

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

*[Handwritten signatures and initials]*

IN THE MATTER OF THE APPEAL OF THE )  
 CONSUMER AFFAIRS DIVISION'S ) CAUSE NO. 44159  
 DECISION REGARDING ELECTRIC )  
 SERVICE TO 151 NORTH DELAWARE ) APPROVED:  
 STREET, INDIANAPOLIS )  
 )  
 RESPONDENT: INDIANAPOLIS POWER & )  
 LIGHT COMPANY )

DEC 05 2012

ORDER OF THE COMMISSION

**Presiding Officers:**

**James D. Atterholt, Chairman**

**Aaron A. Schmoll, Senior Administrative Law Judge**

This matter comes to the Indiana Utility Regulatory Commission ("Commission") as an appeal from a decision of the Commission's Consumer Affairs Division ("CAD"). On January 26, 2012, the CAD issued an Informal Complaint Resolution concerning a consumer complaint presented by Hertz Investment Group ("Hertz") against the Indianapolis Power & Light Company ("IPL"). On February 2, 2012 Hertz filed a Request for Director Review, in accordance with 170 IAC 16-1-5(d). Pursuant to Section 5(e) of that rule, the Commission created the docket for this Cause.

By Docket Entry dated March 8, 2012, the Presiding Officers noted the review would be based on the materials in the CAD record, and accordingly established a filing schedule and set an oral argument for April 18, 2012. Hertz subsequently sought leave to conduct specified discovery, insofar as it did not have that opportunity during the informal CAD proceedings, and by Docket Entry dated March 15, 2012, the Presiding Officers confirmed that discovery was permissible.

IPL filed its Response and Answer on March 28, 2012, and Hertz filed its Reply on April 9. Along with the Reply, Hertz filed a Motion to Supplement the Record with the discovery responses provided by IPL. IPL then requested the hearing be postponed until the state of the record could be clarified, and by Docket Entry the hearing was rescheduled to May 15, 2012.

On April 19, 2012, IPL filed its Response to the Motion to Supplement the Record. In that response, IPL opposed the motion, addressed certain arguments in the Reply, and stated if further evidence is admitted then its own supplemental evidence should also be considered. Attached to the IPL filing were evidentiary materials including a 13-page affidavit, new charts and graphs, and additional discovery responses. Hertz filed its reply in support of the motion to supplement on April 26, objecting to IPL's alternative proposal to offer further evidentiary materials. By Docket Entry dated May 11, 2012, the Presiding Officers granted the Hertz motion

to supplement, and granted in part the IPL request to submit further materials, allowing inclusion only of the Hertz responses to IPL discovery requests.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an Evidentiary Hearing was held in this Cause on May 15, 2012 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Hertz, IPL and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared. During the Hearing, the Presiding Officers took administrative notice of the Record compiled by the CAD during its investigation of this complaint, in addition to the supplemental materials provided by Hertz. Hertz and IPL also presented argument. No members of the public participated at the hearing.

Based upon the applicable law and the administrative record, the Commission now finds:

**1. Jurisdiction and Notice.** Due, legal, and timely notice of the hearing conducted in this Cause was given as required by law. IPL is a public utility as defined in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission as provided in the Public Service Commission Act. The Commission has specific statutory authority to review any decision of CAD upon request pursuant to Ind. Code §8-1-2-34.5, 170 IAC 1-1.1-5, and 170 IAC 16-1.

**2. The CAD Record and Supplemental Record.** The record consists of four exhibits marked at the hearing: (1) Administrative Notice 1 consists of the CAD record, which both parties have referenced with citations to sequentially numbered pages, a convention adopted in this Order; (2) Administrative Notice 2 consists of the IPL discovery responses attached to Hertz’s April 9 motion to supplement; (3) Administrative Notice 3 consists of the Hertz discovery responses attached as Exhibit C to IPL’s April 19 Response; and (4) Administrative Notice 4 consists of the Corrected Prehearing Notice of Updated Outage History, provided to the Commission on the day of the hearing.

