

**ORIGINAL**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober	√		
Ziegner	√		

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 ) CAUSE NO. 45264 TDSIC 1  
 SYSTEM IMPROVEMENT CHARGE (“TDSIC”) RATE )  
 SCHEDULE, STANDARD CONTRACT RIDER NO. 3; ) APPROVED: OCT 14 2020  
 AND (2) AUTHORITY TO DEFER 20% OF THE )  
 APPROVED CAPITAL EXPENDITURES AND TDSIC )  
 COSTS FOR RECOVERY IN PETITIONER’S NEXT )  
 GENERAL RATE CASE. )

**ORDER OF THE COMMISSION**

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

On June 18, 2020, Indianapolis Power & Light Company (“IPL” or “Petitioner”) filed its Verified Petition and Request for Administrative Notice with the Indiana Utility Regulatory Commission (“Commission”), along with its case-in-chief. 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”), which were granted by docket entries issued by the Presiding Officers on July 15, 2020 and August 6, 2020, respectively. On August 17, 2020, the Indiana Office of Utility Consumer Counselor (“OUCC”), the City, and the IG filed their cases-in-chief. On August 26, 2020, Petitioner filed its rebuttal evidence.

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 due to the ongoing COVID-19 pandemic. At the hearing, Petitioner, OUCC, and Intervenors participated by counsel, and all of the parties’ evidence was admitted into the record without objection.

Based upon the 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 “TDSIC Statute”), 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.

IPL is a wholly owned subsidiary of The AES Corporation. AES US Services, LLC (the "Service Company") is a wholly owned subsidiary of The AES Corporation that is located at the headquarters of IPL in Indianapolis, Indiana and provides accounting, finance, legal, human resources, information technology, and other corporate services to the businesses owned by The AES Corporation in the United States, including IPL.

**3. Background and Requested Relief.** On March 4, 2020, the Commission issued an Order in Cause No. 45264 ("45264 Order") approving IPL's seven-year TDSIC Plan. 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. In this first TDSIC tracker filing, IPL requests that the Commission approve the following: an adjustment to its electric rates to go into effect on November 1, 2020 for the recovery of TDSIC capital expenditures and costs incurred through March 31, 2020; authority to recover actual costs that exceed amounts previously approved; authority to defer 20% of eligible and approved capital expenditures and TDSIC costs for recovery in its next general rate case; and an adjustment to its authorized net operating income to reflect any approved earnings for purposes of Ind. Code § 8-1-2-42(d)(3).

**4. IPL's Case-in-Chief.**

**A. TDSIC Plan Project Status.** James W. Shields, Jr., Director of TDSIC Plan Development for the Service Company, testified that IPL's total actual capital expenditures as of March 31, 2020 for TDSIC Plan projects were approximately \$45.9 million. Mr. Shields sponsored IPL's Confidential Attachment JWS-1, which presented the actual cost (for both projects in service and construction work in progress) of the approved TDSIC projects. He also described the construction work in progress that was not yet placed into service by March 31, 2020, which totaled approximately \$28.4 million.

Each TDSIC Plan project consists of individual projects for which IPL presented cost estimates in Cause No. 45264. Mr. Shields stated that the Association for the Advancement of Cost Engineering ("AACE") Cost Estimate Classification System accuracy range for Class 2 estimates is +20% and -15%. When IPL developed its project cost estimates, it expected that some projects would have actual costs below the estimate, while others would come in above the estimated cost. Regarding individual projects, the effect of positive cost variances is usually offset by negative cost variances from other projects. For example, of the 13 individual Circuit Rebuild projects that were completed by March 31, 2020, just three projects cost more than estimated. The aggregated actual cost of the 13 Circuit Rebuild projects is \$11,975,571, which is \$1,543,101 less than the aggregated estimated cost of \$13,518,672. Mr. Shields discussed the

factors causing cost variances, including 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.

**B. Tracker Filings and Updated Cost Estimates.** Chad A. Rogers, Senior Program Manager in Regulatory Affairs for IPL, and Mr. Shields both testified that the COVID-19 pandemic is causing increased risk for completing the necessary engineering work to convert all Year 3 Class 3 and 4 cost estimates to Class 2 estimates for IPL's December 2020 TDSIC filing. Mr. Shields said that state and local stay-at-home orders have limited IPL's ability to make field visits to assess the engineering needed to complete the Class 2 estimates. According to Messrs. Shields and Rogers, IPL plans to file the TDSIC 2 tracker as scheduled in December 2020 with the completed cost estimates and proposes to file supplemental information that will include the remaining Class 2 cost estimates for Year 3 projects when complete.

