers clarified that IPL will update the capital structure component balances and the actual cost rates for IPL's long term debt to calculate the WACC and pretax return for each subsequent TDSIC rider rate filing. *Id.*

Mr. Rogers explained that Witness Gorman's proposal is inconsistent with how rate base additions are financed. Rogers Rebuttal at 8, 11. Mr. Rogers stated that IPL finances capital needs to support the enterprise-wide investment needs of the entire utility, not individually for specific projects. *Id.* at 11. He stated that by financing the overall needs of the utility, and not just specific projects, IPL is able to finance itself more efficiently and effectively than if the Company financed individual projects separately. *Id.* He added that financing transactions come with, among other expenses; underwriting, legal, and rating agency fees. *Id.* He explained that if IPL were to do project specific financing, the Company would have to enter into financing transactions on a much more frequent basis, incurring the expenses described above each time. He said, this would be an inefficient way of financing and would add overall cost for both IPL and its customers. *Id.* He stated that IPL finances the aggregate need of the utility over time and seeks to limit the number of financing transactions in an effort to reduce the financing expenses incurred. *Id.* He said the appropriate cost of this capital mix is reflected in the standard calculation of the WACC using the utility's capital structure components, actual cost of long term debt component, and a cost of common equity determined by the Commission. *Id.* at 11.

Mr. Rogers said that to do as Witness Gorman proposes, which is to pick and choose various components of the capital structure and tie it to specific assets, is not practical. *Id.* Mr. Rogers explained that Witness Gorman is proposing that IPL utilize a cost of approximately 6% of its long term debt as IPL's actual cost of long term debt and ignore the remaining approximately 94% of long term debt. *Id.* He said, this is not representative of IPL's actual cost of long term debt and actual WACC. *Id.*

Mr. Rogers testified that use of IPL's actual cost of debt helps to smooth and reduce volatility that would be caused by using Witness Gorman's proposal where significantly more of the cost of debt calculation would be based on future debt offerings at uncertain and unpredictable interest rates. *Id.* at 12-13. He explained that if adopted, Witness Gorman's proposed approach would introduce volatility into the calculation of IPL's long term debt cost because Mr. Gorman's proposal would severely limit the number of debt issuances that are used to determine the cost of debt and would subject more of the calculation to future interest rate environments that, at a minimum, are unpredictable and could potentially be higher. *Id.* at 12. Mr. Rogers explained that using Witness Gorman's proposal, IPL's cost of debt calculation could hypothetically be limited to only two debt offerings, one of which would be based on a future issuance at an interest rate that is uncertain and one that currently only makes up $105 million. *Id.* Mr. Rogers said that using Mr. Gorman's proposal, the TDSIC pretax return would be calculated using a WACC that includes the cost rate of only 6% of IPL's $1.8 billion in total actual long term debt. *Id.* He added that should interest rates experience a significant increase between now and the timing of the IPL's next debt offering, which is uncertain at this point, this would lead to an outsized impact on the overall cost of debt. *Id.* He said there would only be two series of debt in the calculation leading to a much larger impact on the TDSIC cost of long term debt as compared to the impact it would have when using IPL's actual cost of debt associated with IPL's entire actual capital structure, which is comprised of a much larger pool of debt offerings. *Id.*

Mr. Rogers testified that the Company does not directly finance specific projects. *Id.* at 13. He said that as of the rider cutoff date, IPL has issued no new long term debt under the authorization granted in Cause No. 45115. *Id.* He added that when IPL does issue new debt, it will be to fund the overall investment needs of the Company, not specifically the TDSIC Plan. *Id.* He explained that specifically identifying the financed capital components and assigning them to specific investments is not practical nor required for utility ratemaking. *Id.* He testified that if a utility were to identify the specific capital components raised for a specific investment such as the TDSIC Plan, it would also be necessary to identify the incremental other components such as equity, deferred tax, prepaid pension asset, and other components of the rate making capital structure. *Id.* He added that it is not practical or necessary to maintain an alternative capital structure and component cost for the individual projects such as the TDSIC investment since, as discussed, IPL funds the overall cash needs of the utility, not specific projects. *Id.* He added that Section 13 of the TDSIC Statute directs the Commission to consider *the public utility's* capital structure and the *public utility's* actual cost of long term debt. *Id.* at 13-14. In his view, this language does not support the view that project specific financing should be used. *Id.*

Mr. Rogers explained that use of the marginal debt cost is inconsistent with the Commission's previous directive that the full ratemaking capital structure should be used in the TDSIC Rider pretax return. *Id.* at 14-15. He showed that in the Commission's February 17, 2014 Order in NIPSCO's TDSIC (IURC Cause No. 44371, p. 17) the Commission rejected a proposal to use the investor-supplied capital structure for the TDSIC rider pretax return and directed the utility to use the full ratemaking capital structure. *Id*. at 14-15. Mr. Rogers explained that if Witness Gorman's argument and reasoning were to be accepted, then it would mean the zero cost capital should be removed from the calculation of WACC as well. *Id.*

Mr. Rogers stated that the Company is calculating its WACC using its actual cost rates for long term debt in a manner consistent with the TDSIC Statute (Ind. Code § 8-1-39-13(a)(3)), IPL's rate cases and existing Environmental Compliance Cost Recovery Adjustment ("ECR") capital rider, and other Indiana investor-owned electric utilities' TDSIC rate proceedings. Rogers Rebuttal at 8, 15-16. He added that to force IPL to reflect the marginal cost of debt in its WACC would be an unfair change in ratemaking practice from these other utilities. *Id.* at 15. He added that this deviation may be viewed unfavorably by rating agencies who take notice when there is disparate treatment of individual utilities within the same state commission jurisdiction. *Id.*

Mr. Rogers testified that the cost of each series of IPL's debt reflects the market rates that were achievable at the time of the issuance based on the interest rate environment at that time. *Id.* at 16. Pointing to Witness Gorman's Attachment MPG-3, Mr. Rogers said IPL's actual effective cost rate is lower than the corresponding market rate. *Id.* He stated that IPL monitors its actual cost of debt and considers refinancing if the economics of a refinancing are favorable. *Id.*

He explained that the payment of make-whole premiums would serve to increase the overall cost to IPL and its customers and cannot be ignored in the decision to refinance long term debt. *Id.* Finally, Mr. Rogers explained that Witness Gorman's proposal to use the marginal cost of debt instead of the Company's actual cost of long term debt used in its actual capital structure increases pretax return during periods of rising interest rates. *Id.* at 17.

b. WACC -- ROE. Mr. Roger's disagreed with Witness Gorman's recommendation that the pretax return for TDSIC purposes should be lowered to reflect the reduction in risk arising from the preapproved rate recovery of the TDSIC investment. *Id.* at 17. Mr. Rogers explained that a reasonable and supported rate of return was settled and approved in IPL's most recent rate case (IURC Cause No. 45029 Order p. 27), which contemplated a TDSIC filing. *Id.* Mr. Rogers reiterated that capital investment trackers were considered to be widely available to the proxy group used to determine the ROE in IPL's general rate case and therefore approval of the Company's TDSIC Plan and use of the statutory cost recovery has not created a change in the risk considered in determining IPL's cost of equity in its most recent rate case. *Id.* at 17-18.

Mr. Rogers explained that the duration between IPL's TDSIC 1 rider and its most recent rate case order is similar to (slightly less than) that of NIPSCO's TDSIC in 2014 wherein the Commission rejected a proposal to reduce NIPSCO's authorized ROE outside the context of a basic rate case. *Id.* at 18-19. Quoting this decision, Mr. Rogers showed that the Commission's decision recognizes that the impact on the utility of the increase in the utility investment is offset by the cost recovery assurance and the 80% timely cost recovery provided in this statute. *Id.*

In reply to Mr. Gorman's characterization of TDSIC cost recovery as "accelerated", Mr. Rogers explained that regardless of recovery mechanism (TDSIC or rate case) the duration of recovery of the TDSIC investment is over the life that underpins the depreciation rates determined in IPL's depreciation studies. *Id.* at 19.

Mr. Rogers also explained that Mr. Gorman's proposal is not limited to TDSIC investments, explaining that Mr. Gorman's adjustment proposal for accumulated depreciation extends beyond the TDSIC assets and would use the TDSIC Statute to alter cost recovery for non-TDSIC investments. *Id.* at 19-20.

