

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF THE INDIANA UTILITY )  
REGULATORY COMMISSION'S INVESTIGATION ) CAUSE NO. 45032 S 1  
INTO THE IMPACTS OF THE TAX CUTS AND )  
JOBS ACT OF 2017 AND POSSIBLE RATE )  
IMPLICATIONS UNDER PHASE 1 FOR ) APPROVED: AUG 29 2018  
INDIANAPOLIS POWER & LIGHT COMPANY )

ORDER OF THE COMMISSION

**Presiding Officers:**

**James F. Huston, Chairman**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On January 3, 2018, the Commission initiated an investigation to review and consider the impact of the Tax Cuts and Jobs Act of 2017 ("TCJA") on the rates charged by Indiana's rate-regulated investor-owned utilities ("Respondents"). By Order dated February 16, 2018 ("February 16 Order"), the Commission determined that the TCJA impact on the ongoing revenue requirement of each respondent would be addressed in two phases. By Docket Entry dated March 21, 2018 ("March 21 Docket Entry"), the Presiding Officers confirmed that the February 16 Order does not require each Respondent to change its rates without due process of law because the February 16 Order established that a Respondent could obtain approval for changes in its rates related to Phase 1 issues through "either the expedited 30-day filing procedure or through a subdocket proceeding that contemplates the filing of testimony and an evidentiary hearing."

The March 21 Docket Entry also acknowledged that Indianapolis Power & Light Company ("IPL") has a general rate case pending, which is docketed under Cause No. 45029. Recognizing the overlapping nature of the investigation and IPL's pending rate case and associated timing issues, IPL was dismissed from Phase 2 of the Commission investigation. On March 26, 2018, IPL requested the Commission establish a subdocket to address IPL's proposal for revising its rates and charges in Phase 1 to reflect the new tax rate, which request was granted by Docket Entry dated April 13, 2018.

On April 23, 2018, IPL prefiled the direct testimony of Kenneth J. Flora, IPL Director, Regulatory Affairs. On May 23, 2018, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony and attachments of Margaret A. Stull, Chief Technical Advisor with the OUCC Water/Wastewater Division. Corrections to Ms. Stull's testimony was filed on June 19, 2018. Requests for administrative notice were filed by the OUCC on May 23, 2018, and by IPL on June 4, 2018, which requests were subsequently granted by Docket Entry on June 7, 2018 and June 18, 2018, respectively. On June 4, 2018, IPL prefiled its rebuttal testimony and exhibits of Mr. Flora.

On June 28, 2018, IPL, the OUCC, and the Indiana Industrial Group (collectively, “Settling Parties”) filed an unopposed Joint Motion for Continuance and Modification of Procedural Schedule (“Joint Motion”) to afford the Settling Parties time to submit their Settlement Agreement and supporting evidence. The Joint Motion was granted by Docket Entry on June 29, 2018. The Settlement Agreement was filed with the Commission on July 6, 2018, and settlement testimony from IPL Witness Flora and OUCC Witness Stull was filed on July 13, 2018.

An evidentiary hearing was held on August 6, 2018, at 1:30 p.m. in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, IPL, the OUCC, and Indiana Industrial Group appeared and participated by counsel. The Settling Parties’ respective prefiled testimony and exhibits were admitted into the record without objection.

The Commission, having considered the evidence and applicable law, finds as follows:

1. **Notice and Jurisdiction.** Notice of the public hearing conducted by the Commission was given and published as required by law. IPL is a “public utility” as defined in Ind. Code § 8-1-2-1. Under Ind. Code § 8-1-2-42, the Commission has jurisdiction over changes in IPL’s schedules of rates and charges. The Commission also has authority to initiate an investigation into all matters relating to any public utility pursuant to Ind. Code § 8-1-2-58. In addition, Ind. Code § 8-1-2-72 authorizes the Commission to alter or amend any order made by the Commission, upon notice and after opportunity to be heard. Therefore, the Commission has jurisdiction over IPL and the subject matter of this Cause.

2. **IPL’s Case-In-Chief.** Mr. Flora presented IPL’s proposal to implement a voluntary \$4.4 million rate credit through IPL’s Fuel Adjustment Clause (“FAC”) proceeding (Cause No. 38703 FAC 120) in light of the TCJA. He explained how IPL calculated its proposed rate credit and why it believes such credit proposal is reasonable.