**C. TDSIC Revenue Requirement.** 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. Natalie Herr Coklow, Manager in the Regulatory Accounting Department of the Service Company, identified the portion of the deferral for income tax and presented the balance on IPL Attachment NHC-10. Mr. Rogers stated that 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 of taxes in a future rate case filing.

Ms. Coklow presented the accounting schedules and utilized the accounting treatment approved in the 45264 Order in determining IPL's proposed TDSIC factors. She also explained how the TDSIC Plan development costs and depreciation and property tax expenses are treated in the calculation of the revenue requirement. According to Ms. Coklow, the TDSIC projects for which IPL is seeking recovery in this filing total approximately \$38 million for distribution projects and \$8 million for transmission projects (inclusive of allowance for funds used during construction ("AFUDC") and net of removal costs).

Mr. Rogers testified about IPL's pretax return. He stated that IPL calculated depreciation expense on retired and replaced assets and included that depreciation expense amount as a credit to the depreciation expense recovery sought in this filing. Mr. Rogers said this netting of depreciation expense is calculated in the same way that IPL has implemented the netting of depreciation in past Environmental Compliance Cost Recovery Adjustment ("ECR") rider filings for Mercury Air Toxics Standard ("MATS") equipment. 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. Mr. Rogers opined that this treatment sufficiently addresses the concern of netting depreciation expense on the assets retired as part of the TDSIC Plan.

Mr. Rogers opined that the ratemaking provisions of the TDSIC Statute do not warrant an adjustment to IPL's Commission-authorized pretax return. He noted that IPL's basic rates and charges have been reviewed in two recent cases (Cause Nos. 44576 and 45029), and the Commission's decisions in these cases were issued well after the enactment of the TDSIC Statute. Mr. Rogers stated that the general rate case IPL is required to file under the TDSIC

Statute will provide another opportunity for the Commission to review IPL's rates and charges, including its authorized pretax return.

Mr. Rogers said that IPL utilized a weighted average cost of capital ("WACC") of 6.68%, 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%, which was determined by the Commission in IPL's most recent rate case, Cause No. 45029. The WACC used to calculate pretax return is calculated by Ms. Coklow in IPL Attachment NHC-5.

Mr. Rogers and Ms. Coklow also estimated the effect of IPL's TDSIC Plan on retail rates and charges over the plan term. They showed the aggregate increase in IPL's total retail revenues as a result of this TDSIC Rider is 0.28% and therefore less than the 2% statutory TDSIC limit set forth in Ind. Code § 8-1-39-14. Ms. Coklow also presented IPL's proposed TDSIC 1 factors and their effects on residential bills. She said that an average residential customer using 1,000 kWh per month will experience an increase of \$0.44, or 0.38%, to the basic rates and charges approved in IPL's last rate case.

**5. OUCC's Case-in-Chief.** Wes R. Blakley, Senior Utility Analyst for the OUCC, addressed IPL's proposal to adjust its electric rates through a TDSIC mechanism, commented about specific issues addressed in the 45264 Order related to the current TDSIC tracker proceeding, and addressed IPL's TDSIC revenue requirement calculation.

With respect to the concern raised in Cause No. 45264 regarding netting of depreciation expense, Mr. Blakley testified that the OUCC accepts IPL's adjustment to depreciation expense and agreed that the netting of depreciation expense reflected in IPL's proposal has the effect of reducing IPL's pretax return. He stated that the OUCC disagrees with IPL's position that the depreciation netting addresses the risk reduction IPL receives related to the TDSIC tracker. Mr. Blakley stated that the OUCC agrees with the testimony of Intervenor's witness Michael P. Gorman, Managing Principal with Brubaker & Associates, Inc.

Mr. Blakley reviewed IPL's TDSIC revenue requirement and verified IPL's rate calculation and rate impact. He testified that, should the Commission approve Intervenor's proposed adjustment to IPL's WACC, the Commission should require IPL to recalculate the TDSIC factors.

