

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION


JLG



PETITION OF INDIANAPOLIS POWER & LIGHT)
COMPANY, AN INDIANA CORPORATION, FOR)
AUTHORITY TO (1a) EXECUTE AND DELIVER LONG-)
TERM LOAN AGREEMENTS TO BORROW UP TO A)
MAXIMUM OF \$171,850,000 AGGREGATE PRINCIPAL)
AMOUNT OF FIXED OR VARIABLE RATE SECURED OR)
UNSECURED LONG-TERM DEBT; AND (1b) CAPITAL)
LEASE OBLIGATIONS NOT TO EXCEED \$10,000,000 IN)
AGGREGATE PRINCIPAL AMOUNT OUTSTANDING AT)
ANY ONE TIME; (2) TO EXECUTE AND DELIVER ONE OR)
MORE SUPPLEMENTAL INDENTURES TO ITS)
MORTGAGE AND DEED OF TRUST DATED AS OF MAY 1,)
1940 AS SUPPLEMENTED AND AMENDED, FOR THE)
PURPOSE OF CREATING OR SECURING EACH NEW)
SERIES OF FIRST MORTGAGE BONDS; (3) TO EXECUTE)
AND DELIVER PROMISSORY NOTES AND OTHER)
EVIDENCE OF UNSECURED INDEBTEDNESS RELATING)
TO ISSUANCE OF LONG-TERM DEBT; (4) TO EXECUTE)
LONG-TERM LIQUIDITY FACILITIES DEEMED)
APPROPRIATE BY PETITIONER TO PROVIDE LIQUIDITY)
FOR VARIABLE INTEREST RATE OBLIGATIONS)
CURRENTLY OUTSTANDING AND AS MAY BE ISSUED)
HEREIN, THROUGHOUT THE LIFE OF THE)
UNDERLYING OBLIGATION; (5) TO ENTER INTO)
INTEREST RATE RISK MANAGEMENT TRANSACTIONS)
IN CONNECTION WITH ITS OBLIGATIONS CURRENTLY)
OUTSTANDING AND AS PROPOSED TO BE ISSUED)
HEREIN, THROUGHOUT THE LIFE OF THE)
UNDERLYING OBLIGATION(S); AND (6) AUTHORITY TO)
APPLY THE NET CASH PROCEEDS FROM THE SALE OF)
SUCH LONG-TERM DEBT, AFTER PAYMENT OF)
EXPENSES INCURRED IN CONNECTION THEREWITH,)
TO DISCHARGE, REFUND OR REPLACE CERTAIN)
SERIES OF ITS FIRST MORTGAGE BONDS AND OTHER)
OUTSTANDING INDEBTEDNESS.)

CAUSE NO. 43565

APPROVED: JAN 07 2009

BY THE COMMISSION:

David E. Ziegner, Commissioner
Loraine L. Seyfried, Administrative Law Judge

On August 28, 2008, Indianapolis Power & Light Company (“IPL” or “Petitioner”) filed its Verified Petition and supporting testimony in this Cause seeking authority to issue the

securities, to provide funds to lawfully refund or refinance its obligations, including the possible redemption of debt, and to enter into capital leases for general corporate purposes ("Proposed Financing"). On November 12, 2008, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the testimony of Greg A. Foster. On November 21, 2008, Petitioner filed its Notice of Intent Not to Prefile Rebuttal Testimony.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was held in this Cause on December 15, 2008, at 1:30 p.m. in Room 224 of the National City Center, Indianapolis, Indiana, at which time Petitioner and the OUCC presented their pre-filed testimony. No member of the public appeared or otherwise sought to participate in these proceedings.

