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May 27, 2011

CASE
11-3002-EL-MER

Commissioners
The Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215

Re: AES to acquire DPL

Dear Commissioners:

I understand that The AES Corporation intends to acquire DPL Inc. and that your approval is needed to allow the acquisition. Out of a sense of what is right and just, I am compelled to write you with concern for the Dayton Power and Light consumer. There is much similarity between AES's engagement of IPL (through its parent IPALCO) with the now proposed engagement of DPL, to which I draw your attention.

While I am no longer employed by AES, I was employed by AES for more than 14 years. I have served as an officer of several AES subsidiaries over that time period. I was one of the transition people for AES during its acquisition of the Indianapolis Power and Light Company (IPL), I served as a VP of IPL for the first three years following AES' acquisition, and I served a very short term as Director of IPALCO Enterprises (parent company of IPL). While an officer of IPL, many AES directives with respect to the operation of IPL were designed to maximize the cash available to AES at the known detriment to the IPL enterprise, IPL consumers and the public. My separation from AES is directly related to these directives. I share this for the benefit of Dayton Power and Light consumers as you decide whether to support the AES acquisition.

As you know, the business model for an independent power producer, like AES, is very different from the public utility business model. Perhaps the most notable difference is the rate of return expected by shareholders under each model and thus the business decision-making to support each. So what attracts an IPP like AES to DPL? Very simply it is cash and debt capacity. Dayton Power and Light, like IPL, generates an enormous amount of cash and is conservatively leveraged – meaning that a lot of value can be taken from Dayton Power & Light immediately to support other AES ambitions. In fact, within a few months of the acquisition, AES leveraged IPL and IPALCO generating some $1B in cash for AES even though this resulted in an insolvent state for IPALCO for some period of time. Certainly there are limitations on what AES can do at the utility level; however, the parent company is relatively unrestricted and commits the same cash flows from the utility – thus weakening the utilities financial position.

The Indiana Utility Regulatory Commission took steps to protect the consumer's interest; namely formal agreements around the idea of utility independence from AES and disclosure requirements. However these proved to be innocuous as AES routinely violated these with no recourse (e.g., non reporting of affiliate transactions, incomplete

accounting of its financials, neglect of utility needs in favor of parent company distribution then available to AES).

IPL rates, like Dayton Power & Light's are among the lowest rates in the U.S. These low rates provided AES a great deal of cover from regulatory scrutiny as regulators are less likely to challenge the utility so long as relatively low rates are in place – regardless of whether these rates were fair and reasonable. The general reluctance of regulators to engage in expensive undertakings against the utility (e.g., rate case) also provided a climate for unjust enrichment for AES.

Shortly after the AES acquisition of IPL, IPL was close to exceeding its authorized income. At the time IPL had in place an alternative consumer electric plan called the Elect Plan. While the participation level was extremely low, AES exploited this plan by actively marketing it with financial incentives for the sole purpose of significantly increasing consumer participation, particularly large industrials. IPL chose to not report Elect Plan revenue (to the tune of $60M annually), but did report related expenses, for the sole purpose of misrepresenting the utilities' income to avoid regulatory scrutiny.

On numerous occasions, IPL neglected known and significant utility maintenance to protect dividends available to AES – at the personal risk of employees and the public. As early as 2004, I alerted the regulators of the real exposure of underground utility vault explosions due to the decision to forgo maintenance in favor of cash availability to AES. The downtown area of Indianapolis has experienced numerous explosions within the underground utility vaults, the latest being earlier this year. While local regulators have largely excused these explosions, they are beginning to show great interest as evidence by their request of IPL to explain the circumstances around these explosions during a hearing held this week.

As a fiduciary of IPL, I brought the above issues to the attention of appropriate parties which ultimately included AES CEO, Paul Hanrahan and the AES Board of Directors. The result was my separation from AES. While AES offered me a substantial financial package in return for my silence on these matters, I declined the numerous offers by AES and met with the Indiana Office of Utility Consumer Counselor and provided numerous communications to the Indiana Utility Regulatory Commission. Through this effort, IPL's Elect Plan is no longer an approved program.