Ms. Bulkley explained that Mr. Gorman supports his initial ROE recommendation of 9.40% by noting that utility bond yields and authorized ROEs have declined since IPL's most recent basic rate case proceeding in 2018. Bulkley Rebuttal at 4, 32. She replied however that a comparison of bond yields between 2020 and 2018 is not appropriate given that capital markets have experienced levels of volatility not seen since the Great Recession of 2008/09 as investors rotate in and out of various asset classes responding to both positive and negative developments regarding the COVID-19 pandemic. Bulkley Rebuttal at 4, 31-33, 52. She said the Federal Reserve and U.S. Congress have responded with unprecedented policy measures in an effort to offset the economic effects of COVID-19. *Id.* She concluded that current market data is being influenced by external factors which make it inappropriate to conduct a comparison of the bond yields in 2020 to prior periods without considering the increased uncertainty and risk in financial markets. *Id.* also 38-52. Ms. Bulkley discussed current market conditions in detail and said recent market information demonstrates a greater risk to equity than the data used by the

Commission to set the ROE in the recent Duke Energy Indiana ("DEI") and Indiana Michigan Power Company ("I&M") cases. *Id.* at 40. She added therefore, that relying on current market data would likely suggest that the COE range has increased since the Commission established ROEs in those cases. *Id.* She concluded based on this data, that Mr. Gorman's proposal to reduce the TDSIC ROE to reflect current market conditions, is unsupported. *Id.*

Ms. Bulkley noted that in his Direct Testimony, Mr. Gorman relies on the average authorized ROE for electric utilities in 2020 to develop the market ROE for IPL's TDSIC of 9.40% but in response to a data request, he clarified that his recommended ROE for the TDSIC is 8.40% and should not be considered as a 9.40% ROE with a reduction of 100 basis points. *Id.* at 4. She said, considering the authorized ROEs between 2018 and 2020 for comparable electric utilities Mr. Gorman's ROE recommendation of 8.40% is well below the range of authorized ROEs considered by any state regulator for any vertically integrated electric utility. *Id.* at 4-5, 51-52. She added that IPL's current Commission-authorized ROE is within the COE range of reasonableness of 9.50% to 10.00% that the Commission developed in its most recent rate order for I&M and DEI. *Id.* at 51. She explained that when IPL's ROE is compared to comparable electric utilities in comparable operating jurisdictions for 2018 through 2020, the Company's Commission approved ROE is well within the range of authorized ROEs. *Id.* at 51-52.

Ms. Bulkley added that a reduction of 159 basis points from IPL's ROE that was authorized in its most recent basic rate case is unprecedented and is inconsistent with the ROEs set by the Commission in the pretax returns for TDSIC mechanisms that have been implemented by other Indiana utilities. *Id.* at 5, 7, 10-11, 52. She said adoption of Mr. Gorman's recommendation would reflect a dramatic change in the Commission's implementation of the TDSIC mechanism and would be viewed negatively by rating agencies. *Id.*

Ms. Bulkley also replied to Mr. Gorman's conclusion that authorized ROEs have been trending downward in recent years due to declining capital costs. *Id.* at 5. She explained that the average authorized ROE for electric utilities across the U.S. have been relatively stable since 2015. *Id.* at 5, 19, 51. She added that Mr. Gorman's calculation of the average authorized ROE for 2020 is biased downwards by the inclusion of an authorized ROE for a company which reflects a 100-basis point ROE penalty for management efficiency. *Id.* at 5, 17.

Ms. Bulkley testified that Mr. Gorman's analysis is further biased by a) his inclusion of all electric rate cases as opposed to relying on rate cases for comparable companies operating in comparable regulatory jurisdictions and b) his reliance on the average authorized ROE as opposed to considering the range of ROEs that have been authorized for electric utilities. Bulkley Rebuttal at 5, 17-18. She explained that a review of recently authorized ROE data, screening for those cases that are most comparable to IPL (*i.e.*, vertically integrated) who operate in comparable jurisdictions (*i.e.*, jurisdictions with a comparable ranking to Indiana from Regulatory Research Associates) the range of recently authorized ROEs is from 9.25% to 10.50%, demonstrating that IPL's currently authorized ROE of 9.99% is reasonable and appropriate in the current market environment. *Id.* at 5-6.

Ms. Bulkley also explained that IPL's current Commission authorized ROE of 9.99% is within the range of COE (*i.e.*, 9.50% to 10.00%) that the Commission viewed as reasonable in its recent basic rate orders for I&M (Cause No. 45235) and DEI (Cause No. 45253). *Id*. at 6. She said Mr. Gorman's recommendation of 8.40% is well below the Commission's range of reasonableness in those cases. *Id.* at 3-6, 9, 51-52. She said this is important because Mr. Gorman's ROE is below the range of reasonableness in the recent I&M and DEI cases even before the effects of COVID-19 are considered which have resulted in unprecedented risk and uncertainty in the financial markets. *Id.* at 6, 25-30, 32-38. Ms. Bulkley also explained that the Tax Cuts and Job Act ("TCJA") has been identified by the credit rating agencies as credit negative due to the increase to the financial risk of the utilities sector. *Id.* at 42. She stated that at a time when the credit rating agencies have concerns about the financial coverage ratios resulting from the TCJA and the effects of COVID-19, and are suggesting that higher ROEs and thicker equity ratios would be appropriate to provide greater financial stability, a reduction in the TDSIC ROE of 159 basis points, as proposed by Mr. Gorman, would likely be viewed negatively by rating agencies. *Id.*

Ms. Bulkley responded to Mr. Gorman's contention that the TDSIC shifts recovery risk and disagreed with the premise that the TDSIC tracking mechanism warrants a change in IPL's ROE. Bulkley Rebuttal at 45-49. She pointed out that Mr. Gorman recently testified in Oregon that it was not reasonable to adjust the return for regulatory risk, explaining that the total investment risk assessment of the utility in comparison to the proxy group (which includes regulatory and financial risk), is fully absorbed into the market's perception of the utility's risk and thus the use of the proxy group fully captures the utility's investment risk. *Id.* at 47. She stated that Mr. Gorman's position in this IPL TDSIC Rider proceeding is not consistent with his position taken in June 2020 in the Oregon rate case. *Id*.

Ms. Bulkley said the TDSIC Rider allows utilities that have significant projected capital investment plans to begin to recover those significant capital investments between rate cases. *Id.* at 6, 51. She said the TDSIC Statute also requires a utility using the TDSIC cost recovery mechanism to file a basic rate case before the expiration of the TDSIC plan. *Id.* at 6. She testified that once the utility has a basic rate proceeding, the TDSIC investments are included in basic rates and are recovered through traditional ratemaking mechanisms. *Id.* She added that the statutory TDSIC mechanism (*i.e.*, plan approval and associated cost recovery) is structured to reduce regulatory lag associated with recovery in between rate proceedings. *Id.* at 6, 48-49, 51. She concluded that there is no basis for Mr. Gorman's proposal to reduce IPL's TDSIC ROE for the implementation of the capital tracking mechanism. *Id.*at 6, 19, 51.

Ms. Bulkley testified that the Commission has historically not revised the ROE for a TDSIC tracker. *Id.* at 7, 24. She said the Commission has not reduced a TDSIC ROE as drastically as the 159 basis points that Mr. Gorman has proposed in this proceeding. *Id.* She added that the purpose of the TDSIC Statute is to incentivize companies such as IPL to invest in capital to improve and modernize their transmission and distribution systems. *Id.* She explained that a ROE for IPL's TDSIC rider that is 159 basis points below the Company's currently authorized ROE would be contrary to this purpose, which is to create incentives for capital investments. *Id.* at 7, 24, 29-30. She concluded that it is unlikely that the credit rating agencies would view such a change as credit supportive for IPL. *Id.* at 7, 24-25.

c. Depreciation Expense Netting. Mr. Rogers explained that IPL has completely addressed the double recovery concern raised by the OUCC in the Plan case by voluntarily reflecting netting of depreciation expense in the TDSIC Rider revenue requirement. Rogers Rebuttal at 3-4, 20-23. He explained that Witness Gorman's proposal that the Commission go beyond the OUCC's stated concern in the IPL Plan case, is unreasonable and should be rejected. *Id.* at 4, 21-23.

d. Accumulated Depreciation. Mr. Rogers explained that IPL has appropriately reflected accumulated depreciation on TDSIC projects in the TDSIC revenue requirement. *Id*. at 23. He showed that IPL's proposed schedules do and will continue to reflect accumulated depreciation as a reduction to Utility Plant for TDSIC projects as of the TDSIC cutoff date for each TDSIC filing. *Id.* 24.

Mr. Rogers testified that Witness Gorman's proposed adjustment to net plant investment goes beyond adjusting the WACC and is contrary to the TDSIC Statute. Rogers Rebuttal at 23, 24. Mr. Rogers explained it would not be appropriate to consider increases or decreases in net plant not related to the TDSIC Plan within the TDSIC Rider. *Id.* at 24. He stated that, as shown on IPL Attachment CAR-2 (included with his direct testimony) there are estimated to be approximately eleven FERC accounts that will house the TDSIC investment asset activity. *Id.* He said that in addition to TDSIC investment assets, IPL will record numerous other asset additions to these accounts as part of normal utility operations and infrastructure investment that are not related to TDSIC. *Id.* He explained that these FERC accounts house numerous other existing assets that IPL has placed in service over the past several years also not related to TDSIC. *Id.* Mr. Rogers testified that it is not appropriate to reflect these additions nor their changes in accumulated depreciation in a TDSIC rider filing. *Id.* He explained that the TDSIC is defined by statute to provide for timely recovery of 80 % of approved capital expenditures and TDSIC costs (IC 8-1-39-9). *Id.* He said, TDSIC costs means certain costs incurred with respect to eligible transmission and, distribution system improvements. (IC 8-1-39-7). *Id.* He said, the other costs in the referenced FERC accounts are not eligible costs and there is no requirement in the TDSIC Statute that requires IPL to capture the total change in "net plant in-service" for the non-TDSIC costs in the same FERC accounts in which IPL's TDSIC Plan investments are being made as proposed by Witness Gorman (pp. 17-18). *Id.* Mr. Rogers stated that the "other information" provision in Section 13 of the statute should not be used to expand the scope of the statute. *Id.* at 25.

