Accordingly, it is my opinion that you have the authority to issue a state warrant in payment of the voucher which is filed with you to the Indiana Board of Agriculture in the amount of $246,851.19.

OFFICIAL OPINION NO. 49

May 17, 1946.

Mr. Harold Shulke, Superintendent,
Division of Buildings and Property,
148 State Capitol Building,
Indianapolis, Indiana.

Dear Mr. Shulke:

I have your letter of May 9, 1946 in which you request an official opinion on the following statement of facts:

On February 23, 1934 the Indianapolis Power and Light Company installed meter No. 29921 which is an alternating current meter registering a portion of the electrical energy supplied to the State House. On April 24, 1946, during a routine test, the company discovered that at the time said meter was installed it was incorrectly stamped for a register ratio by the manufacturer. It was incorrectly stamped with a ratio of 1200, when in fact it should have been stamped with a ratio of 1800. By virtue of this error this meter has failed to register the proper amount of current used and has resulted in an undercharge by the company.

The company proposed to adjust the billing in accordance with the practice and the rules and standards of service as prescribed by the Public Service Commission, and on this basis a proration covering the six month period ending in April 1946 has been calculated. The total unbilled energy during this period amounts to 43,999 KWH or an additional charge of $675.92. Allowing for the April bill which has been corrected to include a proration for that amount, the adjustment still to be considered is the sum of $565.30 covering the five month period prior to April 1946.
Based upon the foregoing statement of facts you inquire as to whether you are authorized to pay the company for the additional charge as above outlined.

From the foregoing statement of facts it is not disputed that the state has received the benefit of some 43,999 KWH for which it has not paid, and which would cost at the rates approved by the Public Service Commission the sum of $675.92. This error came about through a mistake in not properly setting the meter and apparently was not the fault of either the State of Indiana or the company. In such a case it would appear that the company could recover. In 43 American Jurisprudence, Section 61, page 610, the following general principle is stated:

“Although there is authority to the contrary, it has been held in several cases that a mistake in a bill for the amount of service furnished by a public service company, such as an electric company, does not preclude a recovery for a larger amount actually furnished.”

In an annotation in L.R.A. 1915 B 711, there is a review of many cases involving this question and the majority of the cases hold that in a situation of this nature, the company would be entitled to recover the additional amount.

It is therefore my opinion that you are authorized to pay the Indianapolis Power and Light Company the total amount of $675.92 for the additional amount of KWH furnished, and which has not yet been paid for by the state. Of course, if you do not have any funds on hand with which to make this payment, an appropriation covering this item would have to be made at the next session of the Legislature.