I have made some positive influence for IPL consumers and the public, but I am certain that the negative impacts to IPL consumers will be felt for many, many years ahead. To give you some further appreciation of the situation imposed by the influence of AES, I attach an Informal Complaint I filed with the IURC (IPL defeated my attempt to be recognized with standing), the motion sought to investigate IPL's financial reporting practices, the resulting settlement agreement, a local new article related to results of my exposing of IPL's falsification of financial reporting to regulators (note the controversial agreement and the likelihood that IPL benefited in the hundreds of millions of dollars while only being held accountable for $10m), and my comments to regulators that likely lead to IPL's withdrawal to seek extension of their Elect Plan.

I am not suggesting that AES should not be allowed to acquire DPL, for that decision is yours, in part. I am suggesting that if the acquisition is allowed, you should exercise extreme caution, put substantial consumer protections in place, and be prepared to faithfully hold Dayton Power and Light accountable for their consumer/public obligations despite influences from their parent company.

The acquisition of Dayton Power and Light (through DPL) is a significant factor to rate payers and I urge your utmost attention. Additionally, I am willing to provide testimony and further support of my concerns on the matter.

Sincerely,

Dwane G. Ingalls
1600 S. Paddock Road
Greenwood, IN 46143
(317) 885-6999
ingalls4dwane@msn.com

Attachments

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INFORMAL COMPLAINT OF FORMER INDIANAPOLIS POWER & LIGHT COMPANY VICE PRESIDENT DWANE INGALLS AGAINST INDIANAPOLIS POWER & LIGHT COMPANY FOR UNLAWFUL ACTS AND FOR OTHER WRONGFUL ACTIONS TAKEN RESULTING IN SERVICE AND FACILITIES THAT ARE NOT REASONABLY ADEQUATE	)	CAUSE NO._____
RESPONDENT: INDIANAPOLIS POWER & LIGHT COMPANY	)	

INFORMAL COMPLAINT

TO THE INDIANA UTILITY REGULATORY COMMISSION:

Complainant, Dwane Ingalls ("Ingalls"), a former Vice President of Indianapolis Power & Light Company ("IPL"), submits this Informal Complaint against Indianapolis Power & Light Company pursuant to Indiana Code ("I.C.") § 8-1-2-34.5, I.C. § 8-1-2-47, I.C. § 8-1-2-58, I.C. § 8-1-2-69, I.C. § 8-1-2-107, I.C. § 8-1-2-113, I.C. § 8-1-2-115 and other relevant statutes and rules, seeking the immediate effecting of a full rate case and the immediate suspension of all dividend payouts from IPL until the rate case process is complete and an investigation into IPL's conduct as alleged in this Informal Complaint . In support of this Informal Complaint, the Complainant respectfully represents and shows, on information and belief, that:

Parties and Jurisdiction

1. Pursuant to 170 IAC § 1-1.1-10, the names and addresses of the complainant is:

Dwane Ingalls
1600 S. Paddock Rd
Greenwood, IN 46143

2. IPL is a corporation incorporated, organized and doing business under the laws of the State of Indiana since 1926, with its corporate and executive business offices located at One Monument Circle, Indianapolis, Marion County, Indiana, 46204. IPL is a regulated electric utility with its customer base concentrated in Indianapolis, Marion County, Indiana, but also serving customers in portions of other Central Indiana communities surrounding Marion County. As an electric utility, IPL is engaged in the marketing and sale of electric energy/power and capacity to the general public, serving both residential and commercial customers.

3. As a public utility, IPL is under the jurisdiction of the Indiana Utility Regulatory Commission ("Commission"). In addition, I.C. § 8-1-2-54, I.C. § 8-1-2-113 and other sections of I.C. § 8-1-2 *et seq* authorized the Commission to exercise jurisdiction over this matter.

Pertinent Facts

4. IPALCO Enterprises, Inc. ("IPALCO") is a holding company incorporated under the laws of the State of Indiana in September 1983. IPALCO's principal subsidiary is IPL. IPALCO owns all of the outstanding common stock of IPL.

5. The AES Corporation ("AES") acquired IPALCO in a stock-for-stock pooling transaction in March 2001.

6. Dwane Ingalls was employed by AES from February 1990 through May 2004. Ingalls was Vice President of IPL from March 2001 through May 2004.

7. IPL's last rate case was in 1995, which was the result of a "black box" settlement that set base rates without specific review rates of return and fair value.