Mr. Rogers added that Witness Gorman's proposal to reflect the accumulated depreciation on non-TDSIC assets in the FERC accounts used to record the TDSIC assets is incomplete because the proposal ignores the fact that IPL has recorded net plant additions to those same FERC accounts which more than offset the impact of the accumulated depreciation. *Id.* at 25, 26-27. Mr. Rogers explained that while IPL disagrees that any adjustment needs made to the TDSIC investment rate base for non-TDSIC assets recorded to the same FERC accounts that house TDSIC investment assets, if the Commission determines an adjustment is to be made, the adjustment would need to reflect all changes in net utility plant, including net additions. *Id*. at 27. Mr. Rogers stated that the impact of a complete adjustment would result in an increase to the revenue requirement and resulting rider factors as compared to what IPL has proposed. *Id.*

Mr. Rogers testified that Witness Gorman argues that IPL should reduce the TDSIC investment to determine the "net plant in-service" for purposes of calculating the TDSIC revenue requirement and Mr. Gorman utilizes the same argument to justify a reduction in IPL's WACC.

Id. at 25. Mr. Rogers explained that neither of these adjustments are necessary or appropriate and added that reflecting the adjustment in both places would be a double counting. *Id.* at 25-27.

e. Other Matters. Mr. Rogers explained that IPL had previously provided the FERC accounts where all (both distribution and transmission) TDSIC plant will be recorded. *Id.* at 28-29. He showed that Mr. Gorman's contention otherwise is unfounded. *Id.* Mr. Rogers added that in future TDSIC rider proceedings, IPL will continue to provide the FERC accounts used to record the TDSIC investment assets for 1) the assets placed in service as of the cutoff date and 2) the forecasted assets over the TDSIC Plan period for purposes of calculating the projected effects of the Plan on retail rates and charges. *Id.*

Mr. Rogers responded to Mr. Gorman's characterization of the IPL TDSIC Plan as "massive" and showed the Company's Plan falls within the range of the approved TDSIC plans of other Indiana investor-owned electric utilities on a total dollar basis and a dollar per customer basis. *Id.* at 29-30.

Mr. Rogers explained that IPL has reflected the revenue requirement components on an after-tax basis in the TDSIC revenue requirement as Witness Gorman suggests. *Id.* at 30-31. He stated that IPL is following essentially the same accounting Vectren uses in the TDSIC rate filings (Cause No. 44910). *Id.* at 31. He added that IPL is also following the same accounting for the TDSIC rate filings that is utilized and approved in IPL's long-standing ECR rate filings. *Id.* at 31. Mr. Rogers stated that to address the Commission finding in the IPL TDSIC Plan Order that IPL should remove the gross up for taxes associated with the 20% deferred regulatory asset from future filings, IPL is breaking out the tax gross-up separately as shown on IPL's Attachment NHC-10 and will continue to do so through IPL's next base rate case. *Id.* at 31. Mr. Rogers concluded that Witness Gorman's criticism should be rejected. *Id.*

Mr. Rogers disagreed with Witness Gorman contention that "[i]f IPL recovers the after-tax balance, it can be adjusted by the deferred balance for income tax in developing a revenue requirement cost recovery when the deferral balance is reflected in IPL's revenue requirement in its next rate case". Rogers Rebuttal at 31. Mr. Rogers explained that the regulatory deferral of 20% of the TDSIC revenue requirement is subject to tax in the year the activity is recorded. *Id*. He said one of the changes in tax law included in the TCJA was a change to the timing of when revenue must be reported as taxable income. He said this change requires that revenue must be reported as taxable income no later than the time when the income is reported for financial accounting purposes (IRC Section 451(b)(1)). He explained that when the regulatory deferral is recorded, revenue is also recorded which results in the annual activity in the regulatory deferral being treated as currently taxable. He said, consequently, there are no deferred taxes related to the deferral of 20% of the revenue requirement. He stated that because IPL will be paying income taxes on the 20% revenue requirement deferral when it is recorded, it is appropriate for it to be grossed up so that the utility is made whole. *Id.* at 31-32.

6. Statutory Requirements. We begin our discussion with a review of the governing statutory requirements. This is appropriate because the Commission is a creature of statute and, as such, must confine itself to implementing the legislature's policy, not debating or attempting to rewrite it. *Ind. Bell Tel. Co. v. Ind. Util. Reg. Comm'n*, 715 N.E.2d 351, 354 n.3

(Ind. 1999) (The Commission is a creature of statute and has no powers beyond those specifically granted it by the General Assembly).

Ind. Code § 8-1-39-9(a) permits a public utility that provides electric utility service to file with the Commission rate schedules establishing a TDSIC that will allow periodic adjustment of the utility's basic rates and charges to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs. This subsection provides that the petition must: (1) use the customer class revenue allocation factor based on firm load approved in the public utility's most recent retail base rate case order; (2) include the utility's TDSIC Plan; and (3) identify projected effects of the Plan on retail rates and charges. Ind. Code § 8-1-39-9(c) provides that the public utility shall defer the remaining 20% of approved capital expenditures and TDSIC costs, including depreciation, AFUDC, and post-in-service carrying costs, and shall recover those deferred capital expenditures and TDSIC costs as part of its next general rate case. Ind. Code § 8-1-39-9(d) provides that a public utility may not file a petition within nine months after the Commission issues an order changing the utility's basic rates and charges with respect to the same type of utility service. Ind. Code § 8-1-39-9(e) provides that a public utility that implements a TDSIC under this chapter shall, before the expiration of its TDSIC Plan, petition the Commission for review and approval of its basic rates and charges. Ind. Code § 8-1-39-9(f) provides that a public utility may file a petition for periodic relief under this section not more than once every six months. Ind. Code § 8-1-39-9(g) provides that actual capital expenditures and TDSIC costs that exceed the approval capital expenditures and TDSIC costs require specific justification by the public utility and specific approval by the Commission before being authorized for recovery in customer rates.

Ind. Code § 8-1-39-12(c) provides that if the Commission determines that the petition satisfies the requirements of Ind. Code ch. 39 and the capital expenditures and TDSIC costs are reasonable, the Commission shall approve the petition, including (1) capital expenditures; (2) timely recovery of TDSIC costs through a TDSIC and (3) if requested, authority to defer TDSIC costs under Ind. Code § 8-1-39-9(c).

Ind. Code § 8-1-39-13(a) provides that for purposes of calculating the TDSIC costs of a public utility, the Commission shall determine an appropriate pretax return for the public utility. In determining the appropriate pretax return, the statute directs the Commission may consider the following factors: (1) the current state and federal income tax rates. (2) the public utility's capital structure. (3) the actual cost rates for the public utility's long term debt and preferred stock. (4) the public utility's cost of common equity determined by the Commission in the public utility's most recent general rate proceeding. (5) other information that the Commission determines is necessary. Ind. Code § 8-1-39-3 defines "pretax return" to mean the TDSIC revenue necessary to: (1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements; (2) pay state and federal income taxes imposed on the net operating income calculated under subdivision (1); and (3) pay state utility receipts taxes associated with TDSIC revenues. Ind. Code § 8-1-39-13(b) provides the Commission shall adjust a public utility's authorized return for purposes of Ind. Code § 8-1-2-42(d)(3) to reflect incremental earnings from an approved TDSIC.

Finally, Ind. Code § 8-1-39-14 provides that the Commission may not approve a TDSIC that would result in an average aggregate increase in a public utility's total retail revenues of more than two percent in a 12 month period.