3. **OUCC’s Case-In-Chief.** Ms. Stull explained why the OUCC considered IPL’s proposal to be unreasonable. She recommended denial of IPL’s proposal and an immediate reduction in customer rates for the full amount of the excess income tax expense embedded in current rates and charges (\$13.242 million), effective on the date a final order is issued in this subdocket. Ms. Stull also presented the OUCC’s concerns about IPL’s proposal to use its FAC to pass back Phase 1 TCJA savings to customers.

4. **IPL’s Rebuttal Evidence.** Mr. Flora explained why he disagreed with Ms. Stull’s discussion regarding the amount of IPL’s proposed credit. Due to Ms. Stull’s concern regarding the FAC, Mr. Flora explained that IPL would agree to utilize its environmental cost recovery (“ECR”) mechanism to implement the credit.

5. **Settlement Agreement and Supporting Testimony.** Mr. Flora stated the Settlement Agreement resolves all pending issues in this subdocket and also reduces controversy in IPL’s pending general rate case, docketed as Cause No. 45029. He explained Section I.1 of the Settlement Agreement sets forth the Settling Parties’ agreement that IPL will flow a credit of \$9.51 million to customers via IPL’s ECR mechanism in Cause No. 42170 ECR 31 (“ECR 31”)

during the six-month period commencing with the September 2018 billing cycle and ending with the February 2019 billing cycle.

Mr. Flora said the \$9.51 million credit reflects 10 months of the difference in federal income tax expense resulting from the TCJA, using a monthly amount of \$0.951 million. He explained that this amount was calculated by comparing the tax expense in IPL's initial rate case filing made in December 2017 with its supplemental filing made in February 2018 reflecting the TCJA (after excluding the amortization of excess deferred federal income taxes). Mr. Flora testified the amount of time applicable to the calculation of the monthly tax benefit was a matter of disagreement among the parties. He said that as a compromise, the Settling Parties agreed to utilize 10 months for resolution of the 2018 TCJA tax expense issue.

Mr. Flora discussed how IPL will implement the agreed credit through its ECR 31 filing and the impact on the proposed ECR 31 factors. He said that a typical residential customer using 1,000 kWh per month will experience a decrease of \$1.52 or 1.43% of such bill, relative to the revised proposed ECR 31 factor and current basic rates and charges currently in effect. He noted this decrease is in addition to the decrease discussed in the direct testimony of IPL Witness Chad Rogers in ECR 31.

Mr. Flora explained that Sections II and III of the Settlement Agreement contain provisions addressing the presentation of the agreement to the Commission and effect and use of the Settlement Agreement. He said these are the types of terms typically found in settlement agreements before the Commission.

Mr. Flora concluded that approval of the Settlement Agreement is in the public interest. He explained the Settlement Agreement reflects a balanced, cooperative outcome of the impact of the TCJA's 2018 tax expense issue on IPL's rates and charges. He said the Settlement Agreement also reduces controversy in IPL's pending rate case. Mr. Flora asked the Commission to issue an order approving the Settlement Agreement in its entirety so that the agreed credit may be placed into effect commencing with the September 2018 billing cycle.

Ms. Stull testified that the Phase 1 tax benefits to customers lies solely in the federal tax rate change from 35%, which is included in IPL's current base rates, to the new federal income tax rate of 21%. She stated the Settlement Agreement timely provides the Phase 1 tax benefit to IPL's ratepayers through the ECR mechanism. She stated any variance due to usage will be reconciled as a credit/charge in IPL's Cause No. 42170 ECR 33 filing.

Ms. Stull testified the Settlement Agreement also provides that new base rates established in IPL's pending rate case, Cause No. 45029, will be placed into effect no earlier than December 5, 2018. She explained that customers benefit by setting a date certain for implementation of those new base rates. She said the Settling Parties also agree that the Settlement Agreement fully addresses all issues related to IPL's 2018 tax expense resulting from the change in the federal income tax rate from 35% to 21%. In addition, the Settling Parties will work together to prepare a stipulation for submission in Cause No. 45029 that would make further Commission action on IPL's 2018 tax expense unnecessary.