8. The IURC entered into a Stipulation Agreement ("Stipulation") on February 2, 2001 with the Indiana Office of Utility Consumer Counselor ("OUCC"), AES, IPALCO and IPL. This Stipulation allowed for the withdrawal of IURC's intervention and protest registered with the Federal Energy Regulatory Commission ("FERC") with regards to the AES acquisition of IPALCO (see FERC Docket No. EC01-25-000).

9. IPALCO and AES entered into a Separateness Agreement ("Separateness") on November 14, 2001.

10. IPL has entered into a tax-sharing agreement with IPALCO which has not been filed with the IURC as required under I.C. § 8-1-2-49 and the Stipulation.

11. IPALCO has entered into a tax-sharing agreement with AES which has not been filed with the IURC as required under.

12. The tax-sharing agreements listed above effectively amount to greatly reduced actual taxes paid on behalf of IPL as federal and state income tax returns are consolidated with AES to utilize AES losses. This tax consolidation greatly reduces IPL's allowable tax expense. See OUCC vs. Indiana Cities Water Corporation (440 N.E.2d 14; 1982 Ind. App. LEXIS 1413).

13. IPL has failed to file other affiliate transactions as required under I.C. § 8-1-2-49 and the Stipulation.

14. IPL participated in the purchase and sale of a combustion turbine from an AES affiliate that did not constitute an arms-length agreement as required under the Stipulation and Separateness.

15. IPL is manipulating its Net Operating Income (NOI) through Elect Plan offerings that understates its true sales revenue by tens of millions of dollars per year and understates its NOI by millions of dollars per year. This manipulation is an attempt to shield these amounts from the purview of the IURC by having the effect of managing IPL's NOI so as to not to draw attention to IPL's true earnings relative to the earning cap set by the IURC.

16. Within the first six (6) months of 2001, IPL reduced its workforce by approximately 30%. Additional workforce reductions followed in 2002.

17. IPL responded poorly to a thunderstorm in July 2001, which resulted in an IURC investigation and a subsequent settlement requiring, in part, the imposition of specific performance standards. IPL has failed to meet the performance standards set and as such has paid associated penalties.

18. AES suffered a significant financial crisis following the collapse of Enron in 2001. As a result, AES has imposed significant cost cutting and asset sales requirements on IPL for the purpose of maximizing IPL dividend flows to AES, through IPALCO.

19. Many maintenance projects where postponed and/or delayed in 2002 and 2003, even though significant reliability and safety issues were raised within IPL, for the sole purpose of enhancing dividends from IPL to AES, through IPALCO.

20. Several significant electric service related explosions occurred in the downtown area of Indianapolis in January 2005 due to IPL's reckless and negligent actions.

21. Given the aforementioned cost-cutting actions of IPL, IPL rates have been unreasonable from 2001.

22. The aforementioned cost-cutting actions, including, but not limited to postponed or delayed maintenance and significant workforce reductions has reduced IPL's service to an unreasonable, unsafe, and inadequate state.

The Commission Should Initiate Rate Case Proceedings, Suspend All Dividends, and Investigate Violations of Commission Agreements and Indiana Law

23. To prevent injury to the business or interest of the people, the Commission should re-establish energy rates that are commensurate with reasonable service and fair returns. Due to the immediate and potentially devastating injury that could occur as a result of the continued depletion of IPL's ability to serve its consumers reliably and safely, given AES's overbearing demand for dividends, this Commission should exercise its authority under the Commission's February 12, 2003 Order (Cause No. 42292) and deny all IPL dividend payout requests, effective immediately, until such time that the rate case proceeding is complete.

24. IPL should bear the burden of proof in this proceeding because the evidence related to this Complaint is particularly within the knowledge and control of IPL. See I.C. § 8-1-2-73.

WHEREFORE, the Complainant respectfully requests that the Commission grant the following relief:

a. Immediately proceed with rate case proceedings for IPL;

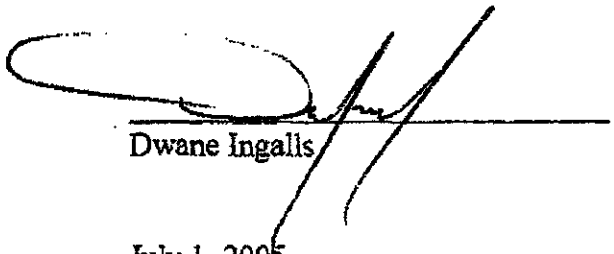
b. Immediately deny all dividend payouts from IPL until the completion of rate case proceedings;

c. Conduct an investigation regarding IPL's conduct as set forth in this Compliant, including, but not limited to IPL's violations of Commission agreements and Indiana Law;

d. Allocate the burden of proof to IPL on each of the above-noted issues; and

e. Provide such other and additional relief as the Commission may find to be appropriate in the circumstances.