**6. Intervenors' Case-in-Chief.** Mr. Gorman opined that IPL's authorized return on equity ("ROE") from its last rate case, 9.99%, should not be used in calculating its TDSIC factors. He proposed that the Commission require the ROE be reduced by 0.59% to reflect current capital market costs of common equity and by 1% to reflect IPL's reduced investment risk created by the implementation of a TDSIC tracker mechanism and the continued possibility of double recovery.

Mr. Gorman also proposed using IPL's incremental cost of debt, rather than IPL's embedded debt cost, in calculating the WACC used to develop the TDSIC factors. He recommended that the cost of debt be set at 3.937%, which reflects IPL's most recent debt issuance in November 2018. He also suggested that the Commission direct IPL to adjust its revenue requirement calculations in subsequent TDSIC trackers to reflect all debt issues starting

with the 12-month period ending March 30, 2020 until either the filing of its next base rate case or the end of the seven-year TDSIC Plan period.

Mr. Gorman recommended that the Commission reject IPL's suggestion 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 pretax return. 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. According to Mr. Gorman, if this were done, IPL's TDSIC factors would accurately capture the operating income needed for changes in IPL's net plant in service for distribution- and transmission-related TDSIC investments. Mr. Gorman argued that IPL over-calculated its TDSIC revenue requirement by failing to reflect changes to its net plant in service due to the buildup of accumulated depreciation in the FERC accounts where assets installed as part of IPL's TDSIC Plan will be recorded.

According to Mr. Gorman, 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. He opined that the incremental regulatory asset should reflect reductions for income tax deductibility of the carrying charge debt interest expense, depreciation expense, and any other tax-deductible costs.

Mr. Gorman concluded that his proposed adjustments to IPL's TDSIC revenue requirement will better reflect IPL'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.

## **7. IPL's Rebuttal.**

**A. Incremental Cost of Debt and WACC.** Mr. Rogers disagreed with Mr. Gorman's proposal that the incremental or marginal cost of debt be used to calculate WACC as part of IPL's TDSIC pretax return. He testified that the TDSIC Statute does not refer to the incremental cost of debt for the eligible projects in defining "pretax return," but refers to a public utility's long-term debt in its weighted capital structure.

According to Mr. Rogers, IPL used the actual capital structure as of March 31, 2020 in calculating its WACC, and its long-term debt balance is a component of that capital structure. 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. Mr. Rogers opined that an artificial lowering of that rate to the incremental cost of debt would not reflect the actual cost rates of long-term debt in IPL's capital structure. He stated 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.

Mr. Rogers testified that IPL does not directly finance specific projects. As of March 31, 2020, IPL had not issued any new long-term debt under the authorization granted in Cause No. 45115. According to Mr. Rogers, when IPL does issue new debt, it will be to fund the overall investment needs of IPL, not specifically the TDSIC Plan. He explained that specifically

identifying the financed capital components and assigning them to specific investments is not practical, nor is it required for utility ratemaking. He argued 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 assets, and other components of the ratemaking capital structure. He noted that Ind. Code § 8-1-39-13(a) directs the Commission to consider the public utility's capital structure and actual cost of long-term debt. Mr. Rogers argued that this language does not support the view that project-specific financing should be used.

Mr. Rogers testified that IPL's actual cost of debt is lower than the corresponding market rate. He noted that IPL monitors its actual cost of debt and considers refinancing if the economics are favorable to do so. Mr. Rogers concluded that Mr. Gorman's proposal to use the incremental cost of debt instead of the cost of long-term debt used in IPL's capital structure would increase IPL's pretax return during periods of rising interest rates.

Mr. Rogers also disagreed with Mr. Gorman's position that the pretax return should be lowered for TDSIC purposes to reflect the reduction in risk arising from the preapproved rate recovery of the TDSIC investment. Mr. Rogers explained that a reasonable and supported rate of return was settled and approved in IPL's most recent rate case, Cause No. 45029, which contemplated a TDSIC filing. He also opined that Mr. Gorman's proposal is not limited to TDSIC investments and would also alter cost recovery for non-TDSIC investments.