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

1. **Notice and Jurisdiction.** Due, legal and timely notice of the time and place of the public hearing conducted by the Commission in this Cause was given and published as required by law. Petitioner is a "public utility" as defined in Ind. Code § 8-1-2-1(a) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana including, among other things, with respect to the issuance and sale of securities. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is a corporation organized and existing under the laws of the State of Indiana, with its principal office at One Monument Circle, Indianapolis, Indiana. IPL owns, operates, manages and controls electric generating, transmission and distribution plant, property and equipment and related facilities, which are used and useful for the convenience of the public in the production, transmission, delivery and furnishing of such utility service.

3. **Petitioner's Evidence.** Petitioner presented the following evidence through its Verified Petition and the direct testimony of Connie R. Horwitz, Treasurer and Assistant Secretary of IPL.

A. **Petitioner's Existing Capitalization.** At June 30, 2008, the capitalization of Petitioner amounted to \$1,683,325,000 and consisted of long-term debt in the amount of \$896,568,000 (net of unamortized discount of \$1,082,000); cumulative preferred stock in the amount of \$59,784,000; and common equity in the amount of \$726,973,000. All of the outstanding bonds, preferred stock and common stock have been duly authorized by Orders of the Commission.

At June 30, 2008, the long-term debt of Petitioner was represented by thirteen series of First Mortgage Bonds and two unsecured notes. The outstanding First Mortgage Bonds have been issued under and pursuant to a Mortgage and Deed of Trust dated as of May 1, 1940, as supplemented and modified by supplemental indentures (hereinafter collectively referred to as the "Mortgage"). A schedule showing the long-term debt obligations of Petitioner at June 30,

2008, was submitted into evidence. At June 30, 2008, the First Mortgage Bonds, the two unsecured notes, and capital lease obligations constitute the only long-term debt obligations of Petitioner.¹ Petitioner had no other outstanding indebtedness except current liabilities at June 30, 2008.

The issued and outstanding capital stock at June 30, 2008 was comprised of five separate issues of Cumulative Preferred Stock totaling 591,353 shares with a par value of \$100 per share, 17,206,630 shares of Common Stock without par value, and Retained Earnings. A schedule showing capital stock and retained earnings of Petitioner at June 30, 2008 was submitted into evidence.

B. Proposed Financing. IPL seeks Commission approval of its Proposed Financing for the two year period ending December 31, 2010 that would permit IPL, from time to time, during this period, to issue a maximum aggregate indebtedness of \$181,850,000 that IPL anticipates will be comprised of: (1) \$171,850,000 issued to retire, refund, or redeem four debt issues currently outstanding (“Redemption Series”); and (2) \$10,000,000 in Capital Leases (“Lease(s)”) entered into for general corporate purposes.

C. Purpose of the Proposed Financing. The proceeds from Petitioner’s Redemption Series would be used to refund certain outstanding debt obligations currently in variable-rate mode (“Outstanding Debt”), which includes the following:

<u>Description</u>	<u>Balance Outstanding (000’s)</u>	<u>Redemption Price</u>
City of Petersburg Pollution Control Refunding Revenue Bonds Series 1995B Adjustable Rate Tender Securities due 01-Jan-2023	\$40,000	100%
City of Petersburg Pollution Control Refunding Revenue Bonds Series 2005A Auction-Rate Securities due 01-Jan-2016	\$41,850	100%
City of Petersburg Pollution Control Refunding Revenue Bonds Series 2005B Auction-Rate Securities due 01-Jan-2023	\$30,000	100%
Indiana Finance Authority Environmental Facilities Revenue Bonds, Series 2006A Auction-Rate Securities due 01-Sep-2041	\$60,000	100%
Total Refundings	\$ 171,850	

¹ Additional off-balance sheet indebtedness of Petitioner includes the \$50 million Asset Securitization of Petitioner’s accounts receivable in 1996. Petitioner expenses interest incurred therefrom as an operating expense in accordance with FAS-140.