I affirm under the penalties for perjury that the foregoing representation is true to the best of my knowledge, information, and belief.



Dwane Ingalls

July 1, 2005

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Informal Complaint was served this 1st day of July 2005, by first class, United States mail, postage prepaid, upon the following:

Office of Utility Consumer Counselor
Indiana Government Center North
Room N-501
Indianapolis, IN 46204

S. Michael Woodard
Registered Agent for IPL
One Monument Circle
Indianapolis, IN 46204

Dwane Ingalls

COPY

FILED

JUL 2 1 2005

INDIANA UTILITY REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF INDIANAPOLIS POWER & LIGHT COMPANY FOR APPROVAL OF A FUEL COST CHARGE FOR ELECTRIC SERVICE DURING THE MONTHS OF SEPTEMBER, OCTOBER AND NOVEMBER, 2005, *IN ACCORDANCE WITH THE* PROVISIONS OF I.C. 8-1-2-42	**CAUSE NO. 38703-FAC68**

MOTION TO ESTABLISH SUB-DOCKET FOR INVESTIGATION INTO IPL'S TREATMENT OF ITS ELECT PLAN REVENUES AND EXPENSES FOR DETERMINATION OF ITS FAC FUEL FACTOR AND EARNINGS TEST

The Indiana Office of Utility Consumer Counselor (OUCC), by counsel, respectfully moves the Indiana Utility Regulatory Commission (IURC or Commission) to establish a new sub-docket in the above-captioned proceeding to investigate IPL's treatment of its Elect Plan revenues and expenses for purposes of determining its FAC fuel factor and it's Earnings Test. In support of this Motion, the OUCC states as follows:

1. In its order in Cause No. 40959, the Commission approved a Settlement between IPL, the OUCC and CAC which allowed IPL to decline Commission jurisdiction for the limited purpose of offering an Optional Pricing and Service Plan (the Plan) as a wholly voluntary alternative to IPL's regulated rates and service. (See Exhibit A attached hereto).

2. As the Commission states in its Order, "...it is necessary to assure that both the risks and benefits of the Plan are borne by IPL and the customers selecting the Plan and not by the customers of IPL's fully regulated service." (order p. 4). Further, the Settlement Agreement states... "it [is] the intent of the parties and the commitment of IPL that jurisdictional customers will not pay higher rates as a result of the costs of the plan implementation." (Settlement Agreement p. 5)

3. During the course of our audit of IPL's FAC 68, it came to our Agency's attention that IPL may have inappropriately removed revenues without corresponding expenses in its application of the earnings test mandated by IC 8-1-2-42(d)(3) in apparent conflict with the Commission's Order referenced above. This concern is more fully set forth in the testimony of Peter Boerger and Robert Endris attached hereto as Exhibit B & C respectively.

4. The OUCC believes that it would be impossible to fully explore this issue in the limited time available to our Agency in the expedited FAC proceeding. This issue deserves review and scrutiny that can only be accomplished with an extended procedural schedule that

permits discovery and the filing of testimony, if necessary, by the OUCC and other interested parties.

WHEREFORE, based on the reasons set forth herein, the OUCC respectfully moves that the Commission create a sub-docket in this proceeding and set a prehearing conference to establish a procedural schedule for the sub-docket.