7. <u>Commission Discussion and Findings.</u>

A. <u>Indiana Code § 8-1-39-9(a).</u> IPL seeks approval of a TDSIC that will allow for the periodic adjustment of the Company's basic rates and charges to provide for timely recovery of 80% of the approved capital expenditures and TDSIC costs. Mr. Rogers and Ms. Coklow showed that IPL's Petition uses the customer class revenue allocation factors based on firm load agreed to and approved in IPL's most recent retail base rate case order. Rogers Direct at 6; IPL Attachment NHC-2. IPL's Petition also included a copy of IPL's Commission-approved TDSIC Plan and this was admitted to the record as IPL Attachment CAR-6. *Id.* As shown by this exhibit and discussed by Mr. Rogers, the TDSIC Plan document included with his attachment is a comprehensive exhibit. Mr. Rogers said Appendix 8.7 to this exhibit sets forth the cost estimates and year detail and plan projects by FERC account (sortable list). He said that for administrative efficiency, IPL proposes that going forward, IPL's TDSIC Rider filings include only Appendix 8.7 to comply with the Section 9(a) requirement that the Petition include the public utility's TDSIC Plan. IPL Witness Shields sponsored IPL Confidential Attachment JWS-1, which reconciles the cost estimates presented in Appendix 8.7 with actual TDSIC capital costs as of March 31, 2020. Finally, Mr. Rogers identified the projected effects of the Plan on retail rates and charges. Rogers Direct at 25-27. We find these proposals to be reasonable and appropriate and they are approved. We further find that IPL has complied with Indiana Code § 8-1-39-9(a).

B. <u>Indiana Code § 8-1-39-9(c).</u> IPL's TDSIC provides for timely recovery of 80% of approved capital expenditures and TDSIC costs. The Company proposes to defer the remaining 20% of approved capital expenditures and TDSIC costs, including depreciation, AFUDC, and post-in-service carrying costs, and to recover those deferred capital expenditures and TDSIC costs as part of its next general rate case. Ms. Coklow supported the TDSIC revenue requirement calculations, explaining among other things how Plan development costs, depreciation, and property tax expenses are treated in the calculation. Mr. Gorman contended that the amount of the TDSIC revenue requirement that should be included in the regulatory deferral should be based on the after-tax components of the TDSIC revenue requirement. Gorman Direct at 17; Rogers Rebuttal at 30-31. The record shows that IPL has reflected the revenue requirement components on an after-tax basis in the TDSIC revenue requirement. This is reflected in the calculation of the revenue conversion rates on IPL Schedule NHC-5, page 1. Rogers Rebuttal at 30-31. IPL is following essentially the same accounting Vectren uses in the TDSIC rate filings (Cause No. 44910). Furthermore, IPL is also following the same accounting for the TDSIC rate filings that is utilized and approved in IPL's long-standing ECR rate filings. To address the Commission finding in the IPL TDSIC Plan Order that IPL should remove the gross up for taxes associated with the 20% deferred regulatory asset from future filings, IPL is breaking out the tax gross-up separately as shown on IPL's Attachment NHC-10 and will continue to do so through IPL's next base rate case. As Mr. Rogers explained, the regulatory deferral of 20% of the TDSIC revenue requirement is subject to tax in the year the activity is recorded. Rogers Rebuttal at 31. Consequently, there are no deferred taxes related to the deferral of 20% of the revenue requirement. Because income taxes are paid based on the 20% revenue requirement deferral when it is recorded, it is appropriate for it to be grossed up so that the utility is made whole. *Id.* As discussed below, we find IPL's proposed WACC should be used in the TDSIC. We further find the Company's proposed cost recovery is reasonable and the filing comports with the governing statute. Accordingly, in accordance with Ind. Code § 8-1-39-12(c), the Commission approves the Company's Petition, including (1) capital expenditures; and (2) timely recovery of TDSIC costs through a TDSIC, and authorizes the requested deferral and subsequent recovery through rates under Ind. Code § 8-1-39-9(c).

C. <u>Indiana Code § 8-1-39-9(d).</u> Petitioner filed its Petition in this TDSIC-1 on June 18, 2020. The final order in IPL's most recent rate case (Cause No. 45029) is dated October 31, 2018. The Commission finds that the Verified Petition in this Cause was filed more than nine months after the Commission's most recent order changing the Company's basic rates and charges in accordance with Ind. Code § 8-1-39-9(d).

D. <u>Indiana Code § 8-1-39-9(e).</u> Mr. Rogers testified that the Company intends to petition the Commission for review and approval of its basic rates and charges prior to the expiration of its approved seven (7) year plan. The Commission finds Petitioner is in compliance with Ind. Code § 8-1-39-9(e).

E. <u>Indiana Code § 8-1-39-9(f).</u> Ind. Code § 8-1-39-9(f) states that "[a] public utility may file a petition under this section not more than one (1) time every six (6) months." This is the first TDSIC filing made by IPL. Mr. Rogers and Mr. Shields discussed the Company's plans regarding the staggering of its TDSIC rate and plan update filings. They also discussed the impact of COVID 19 on the ongoing engineering of future projects and the Company's December 2020 plan update filing. The witnesses for the other parties did not challenge these matters. The Commission finds that IPL's proposals are reasonable and consistent with the timeline for TDSIC filings set forth in the IPL TDSIC Plan Order (p. 27) and with Ind. Code § 8-1-39-9(f).

F. <u>Ind. Code § 8-1-39-9(g).</u> Mr. Shields provided the total actual capital expenditures associated with IPL's TDSIC Plan as of the March 31, 2020 cut-off date for this filing and the in-service costs for the TDSIC projects placed into service by March 31, 2020. Shields Direct at 9. Mr. Shields provided the construction work in progress costs for the TDSIC projects not placed into service by March 31, 2020 and described these projects. *Id.* at 15-16.

Mr. Shields identified and specifically justified the <u>individual</u> projects that have a cost greater than the Class 2 expected accuracy range. *Id.* at 9-10. He showed that one individual Circuit Rebuild project, (1) Center #7, has costs outside the accuracy range of the Class 2 estimate range, and two individual Circuit Rebuild projects, (1) Northwest #9 and (2) Northwest 1, have costs above the Class 2 estimated costs, yet inside the accuracy range of the Class 2 estimate. *Id.* Mr. Shields explained that at the Project type level, the effect of positive cost variances at the individual project level are absorbed by negative cost variances from other projects. *Id.* at 10. He said, for example, of the 13 Circuit Rebuild projects that were completed by March 31, 2020, just three have actual cost greater than the estimated cost. *Id.* He added that the 13 Circuit Rebuild projects have an aggregated estimated cost of $13,518,672 compared to an aggregated actual cost of $11,975,571. He said this results in $1,543,101 under the estimated cost. *Id.*

He testified that for the Circuit Rebuild projects that have been completed the general factors that are driving cost variances are construction labor costs, hydro-vac costs, line clearing costs and indirect costs (due to a change in the Company's cost allocation methodology for A&G costs). *Id.* He ~~specially~~specifically justified these cost variances, discussing the general cost factors driving the individual cost variances and the cost variances for each of the identified projects. *Id.* at 10-15.

Ms. Coklow explained what A&G costs are, explained the reason why the A&G cost allocation methodology was revised, and established that the change in methodology is well-grounded and equitable. Coklow Direct at 16-17. This testimony shows the purpose and process IPL used to establish, review and update its cost allocation methodology and specifically justifies how and why this change occurred. This testimony shows that IPL uses allocation methods to apply capitalized A&G costs across all projects such that each one shall bear its equitable proportion of such costs and so that the entire cost of a project includes both direct and overhead costs that have a definite relation to the construction activity. This testimony shows that IPL determined that A&G costs are incurred to support projects independent of whether the project is staffed with internal labor or outsourced labor; and the application of A&G costs to specific projects based on total construction costs (excluding material) is an appropriate and equitable application of A&G costs to specific projects.

No ~~other~~ witness challenged these cost variances. In particular, no witness challenged the rigor or timing of the process Ms. Coklow described or the conclusions IPL drew from its review. Consequently, IPL presented no rebuttal on this issue.

In their post hearing filing, the Consumer Parties argued for the first time, that the variance in indirect costs (*i.e.* A&G costs) should be rejected on the grounds that IPL failed to provide specific justification for the increase in indirect costs.

The Consumer Parties' characterize the indirect cost variance as a "609%" increase in indirect cost. CPPO (redline) at 27. This distorts the context of the cost variance. As the Commission has previously stated: "there is a danger in falling victim to the 'tyranny of large numbers' when we lack sufficient context in which to view them." *Re Duke Energy Indiana, Inc.*, Cause No. 43743 (IURC 10/19/2011), 294 P.U.R.4th 156, 173. The indirect cost variance of approximately $1.2 million is 9.1% of the previously approved capital expenditures estimated for the 13 in-service TDSIC Circuit Rebuild projects in this filing. Only three of these individual in-service projects have total costs that exceed the previous estimate for the individual project and the variance for one of these three is inside the accuracy range for the previous estimate. Furthermore, in total, the actual cost for these 13 Circuit Rebuild projects is 11.4% ($1.5 million) *less* than the previously approved cost estimate. This means IPL has managed the Project such that actual direct costs came in approximately $2.8 million (20.9%) under budget. The Consumer Parties focus unreasonably on one cost category (indirect cost) that is over budget but ignore both the individual cost category that is under budget (direct cost) and the overall end result, which also remains under budget.