The authority requested by IPL in the Verified Petition will not result in any net increase in Petitioner's long term debt. Petitioner also requests authority to issue First Mortgage Bonds in order to secure its repayment obligations relating to the Redemption Series (the "New Bonds") and for the ability to enter into liquidity facilities or other similar facilities as credit enhancers on the Redemption Series, including the New Bonds or any unsecured notes.

Connie R. Horwitz stated that the Redemption Series will be made for maturities not to exceed 40 years at fixed or variable market interest rates and may be in the form of promissory notes or other unsecured evidences of indebtedness or secured debt issued pursuant to Petitioner's Mortgage and Deed of Trust.

Ms. Horwitz explained the basis for her belief that IPL's request to retire, refund or redeem the Outstanding Debt is prudent. She stated that over the last several years Petitioner has entered into loan agreements with the City of Petersburg, Indiana (the "City") and the Indiana Finance Authority (the "IFA") to borrow the proceeds from bonds issued by the City and the IFA. Petitioner proposed to retire, refund or redeem four of these debt issues, as set forth in the Verified Petition ("Outstanding Debt"). In order to improve the credit ratings and lower the interest rates on the Outstanding Debt, Petitioner purchased bond insurance as a part of the transactions. Over the last several months, the credit ratings for most of the companies selling the bond insurance ("Bond Insurers") have been downgraded due to erosion in their capital structures. Because of these events and other market conditions, interest rates on the Outstanding Debt backed with bond insurance have increased in volatility. Petitioner believes that it is advantageous to obtain the authority to issue the Redemption Series should Petitioner deem it desirable and in the best interest of its customers to issue bonds under a different structure, for example, without the enhancement of the bond insurance and either in variable or fixed rate interest modes.

Ms. Horwitz stated that the terms of the trust indentures of the Outstanding Debt provide Petitioner with the ability to change the interest rate mode on the bonds. In addition, the same bonds can be offered in the municipal marketplace bearing interest under a different mechanism such as fixed, or some form of variable rate mode. She stated that while this may be an option Petitioner elects, since the bond insurance associated with the Outstanding Debt is non-cancellable, it may be desirable to refund, redeem or retire the Outstanding Debt and issue new bonds without the enhancement of the insurance.

Ms. Horwitz explained that IPL utilizes its tax-exempt portfolio to manage its floating rate interest exposure because historically tax-exempt debt has offered the lowest variable interest rates and provides long term liquidity. Three of the four Outstanding Debt issues are Auction Rate Securities ("ARS") which have long-dated maturities with market interest rate resets every 7 days through an auction process. She stated that in the event there are insufficient orders from prospective investors to cover sell orders from current investors in the auction process, the auction "fails" and the interest rate is set to the maximum auction rate as prescribed in the bond documents. The interest rate setting process continues each week with rates being set at a rate that clears the market, or if there are insufficient orders, at a rate equal to the maximum rate. Ms. Horwitz went on to explain that the maximum auction rate as prescribed by Petitioner's bond documents is 12% and that if an auction reset fails, the investor must hold their position in the security until sufficient buy orders exist to cover all sell orders. She stated that

while the Outstanding Debt issues have never experienced a failed auction to date, liquidity and other concerns in the market have had the affect of increasing the volatility of the weekly auction interest resets.²

Ms. Horwitz stated that the remaining Outstanding Debt issue is an Adjustable Rate Tender Security ("ARTS"). The mechanism by which the interest rate is reset is similar to the mechanism described earlier for the ARS, except that if there are not enough buy orders from potential investors to cover sell orders during a particular week, the firm responsible for resetting the interest rate on the bonds can either take a long position in the security until a buyer is found, or the firm can deem the remarketing unsuccessful, or failed. She explained that if deemed failed, the interest rate is set at the maximum rate (12% for the Outstanding Debt) and the investor may tender for their position by requiring the issuer to draw upon some type of liquidity facility dedicated to the bonds to satisfy their sell order. She noted that as with the ARS, IPL has never experienced a failed remarketing. However, it has seen volatility in the interest rate resets associated with these bonds. Ms. Horwitz stated that IPL entered into a swap agreement for this bond whereby the variable interest stream associated with the bond was swapped with the counterparty for a fixed interest stream. Therefore, even though the variable interest rates during 2008 have been volatile, IPL's interest rate exposure has been capped at 5.21%. Ms. Horwitz stated that, as a result, IPL's analysis to retire, refund or redeem this issue will be considered differently than any decision related to the ARS and will include, among other things, an analysis regarding the economics involved in unwinding the swap agreement.