**B. ROE.** Ann E. Bulkley, Senior Vice President of Concentric Energy Advisors, Inc., testified 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 rate case order in 2018. She argued that a comparison of bond yields in 2018 and 2020 is not appropriate because capital markets have recently experienced significant volatility due to the COVID-19 pandemic. According to Ms. Bulkley, IPL's Commission-approved ROE is well within the range of authorized ROEs in comparable operating jurisdictions for 2018 through 2020.

Ms. Bulkley testified that reducing IPL's ROE by 1.59%, as proposed by Mr. Gorman, is unprecedented and inconsistent with the ROEs set by the Commission in the pretax returns for TDSIC mechanisms that have been implemented by other Indiana utilities. She opined that 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.

Ms. Bulkley also addressed Mr. Gorman's conclusion that authorized ROEs have been trending downward in recent years due to declining capital costs, stating that the average authorized ROE for electric utilities across the U.S. has been relatively stable since 2015. According to Ms. Bulkley, the range of recently authorized ROEs is from 9.25% to 10.50% for vertically integrated utilities who operate in jurisdictions with a ranking like Indiana's ranking from Regulatory Research Associates. She stated that IPL's currently authorized ROE of 9.99% is reasonable and appropriate in the current market environment. She also noted that IPL's ROE of 9.99% is consistent with recent Commission rate cases for Indiana Michigan Power Company ("I&M") (Cause No. 45235) and Duke Energy Indiana ("DEI") (Cause No. 45253).

C. **Accumulated Depreciation.** Mr. Rogers opined that Mr. Gorman's proposed adjustment to net plant investment goes beyond adjusting the WACC and is contrary to the TDSIC Statute. He stated that IPL will record other asset additions in its FERC accounts that are unrelated to the TDSIC Plan and which are not eligible costs under Ind. Code § 8-1-39-9. IPL is not required to capture the total change in net plant in service (which would also include non-TDSIC costs) in the same FERC accounts in which IPL's TDSIC Plan investments are being made, as proposed by Mr. Gorman.

Mr. Rogers also stated that Mr. 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. While IPL disagrees that the TDSIC investment rate base should be adjusted for non-TDSIC assets recorded to the same FERC accounts, if the Commission determines that an adjustment should be made, it would need to reflect all changes in net utility plant, including net additions. Mr. Rogers stated that the impact of a complete adjustment would increase the revenue requirement and resulting TDSIC factors from what IPL has proposed.

D. **Other Matters.** Mr. Rogers explained that IPL has reflected the revenue requirement components on an after-tax basis in the TDSIC revenue requirement, as Mr. Gorman suggests. He added that IPL is also following the same accounting for the TDSIC rate filings that is utilized and approved in IPL's ECR rate filings. Per the 45264 Order, IPL has broken 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.

Mr. Rogers also disagreed with Mr. Gorman's contention that, if 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. Mr. Rogers said that the Tax Cuts and Jobs Act of 2017 ("TCJA") requires that revenue be reported as taxable income no later than the time when the income is reported for financial accounting purposes. Therefore, because IPL will pay income taxes on the 20% revenue requirement deferral when it is recorded, Mr. Rogers testified that it should be grossed up so that the utility is made whole.

## 8. **Commission Discussion and Findings.**

### A. **Compliance with Ind. Code § 8-1-39-9.**

i. **Ind. Code § 8-1-39-9(a).** In this proceeding, IPL seeks approval of TDSIC factors that will allow for the periodic adjustment of IPL's basic rates and charges to provide for timely recovery of 80% of the approved capital expenditures and TDSIC costs. The evidence of record demonstrates 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. IPL's Petition also included a copy of IPL's Commission-approved TDSIC Plan. Appendix 8.7 to the TDSIC Plan sets forth the cost estimates and year detail and plan projects by FERC account in a sortable list. IPL has proposed that, going forward, IPL's TDSIC Rider filings include only Appendix 8.7 to comply with the Ind. Code § 8-1-39-9(a) requirement that

the Petition include the public utility's TDSIC Plan. None of the other parties objected to this proposal. Mr. Shields sponsored IPL's 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 TDSIC Plan on retail rates and charges.

Based on the evidence of record, we find that IPL has complied with the requirements of Ind. Code § 8-1-39-9(a). We also find that IPL may include only Appendix 8.7 to the TDSIC Plan in future TDSIC tracker filings, rather than attaching the entire TDSIC Plan to the Petition.

ii. **Ind. Code § 8-1-39-9(c)**. IPL 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 TDSIC Plan development costs, depreciation, and property tax expenses are treated in the calculation.