Ms. Coklow explained what A&G costs are, explained the reason why the A&G cost allocation methodology was revised and established that the change in methodology is well-grounded and equitable. Coklow Direct at 16-17. IPL's testimony establishes the purpose and process IPL used to establish, review and update its cost allocation methodology and specifically justifies how and why this change occurred. *Id.* at 15-17.

The Consumer Parties' contention that the change in allocation methodology was made "*regardless of staffing*" is not correct. CPPO (redline) at 27. Ms. Coklow's testimony shows the change was made "*because*" a review of staffing determined that A&G costs are incurred when internal labor is used and when outsourced labor is used. Coklow Direct at 16.

The "best estimate" IPL presented in the Plan docket reflected the cost allocation methodology in place at the time. The TDSIC Statute does not prohibit a utility from reviewing and updating its cost allocation methodology. Such work seems reasonably undertaken during the ordinary course of business and no record evidence demonstrates otherwise.

We find the unchallenged evidence presented by IPL presents a well-grounded and satisfactory reason for the change in the Company's A&G cost allocation methodology and is reasonable under the circumstances presented. We find the evidence of record comports with our discussion of the meaning of the words "to justify" in *NIPSCO*, Cause No. 44403-TDSIC-1 (IURC 1/28/2015) at 20.

In accordance with Ind. Code § 8-1-39-9(g), we further find that the cost variances on the identified projects are supported by substantial evidence and have been specifically justified. We specifically approve these cost variances and authorize the recovery of these costs in customer rates.

G. Ind. Code § 8-1-39-13(a). Ind. Code § 8-1-39-3 defines "pretax return" to mean the TDSIC revenue necessary to: (1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements; (2) pay state and federal income taxes impose on the net operating income calculated under subdivision (1); and (3) pay state utility receipts taxes associated with TDSIC revenues. In determining the appropriate pretax return, the statute directs the Commission may consider the following factors: (1) the current state and federal income tax rates. (2) the public utility's capital structure. (3) the actual cost rates for the public utility's long term debt and preferred stock . (4) the public utility's cost of common equity determined by the Commission in the public utility's most recent general rate proceeding. (5) other information that the Commission determines is necessary. In the IPL TDSIC Plan Order and in accordance with the above referenced "other information" subdivision, the Commission determined it necessary to receive additional evidence to address two concerns raised in the Plan docket. IPL TDSIC Plan Order at 27.

The first identified concern is the OUCC's concern regarding double recovery of depreciation expense because the statute does not require that the TDSIC Rider revenues for new assets should be offset with the discontinued depreciation expense on the retirement of the replaced assets. IPL TDSIC Plan Order at 25-27 (noting Mr. Blakley recommended that IPL be required to recognize the retirement of replaced assets as a reduction in depreciation expense in its TDSIC tracker, and concluding that the definition of pretax return in Ind. Code § 8-1-39-3 requires that revenues be provided for the eligible TDSIC improvements (as defined by Ind. Code § 8-1-39-2), but does not require, or even suggest, any deduction or netting of replaced assets). See Rogers Direct at 11.

The second identified concern is the Industrial Group's concern with the shifting of risks based on plan approval. IPL TDSIC Plan Order at 27. As shown by the IPL TDSIC Plan Order (p. 10), the Industrial Group's witness, Mr. Collins, contended that "IPL's ROE approved in its most recent rate case reflects the risk of utility without a TDSIC plan and TDSIC plan pre-approval greatly reduces IPL's risk profile." Rogers Direct at 12. In the Plan case, the Company contended that this concern was premature, explaining that IPL did not seek approval of revenue requirement at that time. As a result, the Company did not attempt to rebut this concern in the Plan case. *Id.*

In the IPL TDSIC Plan Order, the Commission found it appropriate to wait until a future proceeding to explore how and to what extent to reasonably adjust IPL's WACC to address these identified concerns. We discuss these matters below.

1. Depreciation Expense. To address the OUCC's concern from the Plan case and to reduce controversy, IPL calculated depreciation expense on the retired and replaced assets and has included that depreciation expense amount as a credit to the depreciation expense recovery sought in this filing. Rogers Direct at 11-12. The netting of depreciation expense is presented on IPL Attachment NHC-6 Line 2. *Id.* Mr. Rogers explained that this netting of depreciation is calculated in the same way IPL has implemented the netting of depreciation in past Environmental Compliance Cost Recovery Adjustment filings for Mercury Air Toxics Standard ("MATS") equipment. He added that the effect of this adjustment is a reduction in the revenue that would otherwise have been recovered through the TDSIC rider, effectively reducing IPL's return on the new assets as compared to not reflecting the depreciation credit. *Id.* at 12, 15-16, 24.

OUCC witness Blakley testified that the OUCC accepts IPL's proposed adjustment to depreciation expense. Pub. Ex. 1 at 5. He also agreed that the netting of depreciation expense reflected in IPL's proposal has the effect of reducing IPL's pre-tax return. *Id.*

We agree that IPL's proposed netting of depreciation expense addresses the concern raised by the OUCC in the Plan case regarding the netting of depreciation expense on the assets retired due to the TDSIC Plan. Accordingly, as further discussed below, we find that no adjustment to the pretax return is necessary to address this concern.

Mr. Gorman contended that while IPL's proposal is consistent with the previous recommendation of the OUCC, it is incomplete because it only adjusts operating expense. Gorman at 3, 23-24. Mr. Gorman's recommended downward adjustment of IPL's Commission-approved ROE to 8.4% is based in part on his view that IPL's depreciation proposal is inadequate. Gorman, at 7-8, 12. While Mr. Gorman ~~also proposed~~discussed an adjustment to the TDSIC revenue requirement to reflect changes to the Company's rate base impacting both the return on, and of, IPL's plant in-service (*id.* at 23), the Consumer Parties clarified in their post hearing filing that they do not seek a revision to IPL's netting proposal on top of determining a TDSIC-specific return. Rather, the Consumer Parties propose an 8.4% ROE for TDSIC purposes in addition to IPL's proposal for netting depreciation expense. Consumer

Parties Post-Hearing Brief, at 8.[3] Mr. Rogers disagreed with Mr. Gorman, explaining among other things, how IPL completely addressed the double recovery concern raised by the OUCC in the Plan case by voluntarily reflecting netting of depreciation expense in the of the TDSIC Rider revenue requirement. Rogers Rebuttal at 3-4. He concluded that Witness Gorman's proposal that the Commission go beyond the OUCC's stated concern in the IPL Plan case is unreasonable and should be rejected. *Id.*~~at 23~~

Accordingly, as this evidence shows, we cannot reasonably find, as the Consumer Parties' urge us to do, that: "There is no disagreement that IPL's proposal represents only a partial adjustment to account for double recovery of depreciation." CPPO (redline) at 31. The Consumer Parties' proposal that the Commission adopt their punitive ROE "[i]n light of the fact that there is no dispute over this point" (*id.),* distorts the record evidence and is unreasonable. Accordingly, we reject the Consumer Parties' argument and recommendation.

As stated above, Ind. Code § 8-1-39-13(a)(5) permits consideration of "other information that the Commission determines is necessary." (emphasis added). In the IPL TDSIC Plan Order, the concern identified as warranting further exploration was the concern regarding depreciation expense raised by the OUCC in the Plan docket. There is no dispute that IPL's depreciation expense netting proposal addresses this OUCC concern. Mr. Gorman's ~~proposal~~concern exceeds the scope of the "other information" identified by the Commission as warranting exploration.

~~The~~As explained above, the IPL TDSIC Plan Order is addressed to two concerns related to the calculation of the pre-tax return. This Order did not invite proposals to adjust other components of the revenue requirement. To the contrary, the IPL TDSIC Plan Order affirmed the Commission's view that the statutory reference to "other information" concerns the WACC:

> We continue to believe that the TDSIC statute does not allow the Commission to offset the required revenues for the new assets with the retirement of the replaced assets. As we explained in our February 17, 2014 Order in NIPSCO, Cause No. 44371, the definition of pretax return in Ind. Code § 8-1-39-3 requires that revenues be provided for the eligible TDSIC improvements (as defined by Ind. Code § 8-1-39-2), but does not require, or even suggest, any deduction or netting of replaced assets. In addition, TDSIC costs as defined by Ind. Code § 8-1-39-7 includes this pretax return. It is also true that Ind. Code § 8-l-39-13(a)(5) allows the Commission to consider "other information" in determining the appropriate pretax return. However, in reconciling the statutory language of Ind. Code §§ 8-1-39-3 and 8-1-39-13, the "other information" can only reasonably be read as addressing the weighted average cost of capital ("WACC") rate rather than the investment amount in eligible TDSIC improvements.

IPL TDSIC Plan Order at 26.

[3] Mr. Gorman's testimony (p. 23) stated: "IPL's proposal is an incomplete adjustment to the TDSIC revenue requirement. The adjustment I describe above would reflect changes to the Company's rate base impacting both the return on, and of, IPL's plant in-service for purposes of the TDSIC revenue requirement". See also Gorman at 3, lines 8-24. To avoid any doubt about the Commission's position, we find such adjustments unreasonable. They are not permissible under the TDSIC Statute and their adoption would be inconsistent with the intention and purpose thereof.