Ms. Stull explained why the OUCC believes the Settlement Agreement is in the public interest. She said that providing IPL's customers with a credit representing the normalized 2018 excess tax expense resulting from the decrease in the corporate income rate embedded in its base rates through its ECR 31 by September 2018 is a reasonable outcome that provides a timely credit to ratepayers. She said the Settlement Agreement reflects compromises made by IPL from the positions taken in its Phase 1 subdocket testimony and concluded that it provides a fair result for IPL's ratepayers.

**6. Commission Discussion and Findings.** The Settling Parties request the Commission to approve the Settlement Agreement. Settlement Agreements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coal.*, 664 N.E.2d at 406.

Any Commission decision, ruling, or order, including approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind. Inc. v. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of the governing statute and that such agreement serves the public interest. While our decision is based on the record as a whole, the foregoing summary of the evidence facilitates our consideration of the Settlement Agreement.

The TCJA was signed into law on December 22, 2017. As summarized above, the evidence demonstrates that the Settling Parties agreed a \$9.51 million credit reasonably resolves the amount of excess federal tax collected from January 1, 2018, and that approval of the Settlement Agreement provides customers a faster realization of the significant benefits from the reduced federal income tax rate than through a litigated proceeding. The record also demonstrates that IPL's ECR mechanism is an administratively efficient means of flowing this credit to all customers through rates. As explained by Mr. Flora, the typical residential customer using 1,000 kWh per month will experience a bill decrease of \$1.52 per month during the September 2018 through February 2019 billing cycles. Therefore, the record shows and we find that the Settlement Agreement presents a balanced and comprehensive resolution of the issues in this case. We further find that the Settlement Agreement reduces controversy in IPL's pending general rate case, docketed as Cause No. 45029. Therefore, the Commission further finds and concludes that the Settlement Agreement is reasonable and in the public interest and is approved.

The Settling Parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Therefore, with regard to future citation of this Order, we find that our

approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459, IURC WL 34880849 at \*7-8 (IURC March 19, 1997).

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

1. The Settlement Agreement, a copy of which is attached, is approved.
2. IPL shall implement the agreed credit by filing its revised ECR tariff sheet under Cause No. 42170 ECR 31 for approval by the Commission's Energy Division.
3. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, AND ZIEGNER CONCUR; OBER ABSENT:**

APPROVED: AUG 29 2018

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

  
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Mary M. Becerra  
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA )  
UTILITY REGULATORY COMMISSION'S )  
INVESTIGATION INTO THE IMPACTS OF )  
THE TAX CUTS AND JOBS ACT OF 2017 ) CAUSE NO. 45032 S 1  
AND POSSIBLE RATE IMPLICATIONS )  
UNDER PHASE 1 FOR INDIANAPOLIS )  
POWER & LIGHT COMPANY )

STIPULATION AND SETTLEMENT AGREEMENT

Respondent Indianapolis Power & Light Company ("IPL"), the Indiana Office of Utility Consumer Counselor ("OUCC") and Intervenor, Indiana Industrial Group ("IG") (collectively the "Settling Parties" and individually "Settling Party") solely for purposes of compromise and settlement and to reduce controversy and avoid protracted litigation and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of all matters pending before the Commission in this Cause, subject to their incorporation by the Indiana Utility Regulatory Commission ("Commission") into a final, non-appealable order ("Final Order") without modification or further condition that may be unacceptable to any Settling Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement Agreement"), in its entirety, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

I. TERMS AND CONDITIONS

1. IPL will provide a \$9.51 million credit to be flowed to customers using IPL's demand allocators via IPL's ECR-31 during the six month period commencing with the September 2018 billing cycle and ending with the February 2019 billing cycle. Any variance due to usage will be reconciled as a credit/charge in IPL's ECR-33.