Respectfully submitted,

Randall C. Helmen, Attorney No. 8275-49
Deputy Consumer Counselor
for State Affairs

AGREEMENT

In recognition that the Elect Plan will soon enter its final year, IPL and OUCC desire to clarify the Elect Plan implementation for the balance of its term, including the treatment of Elect Plan revenues, fuel costs and the calculation of the sum of differentials under IC 8-1-2-42.3 in IPL's Cause No. 38703 FAC proceedings, and to discuss potential options for customers when Elect Plan expires. Therefore, IPL and OUCC agree as follows:

1. In anticipation of the Elect Plan's upcoming expiration, IPL has begun a phase-out of the Elect Plan. No new Elect Plan contracts will be offered, except for Green Power, which will continue on a month to month basis through the balance of the Elect Plan (12/31/06). IPL will honor existing contracts and offers. Existing Elect Plan contracts will expire pursuant to their terms (last contracts would expire in Fall, 2006), making all revenue and expenses, except for REMC, jurisdictional for the purpose of the net operating income ("NOI") calculations in the FAC proceedings. This can be done under the terms of the Elect Plan without the need for regulatory approval. IPL and OUCC agree to include consideration of a "second generation" program to address alternative billing and green power as part of the good faith discussions contemplated in paragraph 6 below.

2. The OUCC agrees that the sum of differentials calculation submitted in Cause No. 38703-FAC 69 on October 14, 2005, by its Auditor is accurate. IPL and OUCC agree that any issue raised regarding the application of IC 8-1-2-42.3 is limited to the prospective application of that section.

3. IPL and OUCC agree that Cause No. 38703-FAC68 and 69 will no longer be subject to refund with respect to Elect Plan issues. OUCC and IPL will work together to implement this agreement in an appropriate and timely manner.

4. IPL voluntarily will treat 100% of Elect Plan revenues in excess of allocated fuel and purchased power costs as jurisdictional effective August 1, 2005 for the purpose of jurisdictional NOI computations in the FAC. In the event that Elect Plan revenues are insufficient to cover the allocated fuel and purchased power costs, such deficiency shall remain non-jurisdictional. This will effectively phase-out Elect Plan accounting in 3 month increments (i.e., one-quarter in FAC 70, one-half in FAC 71, three-quarters in FAC 72 and fully in FAC 73). IPL and OUCC agree that Cause No. 38703-FAC 70 through 73, including the reconciliation period, shall not be interim or subject to refund due to any of the Elect Plan issues (including the Section 42.3 calculations), other than compliance with this agreement. While IPL's treatment of revenues and allocated fuel and purchased power costs under the Elect Plan was authorized by the IURC Orders in Cause Nos. 40959, 41817 and 42318, the parties agree that IPL's voluntary change in the treatment of the non-jurisdictional revenues does not require IURC approval because IPL is the only party potentially adversely affected by the change. As a result, no party would have standing to challenge IPL's voluntary action to benefit its retail jurisdictional customers by treating non-jurisdictional revenues as jurisdictional for purposes of the NOI computations in the FAC. IPL will identify the voluntary treatment in the accounting testimony filed in FAC 70.

5. To assist all residential customers this winter, and in recognition of the various benefits of the Elect Plan to customers and the Company, IPL will provide a one-time, temporary

energy assistance credit to its residential customers in the amount of $25 per customer in the billing month of January 2006. (The total credit is expected to be approximately $10 million.) A 30-day filing will be made by October 31, 2005 to implement this credit.

6. The OUCC and IPL shall agree to engage in good faith negotiations relating to:

- A new alternative regulation plan focused on customer rate levels, reliability assurances, earnings freedom and a "second generation" program to address alternative billing and green power.

- A prompt filing of new depreciation rates for IPL. IPL will agree to discuss with the OUCC whether the depreciation rates issues should also be addressed within the context of the alternative regulation plan. IPL does not waive its right to file a depreciation rate case as a separate proceeding at any time, including before the end of 2005.

7. The OUCC and IPL shall agree to coordinate communications to support the above proposal.

8. This is a "package" and is intended as a global agreement on all items specifically enumerated to the extent each is addressed herein. Both parties agree not to directly or indirectly challenge the regulatory treatment set forth herein.

Accepted and agreed this 28th day of October, 2005.

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

By: Susan L. Macey

Susan L. Macey
Utility Consumer Counselor
100 N. Senate Avenue, Room N-501
Indiana Government Center South
Indianapolis, Indiana 46204

INDIANAPOLIS POWER & LIGHT COMPANY

By: Stephen R. Corwell

Stephen R. Corwell
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Critics want IPL answers

Utility cut $10M settlement after agency suggested accounting was misleading

By Chris O'Malley comalley@ibj.com

Groups representing Indianapolis Power & Light Co. customers want to know if the utility has deliberately underreported income to regulators and overcharged customers.