Ms. Horwitz stated that while IPL does not have a proposed time schedule with respect to carrying out the Proposed Financing, she explained that IPL would like the ability to execute in the marketplace on a timely basis should IPL and its Board of Directors deem it desirable to do so. She opined that the Proposed Financing is advantageous and in the best interest of IPL, the public it serves and its security holders, and necessary in the operation of IPL. Ms. Horwitz stated that action authorizing the filing of the Petition in this Cause was taken by the Board of Directors by unanimous consent effective August 21, 2008.

D. Petitioner's Request to Execute and Deliver Supplemental Indentures to its Mortgage. Petitioner seeks authority to issue and sell, for cash, at not less than 95% of the face value thereof, plus accrued interest (if any) to the date of delivery thereof, New Bonds to secure its repayment obligation relating to the Redemption Series. Each series of New Bonds shall be created under a supplemental indenture to the Mortgage, to be executed and issued under and pursuant to the provisions of the Mortgage and supplemental indenture; each series shall be dated as of the date of such supplemental indenture or as of such other date or dates as may be permitted by the Mortgage and such supplemental indenture; each series shall be due and payable not less than twelve months or more than forty years after the date thereof; each series to bear interest at fixed or variable rates; and each series to be issued and sold at such price and to have such other terms and characteristics as shall be determined by the Board of Directors of the Petitioner within the limitations and in accordance with the terms and provisions of the Mortgage.

² The Commission notes that subsequent to the filing of Ms. Horowitz's testimony in this Cause, IPL's Outstanding Debt issues did experience an auction failure and interest rates were reset at the maximum rates of 12% per annum. See Form 10-Q for IPALCO Enterprises, Inc. (Nov. 6, 2008).

E. The Proposed Unsecured Notes. Petitioner proposes to issue, sell, and deliver for cash new promissory notes or other unsecured evidences of indebtedness ("Notes") at such prices and with such other terms and characteristics as shall be determined by Petitioner's Board of Directors; provided that the issuance of New Bonds as heretofore described and such Notes as described in this paragraph shall not, in aggregate, exceed the maximum aggregate amount requested in this Cause.

F. The Proposed Capital Lease Obligations. Petitioner also seeks Commission approval to enter into, from time to time, over a period ending December 31, 2010, up to \$10,000,000 principal amount of Lease obligations outstanding at any one time, for terms not to exceed ten years. Petitioner proposes to utilize Leases to acquire property and equipment in order to optimize the cost of financing commensurate with the underlying asset's expected life. The Leases shall have structures and terms similar to other forms of debt financing, but with the potential, in certain instances, to lower the overall cost associated with financing property and equipment acquisitions. IPL does not expect the amount financed under such Leases, excluding transaction costs, to be more than the net capitalized cost of the appraised value of the underlying property or equipment, in conformity with accounting principles generally accepted in the United States of America.