2. The Settling Parties agree that rates established in Cause No. 45029 will be placed into effect no earlier than December 5, 2018.
3. The Settling Parties agree that this Settlement Agreement fully addresses the treatment of the Tax Cuts and Jobs Act of 2017 ("TCJA") Change in the Federal Income Tax Rate from 35% to 21% for 2018 ("2018 Tax Expense Issue").
4. The Parties agree to work cooperatively with the IPL Industrial Group in Cause No. 45029 to prepare a stipulation for submission in that Cause stating that the 2018 Tax Expense Issue in Cause No. 45029 has been fully resolved by the Settlement Agreement in Cause No. 45032-S1 and Commission approval of this Settlement Agreement makes further Commission action on the 2018 Tax Expense Issue unnecessary.

## **II. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION**

1. The Settling Parties shall support this Settlement Agreement before the Commission and request that the Commission expeditiously accept and approve the Settlement Agreement. The concurrence of the Settling Parties with the terms of this Settlement Agreement is expressly predicated upon the Commission's approval of the Settlement Agreement in its entirety without any modification or any condition that may be unacceptable by any Settling Party. If the Commission does not approve the Settlement Agreement in its entirety and without change, the Settlement Agreement shall be null and void and deemed withdrawn, upon notice in writing by any Settling Party within fifteen (15) days after the date of the Final Order that any modifications made by the Commission are unacceptable to it.

2. The Settling Parties shall jointly move for leave to file this Settlement Agreement and supporting evidence. The Settling Parties will file testimony specifically supporting the settlement. The Settling Parties will work collaboratively in the preparation of the testimony supporting the settlement agreement. Such evidence together with the evidence previously prefiled by the Settling Parties in this Cause will be offered into evidence without objection and the Parties hereby waive cross-examination of each other's witnesses. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and that, if the Commission fails to approve this Settlement Agreement in its entirety without any change or with condition(s) unacceptable to any Settling Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear Cause No. 45032 S1 with the proceedings resuming at the point they were suspended by the filing of this Settlement Agreement.

3. The Settling Parties shall jointly agree on the form, wording and timing of public/media announcement (if any) of this Settlement Agreement and the terms thereof. No Settling Party will release any information to the public or media prior to the aforementioned announcement. The Settling Parties may respond individually without prior approval of the other Settling Parties to questions from the public or media, provided that such responses are consistent with such announcement and do not disparage any of the Settling Parties. Nothing in

this Settlement Agreement shall limit or restrict the Commission's ability to publicly comment regarding this Settlement Agreement or any Order affecting this Settlement Agreement.

### **III. EFFECT AND USE OF SETTLEMENT**

1. It is understood that this Settlement Agreement is reflective of a negotiated settlement and neither the making of this Settlement Agreement nor any of its provisions shall constitute an admission by any Settling Party to this Settlement Agreement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement Agreement is in consideration and support of each and every other term.

2. This Settlement Agreement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement Agreement.

3. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Settling Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

4. The Settling Parties agree that the evidence in support of this Settlement Agreement and the previously prefiled evidence constitute substantial evidence sufficient to support this Settlement Agreement and provide an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement, as filed. The Settling Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible.

5. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement Agreement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

6. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby.

7. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement Agreement in its entirety and without change or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement Agreement). The Settling Parties shall support or not oppose this Settlement Agreement in the event of any appeal or a request for a stay by a person not a party to this Settlement Agreement or if this Settlement Agreement is the subject matter of any other state or federal proceeding.

8. The provisions of this Settlement Agreement shall be enforceable by any Settling Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

9. This Settlement Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ACCEPTED and AGREED as of the 6th day of July, 2018.**

INDIANAPOLIS POWER & LIGHT COMPANY



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Craig L. Jackson  
President and CEO of Indianapolis Power & Light Company  
Indianapolis Power & Light Company  
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Indianapolis, Indiana 46204

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

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INDIANA INDUSTRIAL GROUP

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Indianapolis, IN 46282

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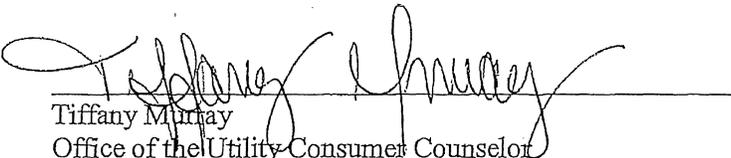
**ACCEPTED and AGREED as of the 6th day of July, 2018.**

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