Their concerns were sparked by a cryptic settlement IPL reached with the Indiana Office of Utility Consumer Counselor on Oct. 28 that took IPL customer groups by surprise.

IPL agreed to provide each residential customer with a $25 credit early next year, "a time when the costs for heating their homes will be at their highest," IPL said in a press release Oct. 31.

The release left the impression the refund, which will cost IPL $10 million, was an act of benevolence. However, the OUCC confirmed it stemmed from "issues" the office had with the way the utility reported its finances when it sought quarterly rate adjustments earlier this year. The adjustments allow utilities to pass on to customers increases in costs for coal and other fuels used to generate electricity.

In a letter to the Indiana Utility Regulatory Commission in July, the OUCC said IPL "may have inappropriately removed revenues without corresponding expenses" in those quarterly fuel proceedings.

Such a move would have the effect of making the utility appear less profitable than it was and would make the company's fuel expenses appear higher than they were.

According to the Oct. 28 settlement document, IPL now will "voluntarily" report all revenue it receives from its so-called Elect Plan program toward the calculation for quarterly fuel-related rate adjustments.

The Elect Plan, approved by the Indiana Utility Regulatory Commission in the late 1990s, gives customers the option of paying a set price for power for a certain period of time.

If costs for coal or other expenses fall during the time, IPL gets to profit from the decline. But if they rise, IPL must shoulder the higher costs, rather than passing them on to customers. In return for accepting that risk, IPL doesn't have to count revenue generated under the plan toward its IURC-imposed earnings cap.

A confidential IPL business plan—filed earlier this year in Marion Superior Court as part of a wrongful-dismissal lawsuit by former IPL Vice President Dwane Ingalls—showed Elect Plan revenue has grown rapidly, from $31 million in 2002 to $60 million in 2003. Total revenue that year was $832 million.

The 2-year-old business plan recommends that IPL "continue to provide mechanisms like Elect Plan ... and operate in a manner that does not attract the negative attention of the IURC."

IPL said in a statement Nov. 3 that it has handled rate matters appropriately.

However, the vague and sudden settlement between IPL and the OUCC has attracted the attention of customer groups, who say they're going to press their concerns with the IURC.

Their key questions: Should IPL have been counting Elect Plan revenue in its calculations for quarterly rate adjustments? And if so, how long has it not met that requirement?

"My impression from reading [the settlement] is that from day one they haven't been," said Timothy Stewart, an attorney at Lewis & Kappes representing a group of IPL's largest industrial customers. "As you might expect, we're curious about it .... I can assure you it will be reviewed."

In its statement, IPL said it has "consistently and correctly applied and accounted for Elect Plan since the plan was approved in 1998," adding "the results have been reviewed and approved in open regulatory proceedings since that time."

The company added that its electric rates continue to be among the lowest in the nation, "while offering creative service options to our customers through Elect Plan."

Stewart said he will press for why the refund negotiated by the OUCC included only residential—not industrial—customers.

OUCC officials declined to elaborate on the settlement, which now must be approved by the IURC. But the OUCC did say the agreement resolves issues the agency had with how the utility treated Elect Plan revenue in two filings this year for fuel-cost adjustments.

That's a red flag to IPL watchdogs.

"IPL has been sheltering a big chunk of revenue under the Elect Plan .... The question is, how much money have they pocketed over the last several years?" said Jerry Polk of Mullett Polk & and Associates, a law firm representing the Citizens Action Coalition.

Polk blasted the OUCC for "striking a settlement with limited public scrutiny," instead of seeking input from IPL customer groups. "It's arrogant and disrespectful to my clients," he said.

As part of the settlement, IPL and the OUCC agreed to discuss a new alternative regulation plan to replace Elect Plan, which expires in late 2006.

In the 2003 confidential business plan, IPL executives had expressed concern the utility might be earning too much and have to refund money to customers. The plan said the company generated a 25-percent return on equity that year compared with an average 11-percent return among electric utilities nationwide.

In a filing late last month with the U.S. Securities and Exchange Commission, IPL said it does not expect to exceed its earnings cap this year but likely will in the future.

If it does, IPL wouldn't immediately face the possibility of refunds. When utilities earn less than their cap, they're permitted to bank the difference—an amount that's now reached $774 million, according to IPL's filing. That amount can be used to offset over-earnings.