The evidence of record demonstrates that IPL has reflected the revenue requirement components on an after-tax basis in the TDSIC revenue requirement, as shown in the revenue conversion rates listed in IPL Schedule NHC-5. IPL is following essentially the same accounting Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South") uses in its TDSIC trackers (Cause No. 44910) and the same accounting IPL uses in its longstanding ECR rate filings.

IPL has addressed our directive in the 45264 Order to remove the gross up for taxes associated with the 20% deferred regulatory asset from future filings by breaking out the tax gross up separately, as shown on IPL's Attachment NHC-10. IPL also represents that it will continue to do this 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, and, therefore, the 20% deferred regulatory asset is not currently subject to any tax. Thus, we find that IPL has complied with the requirements of Ind. Code § 8-1-39-9(c).

iii. **Ind. Code § 8-1-39-9(d)**. IPL filed its Petition in this Cause on June 18, 2020. The Commission's Final Order in IPL's most recent rate case (Cause No. 45029) was issued on October 31, 2018. The Commission finds that the Petition in this Cause was filed more than nine months after our most recent order changing IPL's basic rates and charges and thus complies with Ind. Code § 8-1-39-9(d).

iv. **Ind. Code § 8-1-39-9(e)**. Mr. Rogers testified that IPL intends to petition the Commission for review and approval of its basic rates and charges prior to the expiration of its approved seven-year TDSIC plan. Therefore, the Commission finds that IPL is in compliance with Ind. Code § 8-1-39-9(e).

v. **Ind. Code § 8-1-39-9(f)**. Ind. Code § 8-1-39-9(f) provides that a public utility may file a petition under this section not more than one time every six months. This is the first TDSIC tracker filing made by IPL. Mr. Rogers and Mr. Shields discussed IPL's plans regarding the staggering of its TDSIC rate and plan update filings. They also discussed the impact of the COVID-19 pandemic on the ongoing engineering of future projects and IPL's

December 2020 TDSIC plan update filing. The Commission finds that IPL's proposals are reasonable and consistent with the timeline for TDSIC filings set forth in the 45264 Order and with Ind. Code § 8-1-39-9(f).

vi. **Ind. Code § 8-1-39-9(g)**. Mr. Shields provided the total actual capital expenditures associated with IPL's TDSIC Plan as of the March 31, 2020 cutoff date for this filing and the in-service costs for the TDSIC projects placed into service by March 31, 2020. 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.

Mr. Shields identified and specifically justified the projects that have a cost greater than the Class 2 expected accuracy range. He showed that one individual Circuit Rebuild project, Center #7, has costs outside the accuracy range of the Class 2 estimate range, and two individual Circuit Rebuild projects, Northwest #1 and Northwest #9, have costs above the Class 2 estimated costs, yet still within the accuracy range of the Class 2 estimate. He specially justified the cost variances for each affected project, and none of the other parties challenged these cost variances.

Thus, under Ind. Code § 8-1-39-9(g), we 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.

B. **Pretax Return**. Ind. Code § 8-1-39-13 establishes how pretax return is determined for calculating a utility's TDSIC costs. 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 § 8-1-39-13(a).

Under Ind. Code § 8-1-39-13(a)(5), we may consider "other information" that we find necessary in determining a utility's pretax return. In the 45264 Order, we requested that the parties provide additional evidence to address two issues: the potential for double recovery of depreciation expense and the shifting of risks based on plan approval. Both issues could potentially affect the calculation of IPL's WACC and are discussed below.

i. **Depreciation Expense**. To address the concern of double recovery, IPL calculated its proposed depreciation expense on the retired and replaced assets and included this amount as a credit to the depreciation expense recovered in this filing. The netting of the depreciation was calculated in same manner IPL utilizes in the netting of depreciation in its ECR filings. This adjustment results in a reduction in the revenue that would otherwise have

been recovered through the TDSIC rider. Thus, IPL believes that the proposed WACC is appropriately calculated using the common equity determined in its last rate case. IPL calculated an \$81,000 credit adjustment to the TDSIC distribution utility plant on which the allowed return is based. The OUCC accepted IPL's proposed adjustment for netting depreciation expense and has indicated that its concern with the return of depreciation expense has been addressed.