The case detail entries for the CAD review are set forth at pp. 13-16 of Adm. Notice 1. The original Hertz complaint is the communication at pp. 17 and 24. Referring to the Gold Building as Market Square Center, 151 N. Delaware St., or 215 E. Ohio St.<sup>1</sup> (hereinafter, the “Gold Building”), the complaint states the location has suffered excessive outages attributable to IPL equipment, 11 outages in the past 21 months, and describes the hardship to Hertz and its tenants, which include the Marion County Prosecutor’s Office, the ATF, the Secret Service and Indiana Legal Services, among others. *Id.* It also notes the highly publicized downtown system problems IPL has experienced recently. *Id.*

Through Mr. Sweeney, Hertz provided the CAD analyst with: copies of schematics of the Gold Building transformers (*see* Adm. Notice 1 at 20); an Outage History for the Gold Building through March 2011 (as provided to Hertz by IPL) (*id.* at 21-22), and a comparable Outage History for the other Hertz Building at 251 East Ohio Street (referenced in the document by its vault location of 140 North Alabama) (*id.* at 23). In contrast to the Gold Building, the Outage

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<sup>1</sup> Hertz also owns the building located at 251 E. Ohio Street, which receives service from IPL under Rate SL. 215 E. Ohio Street is the location of the underground vault that serves the Gold Building.

History for the other Hertz building showed only one feeder fault and no outages since 2009. *Id.* at 23.

IPL provides service to the Gold Building pursuant to the terms and provisions of Rate HL, as approved by the Commission and set forth in IPL's filed tariff. A copy of Rate HL is included in the record at Adm. Notice 1, pp. 26-28. It provides for service by IPL at higher than normal voltage, with the customer then assuming responsibility to transform the electricity to normal service voltage using customer-owned equipment. The Character of Service portion of Rate HL states: "All distribution transformers, lines and other equipment on the Customer's side of the point of delivery shall be installed, owned, operated and maintained by the Customer." *Id.* at 26. The rate is discounted to reflect the altered scope of responsibility between IPL and the customer, although there is some dispute as to the extent of the discount. *See* Tr. at 35, 53-54.

IPL provided the CAD with a 9-page letter from Mr. Holtsclaw dated November 4, 2011, addressing the merits of the complaint. *See* Adm. Notice 1 at 57-65. The letter stated that when the Gold Building was being built in the early 1970s, the original owner decided to take service at higher voltage under Rate HL and hence installed customer-owned transformers. *Id.* at 58. Although two transformers would be enough to handle the building's peak load, the owner installed three transformers, with an automatic mechanism to switch load to the idle transformer in the event of an interruption. At some point, however, the automatic switch became inoperable, leading to the utilization of a manual switch by Hertz. *Id.*; *see also* Tr. at 13 (noting switch has not been functional for 20 years).

According to IPL, the service provided to the Gold Building was reasonably adequate and the service problems were attributable to the absence of an automatic switch. *See* Adm. Notice 1 at 58-63. IPL noted that it had replaced a length of primary cable in response to the service complaints. *Id.* at 62. IPL contrasted the experience of the other Hertz building at 251 East Ohio, which is served through IPL's standard secondary network at normal service voltage. *Id.* at 60. Service to that building, accordingly, is provided through an IPL-owned vault. *Id.* The IPL letter stated:

This location has not experienced any service interruptions because this is a secondary spot network vault where the loss of a primary feeder does not result in a service interruption because the secondary side of the transformers are electrically connected together to form one common connection point. For this arrangement to work properly requires the use of special protection equipment called network protectors that are connected to the transformers. This is the standard service arrangement for the majority of building in the downtown network area.

*Id.* That other building is served by two IPL feeders, and the loss of either feeder would not result in an outage to the building. *Id.* at 63.

IPL identified options to improve service to the Gold Building, for which IPL maintained Hertz would bear all cost responsibility. *See* Adm. Notice 1 at 63-64. IPL provided a cost estimate associated with a new vault installation for the Gold Building at a total nearing \$2.5 million. *Id.* at 52-55. One cost estimate provided by IPL for a new automatic switch was in the

\$400-500 thousand range (*see* Adm. Notice 1 at 41), but that option is complicated by the configuration of the three transformers. *See* Tr. at 48-49; *see also* Admin. Notice at 6; Admin. Notice 3, Response to Request No. 1-10. There was no discussion in the 9-page IPL letter of any efforts to determine the reasons why the frequency of service interruptions to the Gold Building has increased since 2010. *See* Adm. Notice 1 at 57-65.

IPL followed up on its letter with a meeting with CAD personnel and submission of additional documents, including a list of other customers sharing circuits with the Gold Building and schematics for the power arrangements at the two Hertz buildings. *See* Adm. Notice 1 at 71-74. Hertz followed up with information about an additional outage that occurred while the CAD review was occurring. *Id.* at 75, 79, 81, 84.