The record shows that no TDSIC investment assets were in plant in service in IPL's most recent basic rate case. Consequently, the Company's basic rates do not reflect costs associated with the TDSIC Plan investment. ~~If adopted, ~~Mr. Gorman's ~~proposal to~~argument regarding the roll forward and ~~include~~inclusion of accumulated depreciation on non-TDSIC assets that reside in the same FERC accounts as TDSIC assets would effectively use the TDSIC Statute to alter cost recovery for non-TDSIC Investments. See Rogers Rebuttal at 20. The TDSIC is defined by statute to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs (Ind. Code § 8-1-39-9). TDSIC cost means certain costs incurred with respect to eligible transmission, distribution, and storage system improvements. (Ind. Code § 8-1-39-7). The other costs in those FERC accounts are not eligible costs. ~~There is no requirement in~~We find the TDSIC Statute ~~that requires IPL~~is not intended to capture the total change in "net plant in-service" for the non-TDSIC costs in the same FERC accounts in which IPL's TDSIC Plan investments are being made as proposed by Mr. Gorman (pp. 17-18). We decline to use the "other information" provision in Section 13 of the statute to expand the scope of the statute or override this intention. Accordingly, we find ~~Mr. Gorman's~~it would be unreasonable to adjust the TDSIC revenue requirement to reflect Mr. Gorman's concerns. We further find and conclude that the Consumer Parties' proposal to reduce the ~~TDSIC rate base for cumulative depreciation~~Company's ROE in an effort to capture changes ~~in~~associated with non-TDSIC assets ~~reaches outside the scope of the TDSIC mechanism as these costs do not fit the statutory definition of TDSIC costs. Therefore, we reject Mr. Gorman's proposed adjustment to the revenue requirement~~is unreasonable and should be denied.

We further find that no adjustment to the pretax return is reasonable or appropriate. First, to conclude otherwise would effectively use the "other information" clause of Section 13 to accomplish indirectly what we have declined to order directly. Second, we reject the suggestion that the TDSIC ratemaking framework is somehow unfair because it focuses on TDSIC costs and not on adjustments to basic rates and charges. As shown by Mr. Rogers' rebuttal, Mr. Gorman's testimony does not reasonably consider the substantial additional non-TDSIC plant investment made by the Company that is not reflected in its rates and charges for service. As described by Mr. Rogers, Witness Gorman's proposal to reflect the accumulated depreciation on non-TDSIC assets in the FERC accounts used to record the TDSIC assets is incomplete and ignores that IPL has recorded net plant additions to those same FERC accounts which more than offset the impact of the accumulated depreciation. Rogers Rebuttal at 20, 23-27. Accordingly, we find it unreasonable and unnecessary to adjust the Company's pre-tax return to address Mr. Gorman's concern.

Finally, IPL has stated that it will continue to provide the FERC accounts used to record the TDSIC investment assets for 1) the assets placed in service as of the cutoff date and 2) the forecasted assets over the TDSIC Plan period for purposes of calculating the projected effects of the plan on retail rates and charges. Rogers Rebuttal at 28-29. This appears reasonable and we so find.

2. Shifting of Risks Based on Plan Approval. In the Commission's February 17, 2014 Order in NIPSCO's TDSIC (IURC Cause No. 44371, p. 17), the Commission acknowledged the offsetting effects of the tracker's cost recovery security and timeliness and impact on the utility of the increased investment being made for the associated projects. Rogers Rebuttal at 18-19. In the NIPSCO proceeding, the Commission declined to adjust the ROE

component of the pretax return. While we decided to take another look at this issue in the instant case, we are not persuaded that Commission approval of IPL's TDSIC Plan and implementation of the statutory TDSIC cost recovery mechanism warrants a downward adjustment to the ROE approved by the Commission in the Company's most recent rate case.

As explained by Mr. Rogers, it is not appropriate to look only at risk-reducing factors and ignore factors that increase risk, such as the size of the capital expenditure needed to respond to the statutory objective of using a multi-year investment plan to address infrastructure needs systemically, which in turn provides efficiency and other benefits. The undertaking of IPL's TDSIC Plan increases capital expenditures beyond what would otherwise be undertaken. Without an approved TDSIC tracker, this would put pressure on IPL's 1) ability to satisfy credit metrics (operating cashflows metrics, EBITDA metrics, and debt metrics), 2) ability to issue debt at attractive rates, and 3) ability to maintain a balanced capital structure. Timely cost recovery through the TDSIC helps to offset these pressures.

Put another way, when paired with the introduction of a TDSIC Plan, the approval of a TDSIC rate mechanism is credit supportive and maintains the Company's opportunity to earn its previously authorized return. *Without* an approved mechanism to timely recover capital investment and TDSIC costs related to IPL's TDSIC Plan investment, IPL's opportunity to earn its authorized return and maintain the metrics used to establish its credit rating would diminish.

The Commission disagrees with the suggestion that the Company will face zero risk of disallowance or non-recovery or that there are no other checks and balances. As explained in the IPL TDSIC Plan Order (p. 23):

> After approval of a TDSIC plan, Ind. Code § 8-1-39-9 establishes procedures for TDSIC trackers, providing that "[a]ctual capital expenditures and TDSIC costs that exceed the approved capital expenditures and TDSIC costs require specific justification by the public utility and specific approval by the commission before being authorized for recovery in customer rates."

While IPL did not have a TDSIC Plan and tracking mechanism in effect at the time of its last rate case, the TDSIC Statute has been part of Indiana's utility regulatory framework since 2013. In this regard, the Commission's March 2020 approval of the IPL TDSIC Plan is not a departure from Indiana's existing a regulatory scheme. Furthermore, the proxy group used in IPL's most recent rate case to establish IPL's cost of equity also had various tracking mechanisms available, including trackers for new capital investment. Rogers Direct at 16-17. Thus, it would be incorrect to conclude that approval of the Company's TDSIC Plan and use of the statutory cost recovery has created a change in the Company's overall risk profile that would cause investors to specifically and measurably reduce their return requirements.

Accordingly, we decline to impose a downward adjustment to the ROE agreed to and approved by the Commission in the Company's most recent rate case based on the premise that the Company's risk profile has been reduced by the Commission's approval of the TDSIC Plan and the associated statutory cost recovery.

3. Market Changes and Other Concerns. Mr. Gorman also contended that the Company's Commission authorized return should be adjusted downward to account for current capital market costs. *E.g.* Gorman, at 5, 7, 12.

As an initial matter, we note that this is not "other information" the Commission determined to be necessary in the IPL TDSIC Plan Order. Intervenors were granted leave to participate in accordance with the Commission's rule on intervention, which among other things provides that Intervenors will not unduly broaden the issues.

As explained below, we disagree that Mr. Gorman's discussion of changes in economic conditions demonstrates that the ROE from IPL's most recent rate case is unreasonable.

First, the Commission's recent ROE findings in general rate cases for other Indiana electric utilities (I&M and DEI) depended on facts and circumstances in their specific utility case as well as the balancing that generally goes on in a general rate case. Witness Gorman's suggestion to look to the final ROE award in these other company cases gives a distorted picture of the reasonable range of the cost of equity for IPL.

Second, there is a difference between establishing a return on equity in a basic rate case and assessing whether a previous return warrants a downward adjustment. We find it is appropriate to recognize that there is a zone of reasonableness for returns. The record shows that IPL's 9.99 % ROE agreed to and approved in its most recent rate case is within the COE range of 9.50% to 10.00% the Commission recently established in the ~~recent~~ I&M and DEI basic rate cases. Bulkley Rebuttal at 9. The record also shows that IPL's current Commission-authorized return is reasonable based on range of recent returns of similar utilities in comparable jurisdictions. Bulkley Rebuttal at 21-23. We note that Mr. Gorman's calculation of the average authorized ROE for 2020 is biased ~~downwards~~downward by the inclusion of an authorized ROE for a company which reflects a 100-basis point ROE penalty. Bulkley Rebuttal at 12-13. There is no legitimate reason for punitive action against IPL in this case. As recognized in the IPL TDSIC Plan Order, IPL has a history of delivering safe, exceptionally reliable service at reasonable rates. IPL TDSIC Plan Order at 11, also 9, 10, 15, 23.