However, Mr. Gorman testified on behalf of Intervenors that he is concerned that the proposed depreciation expense netting does not address the "return on" portion of the cost recovery and believes that an additional depreciation adjustment is necessary. He stated that using IPL's 2019 gross distribution plant in service of approximately \$1.6 billion and approved depreciation rates produces distribution depreciation expense of \$33 million per year that should be reflected in determining the net plant in service for purposes of calculating the TDSIC revenue requirement. He argued that IPL has overestimated 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 TDSIC Plan will be recorded.

Mr. Gorman opined that IPL's net depreciation adjustment is simply an operating expense adjustment and reflects depreciation expense in the TDSIC revenue requirement through a downward adjustment to the depreciation expense for new TDSIC plant that has been placed in service for the remaining original cost value of plant that is replaced by the new TDSIC plant investment. He suggested that IPL's proposal is an incomplete adjustment to the TDSIC revenue requirement and suggested that his proposed adjustments to depreciation expense would reflect changes to IPL's rate base impacting both the return on, and of, IPL's plant in service for purposes of the TDSIC revenue requirement.

While we continue to acknowledge that Ind. Code § 8-1-39-13(a) allows us to consider "other information" when determining the WACC under Ind. Code § 8-1-39-3(1), such as the impact of retirements. We agree with Mr. Blakely that the netting of depreciation expense reflected in IPL's proposal has the effect of reducing IPL's pretax return. However, we do not find based on the evidence that it is reasonable to further effectively adjust the assets that were included in rate base in IPL's most recent base rate case. The TDSIC Statute addresses TDSIC costs, not rate-based asset costs. *See* Ind. Code § 8-1-39-7. Thus, we find that IPL's proposed depreciation netting addresses the OUCC's concerns in Cause No. 45264 and that no further depreciation adjustment is necessary, as suggested by Mr. Gorman.

ii. **Shifting of Risks Based on TDSIC Plan Approval.** In Cause No. 45264, the IG expressed concern that approval of IPL's TDSIC Plan shifted risks and, therefore, the ROE approved by the Commission in IPL's most recent rate case, Cause No. 45029, should be decreased. In this Cause, Mr. Gorman recommended that the Commission lower IPL's approved ROE from 9.99% to 8.40% for this reason. He argued that reductions of 0.59% (due to the current capital market costs for utility companies) and 1.0% (to reflect the remaining possibility of double recovery under IPL's partial netting proposal, in combination with the shifted risk associated with TDSIC investments) were appropriate.

Mr. Rogers noted on rebuttal that IPL has both increased and decreased various types of risk by undertaking the TDSIC Plan. For example, the large amount of the capital expenditure

needed to implement its TDSIC Plan increases risk, but the TDSIC Plan projects, once implemented, will increase IPL's efficiency, save money for its customers, and provide other benefits, all of which will reduce IPL's overall risk.

The IG argument in this proceeding is very similar to the argument made by the Northern Indiana Public Service Company ("NIPSCO") Industrial Group ("NIPSCO IG") in Cause No. 44371. The Commission's Order in Cause No 44371 states:

Some parties recommended that we reduce the return on equity approved in NIPSCO's last general rate case in order to reflect the reduced risk associated with cost recovery trackers. [NIPSCO IG] witness Mr. Gorman testified that this tracker will reduce NIPSCO's risk profile significantly, and in his opinion, 9.55% would be an appropriate rate of return on equity. 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.

*NIPSCO*, Cause No. 44371, at 17 (Feb. 17, 2014), *affirmed in pertinent part by NIPSCO Industrial Group v. NIPSCO*, 31 N.E.3d 1 (Ind. Ct. App. 2015). The facts and circumstances in Cause No. 44371, in which we rejected the risk reduction argument made by Mr. Gorman on behalf of the NIPSCO IG, are similar to those in this proceeding. As reflected in the above excerpt, the Commission gave weight to the time between the last rate case in which NIPSCO's ROE was established in rejecting the NIPSCO IG's proposal to reduce NIPSCO's ROE. Here, similarly, IPL's ROE was established in the October 31, 2018 order in its most recent rate case, Cause No. 45029, less than two years before the Petition in this case was filed on June 18, 2020. In addition, the IG was a party to the settlement agreement in Cause No. 45029 in which IPL's current ROE was established. Further, that settlement agreement included terms that provided for the implementation of a TDSIC for IPL. Consistent with our finding on this issue in Cause No. 44371 on the appropriate ROE, we decline to accept the IG's argument in this case to lower IPL's authorized ROE from that approved in its most recent rate case (and agreed to by the IG) based on a purported reduction in risk with the implementation of the TDSIC plan.