The CAD prepared sets of questions for both Hertz and IPL, which were answered in writing by the parties. *See* Adm. Notice 1 at 130-32, 135-37. In its answers, Hertz provided detail about the feeder interruptions to both of its buildings, described the equipment and arrangements, summarized the maintenance history for the Gold Building vault, and explained the operation of the existing manual switch and the three transformers. *Id.* at 130-32.

In its written responses to the CAD questions, IPL described the “standard service” received by the vast majority of the customers served through IPL’s downtown network of underground facilities. *See* Adm. Notice 1 at 135. The Gold Building is only one of six such customers receiving service at higher voltage, and only one of two served under Rate HL. *Id.* For nearly all of IPL’s downtown customers, receiving normal service voltage, the standard service arrangement typically utilizes network protectors that are provided by IPL, so that “the loss of one feeder does not result in an outage to the facility.” *Id.* at 135-36.

IPL further described the various interruptions affecting the Gold Building. *See* Adm. Notice 1 at 136-37. It revised the outage history to indicate an incident involving the loss of two feeders would have resulted in a complete outage to the Gold Building. *Id.* at 137. IPL stated:

IPL recognized an issue with the feeders that serve the 151 N Delaware building and has replaced sections of the underground primary cable. IPL continues to monitor the performance of those three circuits and if further issues are observed, IPL will schedule additional cable replacements.

*Id.* IPL described Rate HL as a tariff that “provides a lower price but obligates the customer to own, operate and maintain any equipment necessary for voltage reduction.” *Id.*

In addition to the CAD record, pursuant to the May 11, 2012 Docket Entry, the record was supplemented with discovery responses by both IPL and Hertz. The IPL responses included an updated Outage History for both the Gold Building and the other Hertz building at 251 East Ohio. *See* Adm. Notice 2. The Outage History for the Gold Building showed two additional “Cable fault” incidents causing partial outages to the Gold Building subsequent to the CAD record. *Id.* Item 1-1A. The Outage History for the Hertz building at 251 East Ohio showed no further events. *Id.* Item 1-1B. The IPL responses also identified and provided service interruption histories for customers in three categories: (1) similar office buildings in downtown Indianapolis, all of which are served at normal voltage with network protectors provided by IPL

(Request 1-2); (2) those served by the same circuits as the Gold Building (Request 1-4); and (3) those receiving service under Rate HL (Request 1-6).

The Hertz discovery responses provided information regarding the customer-owned equipment, its maintenance history, switching capabilities, cost estimates, identification of Hertz personnel and contractors, service alternatives, operational costs, transformer configurations, and communications relating to the electric service to the two Hertz buildings. *See* Adm. Notice 3.

At the hearing, a final exhibit was marked and admitted, stating that two additional feeder interruptions affecting service to the Gold Building had occurred since the most recent update. *See* Adm. Notice 4. With clarification, counsel for IPL confirmed the incidents did occur as indicated. *See* Tr. at 6-8.

**3. Commission Discussion and Findings.** The primary issue in this matter concerns the tariff language of Rate HL, specifically concerning the scope of the customer-owned equipment required under that rate schedule and the adequacy of IPL's service under that rate. The Commission will also address cost responsibility for any repairs or changes to Hertz's service.

The Rate HL tariff sheet No. 58 reads as follows:

Standard Characteristics-Three phase, sixty cycle alternating current, delivered and metered at one point on Customer's premises, at primary distribution voltage (approximately 4,160 or 13,200 volts), sub-transmission voltage (approximately 34,500 volts), or transmission voltage (approximately 138,000 or 345,000 volts). All distribution transformers, lines and other equipment on the Customer's side of the point of delivery shall be installed, owned, operated and maintained by the Customer.

Non-Standard Characteristics: If the Customer desires service necessitating transformers (including circuit breakers, supporting structure and supplementary equipment) which do not conform to the standards of the Company as to design, voltage ratio or capacity, or if the Customer desires exclusive use and or control of the transformers (whether standard or nonstandard), such transformers shall be installed, owned, operated and maintained by the Customer, and the point of delivery in either case shall be at the high voltage side of the transformers.

Adm. Notice 1 at 26.

According to IPL, the quoted language in Rate HL requires Hertz, as the customer, to provide and maintain an automatic switching system in order to ensure continuous service in the event of a feeder outage. According to Hertz, on the other hand, the customer-owned equipment called for in Rate HL is that needed to transform the higher voltage to normal service level, and the customer is not obligated under the tariff to provide additional equipment to combat outages in IPL service.