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Giveback questions

Controversy: IPL parent IPALCO Enterprises' 2003 internal business plan revealed that revenue from its Elect Plan in 2002 was $31.2 million and was expected to double to $60 million in 2003. Some consumer groups wonder if regulators allowed IPALCO to earn too much money when they approved the plan.

Latest: IPL on Oct. 31 struck a deal with the Office of Utility Consumer Counselor to give each customer $25 in January as relief during the winter heating season "and in recognition of the various benefits of the Elect Plan to customers and the company." But consumer groups say the deal appears to be to make good on underreported revenue.

Next up: Elect Plan expires in late 2006; IPL and regulators are discussing "second-generation" plan.

Sources: IPALCO 2003 business plan, Indiana Office of Utility Consumer Counselor

September 20, 2006

Indiana Utility Regulatory Commission
Indiana Government Center South
302 W. Washington Street, Suite E-306
Indianapolis, IN 46204

Indiana Office of Utility Consumer Counselor
100 N. Senate Ave. - Room N501
Indianapolis, IN 46204-2215

RE: Comments in Opposition - IURC Cause 43100 - Petition of Indianapolis Power & Light Company petition related to optional service and pricing initiatives

Dear IURC and OUCC:

I have addressed these comments to you jointly for the purpose of providing information to best represent the interest of IPL consumers and for the purpose of having these comments included in the official case record. I offer these comments in behalf of me, in behalf of an investment company that I manage which is a direct IPL customer, in behalf of the remaining IPL customers, and in behalf of the general public having a presence in the vicinity of IPL assets. I personally have more than 20 years experience in the electricity generation industry and I am a past director of IPALCO Enterprises and a past Vice President of IPL.

In the strongest sense possible, I oppose IPL's petition to expand its Option Service and Pricing programs. As I discuss below, most of the Option Service and Pricing programs currently offered and currently proposed by IPL are, without question, **not** in the interest of IPL consumers.

The IURC approved IPL's current optional service and pricing program, commonly referred to as the Elect Plan, in 1998 (cause number 40959) under the belief that the plan was "in the public interest and will enhance or maintain the value of IPL's energy services and property". The simple fact is that this plan has proven to not be in the public's interest and has deteriorated the value of IPL's energy services and property. While very few customers may appear to benefit in the short-term, the plan has resulted in current rates that are unfair.

Allow me to explain:

IPL's latest rate case (1995 – IURC cause number 39938) was in fact a "negotiation" between parties as opposed to a full computational analysis of IPL's business. It was further conducted during a strong monopolistic environment in Indiana. Essentially all of IPL's assets, at that time, were employed to serve jurisdictional customers with a mere morsel of non-jurisdictional wholesale sales. At the time of this rate negotiation there appears to have been no envisioning of anything but business as usual, and certainly not an optional service and pricing plan. An authorized net operating income was established recognizing that IPL's

revenue was 99% jurisdictional.[1] Today, IPL enjoys relatively significant wholesale sales (approximately 6% of its revenue)[2], and has managed to transfer another 7 – 10 % of jurisdictional revenue to non-jurisdictional revenue via its Elect Plan[3]. This means that IPL is now using a much lower percentage of its capital to service jurisdictional customers, yet there has been no adjustment to IPL's authorized net operating income to reflect this fact. This effectively allows IPL's rates to jurisdictional customers to be artificially inflated and/or serves to mask indicators of over earning that suggest the possibility of unfair rates.

Further outdating the authorized income established in 1995 are other extraordinary events that have occurred within IPL. For example, in 2000 IPL divested itself of significant assets and associated costs with the sale of IPL's Perry "K" steam plant and other assets. Another example includes expense reductions as a result of IPL spinning off certain post-retirement employee benefits, which was well publicized.