Therefore, based on the evidence presented, the Commission finds that approval of IPL's TDSIC Plan and use of the statutory cost recovery mechanism has not created a change in IPL's risk profile that is utilized to determine its ROE. Thus, we decline to adjust IPL's ROE<sup>1</sup> in this proceeding.

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<sup>1</sup> As noted above, the approved depreciation expense has the effect of adjusting the authorized pretax return.

iii. **Long-Term Cost of Debt.** Mr. Gorman also proposed that the Commission should require IPL to use IPL's incremental cost of debt, 3.937%, rather than the 4.98% embedded cost of debt IPL used in calculating its proposed WACC.

In calculating its proposed WACC, IPL has used the actual ratemaking capital structure as of the rider cutoff date. IPL Attachment NHC-5 shows that the equity percentage of ratemaking capital structure is 41.50%, while the equity percentage of long-term debt is 47.95%. 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 \$1.8 billion of long-term debt was issued between 2004 and 2018, and each issuance of debt reflects the market interest rates at the time it was issued. Mr. Gorman has proposed that the Commission use the rate of IPL's 2018 \$105 million debt offering to calculate its WACC, subject to adjustment based on future financing needed to fund the TDSIC program.

IPL finances its capital needs to support the investment needs of the entire utility, not just specific projects such as those in the TDSIC Plan. If IPL were to use project-specific financing, it would need to pay underwriting, legal, and rating agency fees on a much more frequent basis, reducing efficiency and adding costs for IPL and its customers. This proposal would result in the debt component of the WACC being subject to market volatility that would allow for unnecessary cost increases to its customers. In addition, if Mr. Gorman's proposal were accepted, other adjustments to IPL's capital structure would be required. For example, the zero-cost capital would need to be removed from the WACC calculation, as none of the zero-cost capital from IPL's most recent rate case was used to finance its TDSIC projects.

In Cause No. 44371, in which Mr. Gorman offered similar recommendations regarding the calculation of WACC, we stated:

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.

*NIPSCO*, Cause No. 44371, at 17 (Feb. 17, 2014). The evidence in this proceeding does not lead to a different conclusion. Such an approach is also supported by the language of Ind. Code § 8-1-

39-13(a)(2), which refers to “the public utility’s capital structure,” and Ind. Code § 8-1-39-13(a)(3), which refers to “actual cost rates for the public utility’s long-term debt and preferred stock.”

Thus, for these reasons, we approve IPL’s use of its actual capital structure as of the rider cutoff date, March 31, 2020, and the actual cost rate for the long-term debt component of IPL’s capital structure in calculating its WACC, not the alternative proposals made by Mr. Gorman.

iv. **Conclusion.** We acknowledge and commend IPL’s netting proposal, which has the effect of reducing the authorized return that it would have received if the adjustment were not made, thus addressing the concerns about this topic that were raised by the other parties. For the reasons explained above, we find that IPL’s proposed WACC should be utilized in determining the appropriate TDSIC revenue requirement, as shown in the table below and IPL’s Attachment NHC-5.

<b>IPL’s Proposed WACC as of March 31, 2020</b>				
	Total Company Capitalization (in thousands)	Capitalization Ratio	Total Cost of Capital	WACC
Long-Term Debt	\$1,801,151	47.95%	4.98%	2.39%
Preferred Equity	\$59,784	1.59%	5.37%	0.09%
Common Equity	\$1,559,018	41.50%	9.99%	4.15%
Post-1970 Investment Tax Credit	\$27	0.00%	0.00%	0.00%
Prepaid Pension Asset	(\$88,063)	-2.34%	0.00%	0.00%
Deferred Taxes and Pre-1971 Investment Tax Credit	\$390,468	10.38%	0.00%	0.00%
Customer Deposits	\$34,218	0.91%	6.00%	0.05%
<b>Total</b>	<b>\$3,756,603</b>	<b>99.99%</b>		<b>6.68%</b>

C. **Ind. Code § 8-1-39-13(b).** IPL has requested Commission 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. This request is consistent with the applicable statute and is approved.