We find Mr. Gorman's comparison of bond yields between 2020 and 2018 does not adequately recognize that capital markets have experienced levels of volatility not seen since the Great Recession of 2008/09 as investors rotate in and out of various asset classes responding to both positive and negative developments regarding the COVID-19 pandemic. ~~We cannot~~The Consumer Parties' proposal (CP Post-Hearing Brief at 10) that we base our decision on the current market bond yields without regard to the underlying economic factors driving those yields lacks merit. It would be illogical for the Commission to reduce the Company's ROE based on "current market" information while excluding the economic conditions driving the current market. Furthermore, the Commission in an impartial fact-finding body. Ind. Code § 8-1-1-5. We find no reason to ignore the market data Ms. Bulkley presented which supports the conclusion that the COE is increasing, not decreasing. Bulkley Rebuttal at 11-12, 30-42. Additionally, just last year, Mr. Gorman testified to this Commission that an agreed 9.99% ROE was reasonable because capital market costs had not changed substantially since July 2016. *Id.* at 18. He made no attempt to reconcile his prior testimony with his testimony in the instant proceeding that suggests otherwise.

The Consumer Parties' post hearing argument that IPL's projected dividend payments indicate the COVID 19 pandemic has not adversely affected the Company's access to capital markets is also unpersuasive. CPPO (redline) at 30. As an initial matter, this is mere argument of counsel, not evidence.[4] As explained below, we find the Consumer Parties' new argument is not sufficiently supported by record evidence and decline to accept it. While the record includes the amount of IPL's past dividends and projected dividend for the remainder of 2020, this data does not prove the pandemic has not adversely affected the Company's access to capital markets. The record shows that IPL has not attempted to access capital during this period. The Commission notes that the concern is not whether the Company can do so at all, but rather the Company is positioned to do so at a reasonable cost. Also, the viability of the Company's forecast necessarily depend on numerous factors including whether the Commission orders the punitive result urged by the Consumer Parties in this case. Furthermore, the Consumer Parties' position implies that dividends are somehow contrary to the prudent management of a utility. Yet, no evidence supports this position. Mr. Gorman did not argue that the Company's dividends are grounds to decrease the ROE in the TDSIC Rider. The payment of dividends is important to maintaining a balanced capital structure. Retaining the equity within IPL as suggested by the Consumer Parties' argument would increase the equity ratio for IPL and this in turn would increase the overall cost to IPL's customers because the cost of equity is greater than the cost of long term debt.

Mr. Gorman has recommended an 8.40% ROE for IPL's TDSIC rider without providing any analytical support for a reduction of 159-basis points from IPL's currently authorized ~~ROE of~~ 9.99% ROE from the Company's most recent basic rate case. Mr. Gorman's 9.4% market change recommendation is slightly greater than Mr. Gorman's recommended ROE of 9.35% in IPL's most recent basic rate case which would actually imply an increase in capital market costs. Bulkley Rebuttal at 12-13. As discussed above, the TDSIC Statute is addressed to TDSIC capital expenditures and TDSIC costs. We reaffirm our position that the statute does not directly authorize the Commission to decrease this cost recovery to capture changes in basic rates. As also discussed above, the Consumer Parties' contention (CPPO (redline) at 31) that there is no disagreement on these matters lacks merit. *Cf.* Rogers Rebuttal at 3-4. Accordingly, we decline to use the "other information" clause to accomplish indirectly what the TDSIC Statute does not allow us to do directly.

Third, the Commission has not previously ordered a reduction in the ROE component of a TDSIC Rider pretax return for a company that has had regular rate cases. Bulkley Rebuttal at 24, 26-28. A sudden departure from past Commission practice may be viewed negatively by credit ratings agencies. The Commission's decision on the pretax return in a TDSIC rider may affect how credit rating agencies and the market perceive the risk associated with the TDSIC rider, which in turn could affect the ability of Indiana utilities to obtain financing for the TDSIC plans on reasonable terms. While the IPL TDSIC Plan Order sought certain "other information" to consider in establishing the Rider pretax return, we disagree with the Consumer Parties' assertion (CPPO (redline) at 31) that our decision to further explore these issues somehow nullifies these concerns. Furthermore, Ms. Bulkley testified that the TCJA has been identified by

[4] Mere argument of counsel is no substitute for substantial evidence, and the Commission must base its decision on the record. *See Monon R.R. v. Public Serv. Comm'n*, 241 Ind. 142, 170 N.E.2d 441, 442 (1960) (quoting *Public Serv. Comm'n v. Indiana Bell Tel. Co.*, 235 Ind. 1, 27, 130 N.E.2d 467 (1955)); *see also Keuster v. Inman*, 758 N.E.2d 96, 100 (Ind. Ct. App. 2001) (distinguishing evidence from argument of counsel).

the credit rating agencies as credit negative due to the increase to the financial risk of the utilities sector. Bulkley Rebuttal at 42.

In Cause No. 44371, which was a NIPSCO TDSIC rider case, the Commission declined to make an adjustment to the TDSIC ROE. In that case, the Commission noted that NIPSCO's authorized ROE was fairly recently determined in December 2011, which was only two years and a few months prior to the decision in the TDSIC case. In addition, the Commission noted the offsetting effects of the security and timeliness of the tracker's recovery mechanism and the investment that was being made. In the NIPSCO case, the Commission did not agree with Mr. Gorman's position that the TDSIC ROE needed to be adjusted for market conditions or that the TDSIC tracking mechanism necessarily reduces the risk of the utility. Bulkley Rebuttal at 13.

We decline to reach a different conclusion in the instant case. IPL has had two recent rate cases and will file ~~another~~at least one other case before the end of the TDSIC Plan. The Commission order approving the settlement in IPL's most recent rate case is relatively recent (October 31, 2018), approximately two years prior to the Order in the instant proceeding. The duration between IPL's TDSIC 1 Rider and its most recent rate case order is similar to (slightly less than) that of NIPSCO's TDSIC in 2014 wherein the Commission rejected a proposal to reduce NIPSCO's authorized ROE outside the context of a basic rate case. Rogers Rebuttal at 18.

IPL has and continues to be a solid provider of electric service. The record shows IPL strives to maintain comparatively low residential rates and has a solid track record of providing reliable service. IPL was commended for its performance in IPL's Asset Management Collaborative process and its asset management has been viewed as "exemplary". Rogers Rebuttal at 32. This too weighs against a decision to adopt ~~Mr. Gorman~~the Consumer Parties'~~s proposal~~ proposals.

Accordingly, the Commission declines to order a change in the Company's Commission approved ROE for purposes of calculating the pretax return in the TDSIC Rider.

4. Long Term Cost of Debt. Mr. Gorman proposes ~~that IPL~~the Commission should require IPL to use the Company's marginal cost of debt in the calculation of the WACC used in the TDSIC Rider rate (p. 14). This is not an issue identified in the IPL TDSIC Plan Order as warranting consideration.

As discussed below, this proposal conflicts with the plain language of the governing statute, is inconsistent with the calculation of pretax return in the context of other rate adjustment mechanisms and is inconsistent with how rate base additions are financed. The Company is calculating its WACC using its actual cost rates for long term debt in a manner consistent with the TDSIC Statute (Ind. Code § 8-1-39-13(a)(3)), IPL's rate cases, its existing ECR capital rider, and other Indiana investor-owned electric utilities' TDSIC rate proceedings. Rogers Rebuttal at 8.

While Ind. Code § 8-1-39-13 allows consideration of "other information the commission determines is necessary"~~ in determining the "appropriate pretax return", "pretax~~, this provision should not be used to nullify the very clear statutory directives in Sections 3 and 13. "Pretax return" is a defined term in the statute. It means revenues necessary (among other things) to "(1) produce net operating income equal to the public utility's weighted cost of capital multiplied by investments in eligible transmission, distribution, and storage system improvements;" Ind. Code § 8-1-39-3. "Weighted cost of capital" has long been a term recognized by this Commission as meaning the actual (and not a hypothetical) capital structure. Indeed, the TDSIC Statute enunciates the "public utility's" capital structure and the "actual cost rates for the *public utility's* long-term debt" (emphasis added) as considerations. The statute does not refer to the incremental cost of debt for the eligible projects. It refers to the actual cost rates for the "public utility's" long term debt in the "public utility's" "weighted" capital structure. This language does not support the view that an approach more in line with project specific financing approach should be used.

The "other information" clause is more properly viewed as authority to make a change in the event the "other information" shows the "actual cost rate for the public utility's long term debt" and capital structure are somehow unreasonable, which is not the case here. In fact, the record shows IPL's actual effective cost rate is lower than the corresponding market rate. Rogers Rebuttal at 15 (citing Witness Gorman's Attachment MPG-3). Mr. Gorman is proposing that IPL utilize a cost associated with approximately 6% of its long term debt as the public utility's actual cost of long term debt. Mr. Gorman's proposal ignores the remaining approximately 94% of the public utility's long term debt. We find the incremental cost identified by Mr. Gorman is not representative of IPL's actual cost of long term debt and actual WACC. Rogers Rebuttal at 11.

~~Lowering~~We find that lowering IPL's cost of long term debt to the incremental (marginal) rate as proposed by Mr. Gorman would not reflect the actual cost rates for the public utility's long term debt in IPL's capital structure. IPL proposes to update the capital structure component balances and the actual cost rates for IPL's long term debt to calculate the WACC and pretax return for each subsequent TDSIC rider rate filing. Rogers Rebuttal at 9. We further find that Mr. Gorman's proposal, which ignores all preexisting debt, will not produce IPL's weighted cost of capital multiplied by the TDSIC investments as required by Ind. Code § 8-1-39-3. *Id.* at 9-10.