G. The Proposed Long-Term Liquidity Facilities to Provide Credit Enhancements, which may be in the Form of Credit Agreements, Promissory Notes, or Letters of Credit. Petitioner seeks authority to enter into long-term liquidity facilities to provide liquidity for variable interest rate obligations currently outstanding and as proposed to be issued hereunder throughout the life of its outstanding indebtedness and its Redemption Series, including the New Bonds or Notes, in order to provide liquidity for such securities. IPL's Verified Petition indicates that such liquidity facilities are often required in order to persuade investors of certain variable interest rate obligations to buy such securities, particularly those securities with mandatory put features that must be remarketed to other investors. Petitioner proposes to enter into such liquidity facilities, which may be in the form of credit agreements, promissory notes or letters of credit, with terms and characteristics as shall be determined by Petitioner's Board of Directors. The authority to enter into any liquidity facilities in connection with the Redemption Series, including the New Bonds or Notes issued in this Cause, shall not expire with the expiration of the authority to issue the New Bonds or Notes in this Cause, but such authority shall remain throughout the term of the New Bonds or Notes. This authority to enter into long-term liquidity facilities shall be in addition to the authority the Commission granted to Petitioner to enter into multi-year credit facilities under Cause No. 42968, dated March 22, 2006.

H. The Proposed Interest Rate Risk Management Transactions. Petitioner seeks authority to enter into interest rate risk management transactions for currently outstanding obligations and the obligations issued as part of the Redemption Series, including the New Bonds or Notes. Petitioner seeks authority to enter into any such interest rate risk management transactions throughout the life of any of these underlying obligations in order to mitigate the interest rate risk associated with such securities. Such interest rate risk management transactions would include, but not be limited to, interest rate swaps, caps, floors, collars, forwards, forward starting swaps, treasury locks or similar products, the purpose of which is to manage interest rate risk and costs. Petitioner proposes to enter into such interest rate risk management transactions

with terms and characteristics as shall be determined by Petitioner's Board of Directors. The authority to enter into the interest rate risk management transactions shall not expire with the expiration of the authority to issue the Redemption Series, including the New Bonds or Notes under this Petition, but such authority shall remain throughout the term of the currently outstanding obligations or the Redemption Series, including the related New Bonds, or Notes.

I. Petitioner's Capitalization and Balance Sheet. A Balance Sheet of Petitioner as of June 30, 2008, and an Income Statement of Petitioner for the twelve months ended June 30, 2008, were submitted into evidence. Ms. Horwitz testified the original cost net utility plant exceeds the total capitalization of Petitioner. The Commission has repeatedly recognized that due to historic inflation and other factors, Petitioner's fair value of its net utility plant would exceed its net original cost, and thus, once Petitioner completes the financing transactions contemplated herein, Petitioner's total capitalization will not exceed the fair value of Petitioner's net utility plant.

4. The OUCC's Position. The OUCC submitted the prefiled testimony of Greg A. Foster as its evidence in this case. Mr. Foster testified that his review of IPL's Petition focused on the following main areas: the specified uses of the proceeds; the proposed interest rate structure; recent trends in the ARS market; and IPL's capitalization, earnings, cash flows, and credit ratings.

Mr. Foster stated that in considering IPL's capitalization, earnings and cash flows, he compared standard measures of the Petitioner's financial performance and position to those of a peer group of utilities; he analyzed Petitioner's cash flow; he also checked credit ratings assigned to the Petitioner by widely-recognized rating agencies, including Standard and Poor's and Moody's. He noted that IPL has a lower total debt/total equity ratio than the peer group analyzed and that IPL also has significantly higher recurring operating earnings. The results of Mr. Foster's analyses are found in Exhibits A, B and C to his prefiled testimony. He concluded that in light of the information he reviewed and the current volatility of the U.S. financial markets, IPL's proposed capitalization did not appear to be unreasonable.

Based on his review, Mr. Foster testified that the OUCC does not object to IPL's additional requested financing authority or to its proposed December 31, 2010 deadline for exercising that authority. Additionally, Mr. Foster testified that the OUCC does not oppose the Petitioner's request for authority to enter into interest rate risk management agreements or long-term liquidity facilities. However, he emphasized the need for Petitioner to prudently exercise such authority. Mr. Foster requested that both the Commission and the OUCC be notified, in writing, within 30 days of Petitioner exercising any of the financing authority approved in this Cause. He recommended that each notice of issuance state the principal amount borrowed, the applicable interest rate(s), how the interest rate(s) was (were) determined, any collateral required, the term of the borrowing and any other pertinent repayment terms. Finally, Mr. Foster testified that the OUCC does not waive its rights in future proceedings to review Petitioner's financing decisions, including interest rate risk management agreements and long-term liquidity facilities used, to determine whether such transactions were consistent with the authority granted in this Cause and were reasonable and prudent at the time they were made.