D. **Ind. Code § 8-1-39-14.** 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 the proposed increase is less than the 2% statutory TDSIC limit set forth in Ind. Code § 8-1-39-14. As shown on IPL Attachment NHC-11, the TDSIC 1 filing results in an average aggregate increase of 0.28% in total retail revenues. Thus, we find that IPL’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 and therefore complies with Ind. Code § 8-1-39-14.

E. **TDSIC 1 Factors.** For the reasons explained above, IPL’s proposed TDSIC 1 factors and associated revisions to its tariff, as set forth in IPL’s revised Attachment NHC-12, are approved. An average residential customer using 1,000 kWh per month will experience an increase of \$0.44, or 0.38%, on their monthly bill.

**TDSIC 1 Rider Factors**

Rate per kWh	Rate Class
\$0.000440	Residential Service – RS, CW, and EVX (associated with RS)
\$0.000365	Small Commercial and Industrial Services – SS, SH, OES, UW, CW, and EVX (associated with SS)
\$0.000146	Large Commercial and Industrial Service – PL and HL
\$0.000226	Large Commercial and Industrial Service – SL, PH, and EVX (associated with SL)
\$0.000362	Lighting Services – APL and MU-1

F. **Updated Cost Estimates.** As noted by Mr. Shields, the ongoing COVID-19 pandemic has caused increased risk in completing the necessary engineering work to convert all Year 3 Class 3 and 4 cost estimates to Class 2 estimates for the December 2020 Plan Update filing. IPL is currently scheduled to complete detailed engineering on 2022 projects and some 2021 projects in 2020, for Class 4 estimates to be converted to Class 2 estimates. Due to state and local government stay-at-home orders during the early stages of the COVID-19 pandemic, IPL and its consultants have been subject to restrictions on travel and meetings, limiting the ability of IPL’s engineering contractor to make the necessary field visits to complete the Class 2 estimates.

For the TDSIC 2 plan update, IPL has indicated that it will present the progress of the TDSIC projects and compare spending levels to the previously approved TDSIC Plan estimates. IPL will also present any proposed changes to the TDSIC Plan and provide specific justification for the Commission to approve the recovery of costs in excess of approved estimates as stated in the 45264 Order. Given the ongoing nature of the pandemic, the Commission accepts IPL’s proposal to provide updated project estimates in TDSIC 2 and to provide supplemental information in 2021. We encourage IPL to provide any updated information as soon as possible so that all parties are afforded the maximum amount of time to review the updated estimates.

9. **Confidentiality.** 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.

**10. Administrative Notice.** IPL's Petition contained a request that the Commission take administrative notice of the 45264 Order.<sup>2</sup> On August 17, 2020, Intervenors filed a Motion for Administrative Notice requesting that the Commission take administrative notice of the 45264 Order and the order in Cause No. 45029, IPL's most recent rate case.

All of these requests for administrative notice were denied due to a recent amendment to the Commission's procedural rule governing administrative notice. 170 IAC 1-1.1-21.5(f) provides, "The commission and parties may cite to the commission's orders and rules without taking administrative notice of those documents." Therefore, such requests for administrative notice are unnecessary in the future.

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

1. IPL's actual capital expenditures and TDSIC costs, including 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 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's revised Attachment NHC-12, 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 TDSIC factors approved in a subsequent filing.

5. Prior to implementing the approved TDSIC factors, IPL shall file the tariff and applicable rate schedules under this Cause for approval by the Commission's Energy Division. Such rates shall be effective on or after the Order date, subject to Division review and agreement with the amounts reflected.

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

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<sup>2</sup> IPL also requested in the Petition that the Commission take administrative notice of its TDSIC Plan, but this request was ultimately moot because the TDSIC Plan was admitted into evidence.

7. The information filed in this Cause pursuant to IPL's Motions for Protection and Nondisclosure of Confidential and Proprietary Information 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: OCT 14 2020**

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

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**Mary M. Schneider**  
**Secretary of the Commission**