IPL has used the actual ratemaking capital structure as of the rider cutoff date. See IPL Attachment NHC-5, pg. 3 (showing common equity percentage of ratemaking capital structure is 41.50%; long term debt is 47.95%). The Company's long term debt balance is a component of that capital structure. The actual cost rate for the long term debt component of IPL's capital structure is the 4.98% used in IPL's WACC calculation. IPL's long term debt is comprised of debt issuances that were issued between 2004-2018 totaling $1.8 billion. Each of IPL's series of debt reflects market interest rates at the time of its respective offering. Witness Gorman has proposed to use the debt cost rate of IPL's 2018 debt offering, totaling $105 million, and then adjusting based on the actual cost rate of future financings needed to fund the TDSIC program. If adopted, Witness Gorman's proposed approach would introduce volatility into the calculation of IPL's long term debt cost. Rogers Rebuttal at 12. The use of IPL's actual cost of debt helps to smooth and reduce volatility that would be caused by using Witness Gorman's proposal. *Id.* at 13.

The record shows that IPL does not directly finance specific projects. Rogers Rebuttal at 13. IPL finances capital needs to support the enterprise-wide investment needs of the entire utility, not individually for specific projects. *Id.* at 11~~. By financing the overall needs of the~~

~~utility, and not just specific projects, IPL is able to finance itself more efficiently and effectively than if the Company financed individual projects separately. *Id*~~.

Mr. Gorman's proposal to use the marginal debt cost is inconsistent with the Commission's previous directive that the full ratemaking capital structure should be used in the TDSIC Rider pretax return. Rogers Rebuttal at 13-14. In the Commission's February 17, 2014 Order in NIPSCO's TDSIC (IURC Cause No. 44371, p. 17), the Commission rejected a proposal to use the investor-supplied capital structure for the TDSIC rider pretax return and directed the utility to use the full ratemaking capital structure. The Commission explained:

> The pre-approval of TDSIC projects and the timely recovery of TDSIC costs are regulatory tools that work to enhance the assurance and timeliness of cash flow to cover investments that utility investors fund. It seems reasonable that such investors would likely have a different risk-return expectation when making an investment in a standalone project versus an investment in an ongoing enterprise. NIPSCO presented no evidence that it expects to finance its TDSIC projects outside of its normal utility funding process. *Accordingly, we are not persuaded that a capital structure more in line with project specific financing is appropriate.* The regulatory capital structure for NIPSCO as an enterprise includes equity, debt and zero cost capital. *We believe NIPSCO and other Indiana utilities are better viewed as an ongoing concern that utilizes all of their capital resources in a holistic manner to finance that ongoing concern, including resources which have no cost attached.* This view and methodology is consistent with other long-standing capital investment trackers such as the ECRs. Accordingly, the Commission finds that NIPSCO shall calculate WACC in a manner consistent with its last rate case and ECR proceedings, which includes zero cost capital in the capital structure.

Id. (emphasis added). If Witness Gorman's argument were to be accepted, then it would mean the zero cost capital should be removed from the calculation of WACC as well and an alternative capital structure and component cost established. Rogers Rebuttal at 11, 15. However, as Mr. Rogers explained, this approach is not practical. *Id.*

The Consumer Parties' effort to distinguish the instant case based on comparison of the total cost of IPL's seven-year TDSIC plan to the test year rate base in the Company's last rate case is unpersuasive. CP Brief, at 20. The Consumer Parties' comparison ignores the substantial post-test year investment already made by the Company and the ongoing non-TDSIC investment the Company will continue to make over the course of the seven-year plan. Moreover, the record shows that IPL is an ongoing concern that utilizes all of its capital resources in a holistic manner to finance the ongoing concern. By financing the overall needs of the utility, and not just specific projects, IPL is able to finance itself more efficiently and effectively than if the Company financed individual projects separately. Rogers Rebuttal at 11.

The record reflects that in their TDSIC filings, NIPSCO (IURC Cause No. 44733), DEI (IURC Cause No. 44720), and Vectren (IURC Cause No. 44910) are each using their actual capital structure and actual cost of long term debt for all long term debt in their capital structure and not a marginal or incremental long term debt rate. To force IPL to reflect the marginal cost of debt in its WACC would be an unfair change in ratemaking practice from these other utilities. Further, this deviation may be viewed unfavorably by rating agencies who take notice when there is disparate treatment of individual utilities within the same state commission jurisdiction. Rogers Rebuttal at 15.

~~A~~As stated above, a change in practice is not warranted by IPL's cost of debt. The cost of each series of IPL's debt reflects the market rates that were achievable at the time of the issuance based on the interest rate environment at that time. Rogers Rebuttal at 16. This is evidenced in Witness Gorman's Attachment MPG-3. As explained by Mr. Rogers, IPL's actual effective cost rate is generally lower than the corresponding market rate. Rogers Rebuttal at 16.

The record shows that IPL monitors its actual cost of debt and considers refinancing if the economics of a refinancing are favorable. There are often substantial make-whole premiums that would be required to be paid in order for IPL to re-finance the vast majority of its outstanding debt. Like other utilities, IPL typically issues long term fixed rate debt. This is an attractive way to finance utility investments as it gives long term interest rate certainty to both IPL and its customers. In order to refinance this debt early, a make-whole payment has to be made to the debt-holders that effectively makes the holders "whole" on what they would have otherwise been owed had the debt been outstanding until its maturity date. The payment of this make-whole premium would serve to increase the overall cost to IPL and its customers and cannot be ignored in the decision to refinance long term debt. Rogers Rebuttal at 16.

Accordingly, we reject Mr. Gorman's proposal. We approve IPL's use of its actual capital structure as of the rider cutoff date and ~~its~~IPL's proposed use of the public utility's actual cost rate for the long term debt component of IPL's capital structure in the calculation of the pretax return for the TDSIC Rider.

H. Code § 8-1-39-13(b). IPL requests approval to adjust Petitioner's authorized return for purposes of Ind. Code § 8-1-2-42(d)(3) to reflect the incremental earnings that will result from this TDSIC Rider filing. This request comports with the governing statute and is hereby approved.

I. Ind. Code § 8-1-39-14 (Average Aggregate Increase in Total Retail Revenues). Mr. Rogers and Ms. Coklow addressed the calculation of the aggregate increase in IPL's total retail revenues as a result of this TDSIC Rider filing and demonstrated that such increase is less than the 2% statutory TDSIC limit set forth in Ind. Code § 8-1-39-14. Rogers Direct at 25; Coklow Direct 15. As shown on IPL Attachment NHC-11, the TDSIC 1 filing results in an average aggregate increase of 0.28% in total retail revenues. Accordingly, the Commission finds that Petitioner's proposed TDSIC-1 factors will not result in an average aggregate increase in total retail revenues of more than 2% in a 12-month period.

J. Confidential Information. As noted above, IPL filed three Motions for Protection and Nondisclosure of Confidential and Proprietary Information in this Cause, each of which was supported by an affidavit showing that certain information to be submitted to the Commission is trade secret information as defined in Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. The Presiding Officers found the information which is the subject of each Motion should be held confidential on a preliminary basis, after which the information was submitted under seal. After review of the information and consideration of the affidavits, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. IPL's actual capital expenditures and TDSIC costs, including specifically the individual project costs that exceed the previously approved individual project cost estimates, are approved by the Commission and authorized for recovery in customer rates.

2. IPL is authorized to recover 80% of the capital expenditures and TDSIC costs incurred in connection with its TDSIC Plan and to defer 20% of the eligible and approved capital expenditures and requested TDSIC costs incurred in connection with the TDSIC Plan, including ongoing carrying charges on all deferred costs, for recovery in its next general rate case.

3. IPL is authorized to record ongoing carrying charges based on the full AFUDC rate calculated in accordance with the ~~order~~return on equity authorized in Cause No. 45029 on all deferred capital expenditures and TDSIC costs until such costs are recovered in IPL's base rates as a result of its next general rate case.

4. IPL's requested TDSIC factors and associated revisions to its tariff, as set forth in IPL Attachment NHC-12 Revised are approved to be effective for bills rendered by IPL for the first billing cycle following approval of this Order and continuing until replaced by different factors approved in a subsequent filing.

5. Prior to implementing the approved TDSIC factors, Petitioner shall file the applicable rate schedules under this Cause for approval by the Commission's Energy Division.

6. IPL is authorized to adjust its net operating income to reflect the approved earnings associated with the TDSIC for purposes of Ind. Code § 8-1-2-42(d)(3).

7. The information filed in this Cause pursuant to IPL's Motions for Protective Order is deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 8-1-2-29, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:
APPROVED:

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

Mary Becerra, Secretary of the Commission

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