The 1998 Elect Plan further requires that the revenue, expense, and income or losses from participants be non-jurisdictional. IPL has been very astute to remove revenue from jurisdictional status as this allows IPL to generate much higher incomes without approaching its unadjusted authorized income. Yet IPL has not appropriately accounted for expenses under the Elect Plan. This means that IPL gets to keep (or send to AES) monies that would otherwise be returned to customers via the FAC, and nobody is the wiser because, under the Elect Plan, IPL is able to reflect an appearance of under earning. I personally outlined this concern in a meeting with the OUCC on February 23, 2005.[4] The OUCC obviously concurred with my concern given their motion filed with the IURC calling for an investigation.[5] The fact that IPL was prepared to modify its accounting of Elect Plan and give up $10,000,000 in a settlement with the OUCC, after private meetings on this matter, further suggests potential misappropriation by IPL.[6] It is probable that IPL's annual reports related to this 1998 Plan, which are provided to the IURC and the OUCC, raise additional concerns as the reports, as stated in the cause number 40959 Settlement Agreement, "...detail any effect the operation of the Plan has on IPL's jurisdictional (non-participating) customers,...". Unfortunately, the IURC and OUCC are holding these reports confidential at IPL's request. The confidential treatment of these reports seems inappropriate and I suggest that they be made public.

From a practical standpoint, IPL customers have indicated little interest in the 1998 optional service and pricing plan. In mid 2003, some seven (7) years after the implementation of the Elect Plan, approximately 1,500 customers opted to take part. That's less than one-half of one percent of IPL's 460,000 customers! Clearly, IPL customers have spoken which begs the question, "Why then is IPL so eager to expand the program even further?"

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[1] 1994 FERC Form 1
[2] 2005 FERC Form 1
[3] 2005 FERC Form 1 with assumption of $60 – 90M in Elect Plan revenue
[4] Related concerns were also presented to the IURC by me in a compliant filed with the IURC on July 1, 2005.
[5] Motion filed July 21, 2005. IURC Cause 38703-FAC68. The OUCC stated within their motion that their concern "is more fully set forth in the testimony of Peter Boerger and Robert Endris attached hereto as Exhibit B & C respectively." Noteworthy is the fact that the referenced exhibits could not be found within IURC records on September 14, 2006.
[6] Indianapolis Business Journal (November 7, 2005) and IPALCO Enterprises, Inc. SEC Form 8-K filing dated October 31, 2005.

Indiana is a regulated state with respect to electricity service. Each of you is tasked with regulating IPL. In-lieu of having the option to choose our electric provider, current and future IPL customers depend on responsible regulation to ensure adequate electric service and facilities to provide us a product at reasonable rates. To hold IPL customers captive to IPL, while at the same time supporting unbalanced deregulation, goes against the integrity of the public utility system. In theory, it seems that the subject petition could allow IPL to fully convert all jurisdictional customers to non-jurisdictional!

We, IPL customers, are currently paying unfair rates. I am confident that the facts will handily support that assertion. Since 2001, with IPL's acquisition by AES, expenses at IPL have plummeted. We (the IURC, the OUCC, and I), are also aware of tax-sharing agreements in place that are related to IPL income. A business person understands that tax-sharing agreements likely result in no taxes actually being paid, which is particularly important in considering allowable cost to be borne by IPL customers.[7] Additionally, as indicated above, the portion of IPL capital being used for jurisdictional purposes has decreased. Now, insert the impact of IPL being allowed to convert jurisdictional revenue to non-jurisdictional revenue, thus creating disproportional expense loading to jurisdictional customers as well as effectively removing the traditional tell-tale signs of the need for a rate review. Even without the traditional tell-tale signs, a casual evaluation of IPL FAC filings since 1995 indicates that a rate review at some level was in order subsequent to AES' acquisition of IPL.[8]

In my estimation, assuming no Elect Plan and a high-altitude review of appropriate costs and return on capital, given the well known activities within IPL subsequent to the acquisition by AES, we, IPL customers would currently be enjoying rates 20% (maybe more) lower than what we are paying today. That is precisely the damage the Elect Plan has caused, and it is precisely why you should not support the current petition. In fact, you should rather support the revocation of the current Elect Plan and investigate the need to conduct a full rate case on IPL.

I do not oppose the whole of IPL's petition as I do believe that certain DSM and renewable programs are in the long-term interest of IPL consumers ... but only within careful regulatory framework.

I welcome any opportunity to provide testimony on this matter.

Sincerely,

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[7] See OUCC vs. Indiana Cities Water Corporation (440 N.E.2d 14; 1982 Ind. App. LEXIS 1413).
[8] See IPL FAC filing, Cause 38703-FAC73, Applicant's Exhibit 4 showing unusual expenses in 2001 and income in excess of authorized levels in 2002.