5. **Commission Discussion and Findings.** We find that approval of the Proposed Financing is in accordance with the provisions of Indiana law relating thereto including, but not limited to, Ind. Code § 8-1-2-76, 77 and 78 and is necessary and desirable in the operation and management of the business of Petitioner.

We also find that Petitioner's proposed use of fixed or variable rate securities is reasonable and should be approved. In addition, we find Petitioner should be authorized to execute interest rate risk management transactions, letters of credit or liquidity facilities, which authority shall be in effect throughout the life of any of these underlying obligations in order to mitigate the interest rate risk associated with such securities. Petitioner has agreed to notify both the Commission and the OUCC, in writing, within 30 days of Petitioner exercising any of the financing authority approved in this Cause and that each notice of issuance should state the principal amount borrowed, the applicable interest rate(s), how the interest rate(s) was (were) determined, any collateral required, the term of the borrowing and any other pertinent repayment terms.

Accordingly, we find that IPL's Proposed Financing as set forth in the findings herein should be approved and a Certificate of Authority should be issued to Petitioner to proceed with such financing program.

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

1. There shall be, and hereby is issued to Petitioner, a Certificate of Authority for the issuance of securities, upon the terms and conditions, of the character, for the consideration, in the manner, and for the purposes, set forth in this Order, including:

- (i) authority to issue from time to time over the period ending December 31, 2010, up to \$171,850,000 in aggregate principal amount of fixed or variable rate secured or unsecured long-term debt in amounts and on terms consistent with the evidence submitted herein;
- (ii) authority to execute capital lease agreements not to exceed \$10,000,000 on terms consistent with the evidence submitted herein;
- (iii) authority, to the extent long-term debt issued pursuant to this authority is secured, to execute and deliver Supplemental Indentures supplementing and amending the Mortgage in order to create new series of Mortgage Bonds and to specify the characteristics thereof in accordance with the terms and provisions of the Mortgage;
- (iv) authority to the execute and deliver promissory notes and other evidence of unsecured indebtedness relating to such long-term debt;
- (v) authority to execute long-term liquidity facilities or other credit enhancements on terms consistent with the evidence submitted herein;

- (vi) authority to execute interest rate risk management transactions on terms consistent with the evidence submitted herein; and
- (vii) authority to use and apply the cash proceeds arising from the issuance of the long-term debt and/or capital lease obligations as provided herein.

2. Within thirty (30) days after exercising any of the financing authority approved in this Cause, Petitioner shall submit a report in this Cause to the Commission with a copy to the OUCC, which report shall state the principal amount borrowed, the applicable interest rate(s), how the interest rate(s) was (were) determined, any collateral required, the term of the borrowing and any other pertinent repayment terms.

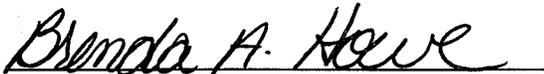
3. The authority granted in this Order shall expire on December 31, 2010 to the extent it has not been utilized by that date. However, Petitioner's authority to execute interest rate risk management transactions, long-term liquidity facilities or other credit enhancements related to the financing transactions authorized herein shall remain in effect throughout the life of the underlying obligations in order to mitigate the interest rate risk associated with such securities.

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

HARDY, GOLC, LANDIS, AND ZIEGNER CONCUR; SERVER ABSENT:

APPROVED: JAN 07 2009

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



**Brenda A. Howe,
Secretary to the Commission**