Rate HL differs from Rate SL, under which IPL serves a majority of downtown customers. Under Rate SL, IPL controls and maintains all equipment necessary to provide service to its customers, but at a higher cost than under Rate HL. However, under both rates, IPL provides redundancy to prevent outages. Under Rate SL, the equipment necessary to provide the redundant service is operated by IPL. Under Rate HL, however, the tariff provides that the customer shall install, operate, and maintain “all . . . other equipment” on the Customer’s side of the point of delivery. Further, the record suggests the design and installation of the service in the 1970s was based on the customer’s request, and it is undisputed that the customer purchased and installed the equipment necessary to switch between the three customer-owned transformers in the event of an outage from one of the three high voltage feeds to the building.

Hertz’s present request to shift responsibility for switching equipment is contrary to the plain language of Rate HL and the history of the design and installation of the service to the building. Accordingly, we find that the CAD decision with respect to Rate HL and customer-owned equipment was correct.

Hertz attempts to bolster its argument by citing to what it described as an excessive number of outages the Gold Building has suffered since 2003. According to Admin. Notice 2, 1-1A, the Gold Building has encountered 34 outages since 2003, and 2 additional outages prior to the date of the hearing in this Cause. *See* Admin. Notice 4. Since 2010, Hertz asserts that 17 outages occurred. However, the record indicates that only one of those incidents would have resulted in a loss of power to the Gold Building if the customer-owned switching equipment functioned properly. As noted above, IPL provides redundant service feeds to the Gold Building, and unless two of the three feeders fail, the Gold Building should not experience an outage. This appears consistent with the service history of “Customer 1” as shown in Admin. Notice 2, 1-6. Moreover, as IPL noted, Feed UG 459 is a back-up feed, so any outage on that circuit would not cause a building outage, absent additional outages on the other two circuits.

Based on this record, the outages Hertz has encountered at the Gold Building are, with the exception of one incident, a result of Hertz’s failure to adequately maintain its automated switching equipment. The record reflects that IPL has made repairs to its feeder circuits when warranted. We agree with IPL that customers are entitled to reasonably adequate service, not perfection. Accordingly, we find that IPL has provided reasonably adequate service to the Gold Building.

Finally, Hertz argues that IPL should be responsible for some or all of the cost of either replacing the automated switching equipment or changing its service from Rate HL to Rate SL.

170 IAC 1-4-28 provides:

Sec. 28. Modification at Customer’s Expense. If a customer requests for his convenience or by his actions requires that utility facilities be redesigned, reengineered, relocated, removed, modified or reinstalled, the utility may require the customer to make payment to it of the full cost of performing such service.

Hertz suggests that Rule 28 applies only when the alteration in facilities is for “convenience” or due to customer actions, and in this case the context is that changes in facilities

are required to correct service deficiencies. IPL argues that Rule 28 applies and Hertz is responsible for all costs associated with transitioning to Rate SL.

As previously addressed, the outages to the Gold Building would have been mitigated if Hertz had repaired or replaced its automated switching equipment in a timely manner. Accordingly, we reject the premise that facility changes are required due to service deficiencies. Further, under Rate HL, Hertz is responsible for all costs associated with the equipment on its side of the point of delivery.

With respect to moving to Rate SL, we view Hertz's request as a convenience request under Rule 28. At the hearing, counsel indicated that it was Hertz's preference to move to Rate SL, which would eliminate its responsibility to install, repair, and maintain the equipment currently in place to receive service under Rate HL. Again, because the outages to the Gold Building could have been prevented if the automated switching equipment was functioning, moving to Rate SL would eliminate the need to replace the switching equipment. Further, because two transformers are configured differently from the third due to changes in the clearance requirements, Hertz would likely need to invest in an additional transformer to prevent momentary outages during switching events. Accordingly, we find that the CAD decision with respect to this issue was correct.

Finally, although we find that Hertz is ultimately responsible for the costs associated with either replacing its customer-owned equipment, or for the costs associated with redesigning the facilities to accept service under Rate SL, we believe that if Hertz ultimately seeks to transition to Rate SL, the parties may want to consider another option to provide for the transition to that tariff. The special contract provisions of Ind. Code §§ 8-1-2-24 and 25 could present a reasonable resolution considering the relatively high costs of the facility changes that would be required, and could be mutually beneficial to both parties.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:**

1. The informal disposition in the January 26, 2012 letter by the CAD analyst is affirmed.
2. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

**APPROVED:      DEC 05 2012**

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



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