

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC)
 SERVICE COMPANY FOR APPROVAL OF AN)
 ADJUSTMENT TO ITS ELECTRIC SERVICE)
 RATES THROUGH ITS ENVIRONMENTAL COST)
 RECOVERY MECHANISM FACTOR AND)
 ENVIRONMENTAL EXPENSE RECOVERY)
 MECHANISM FACTOR PURSUANT TO IND. CODE)
 §§ 8-1-2-6.6, 8-1-2-6.8 AND 8-1-8.7 AND 170 IAC 4-6-1,)
 ET SEQ. AND THE COMMISSION'S ORDERS IN)
 CAUSE NOS. 42150, 43188, 43913, 43969 AND 44012,)
 APPROVAL OF ITS PROGRESS REPORT AND)
 APPROVAL OF MODIFICATIONS OF AND)
 REVISED COST ESTIMATES RESPECTING)
 CLEAN COAL TECHNOLOGY UNDER THE)
 ONGOING REVIEW PROCESS APPROVED IN)
 CAUSE NOS. 42150, 43188, 43913 AND 44012)
 PURSUANT TO IND. CODE § 8-1-8.7.)

CAUSE NO. 42150 ECR 19

APPROVED: 'AUG 15 2012

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ORDER OF THE COMMISSION ON RECONSIDERATION

Presiding Officers:

David E. Ziegner, Commissioner

Aaron A. Schmoll, Senior Administrative Law Judge

On May 2, 2012, the Commission issued its Order in this Cause. On May 22, 2012, NIPSCO Industrial Group ("Industrial Group") filed its *Petition for Reconsideration* ("Petition"). On May 31, 2012, Industrial Group filed its Notice of Appeal with the Indiana Court of Appeals, and on June 4, 2012, Industrial Group filed its *Verified Motion for Temporary Stay of Appeal and Remand Pending Completion of Reconsideration Process Below* with the Court. On June 1, 2012, the Indiana Office of Utility Consumer Counselor filed its *Response*, and on June 11, 2012, Industrial Group filed its *Reply*. On July 2, 2012, the *Notice of Completion of Clerk's Record* was filed with the Court, which transferred jurisdiction over the case to the Court. On July 11, 2012, the Indiana Court of Appeals granted Industrial Group's *Verified Motion*, returning jurisdiction to the Commission for purposes of addressing the Petition.

Industrial Group raised a single issue in its Petition, namely that 170 IAC 4-6-15 required the Commission to use the negotiated revenue allocations approved by the Commission in its December 20, 2012 Order in Cause No. 43969 ("43969 Order") as the basis for allocating future Environmental Cost Recovery Mechanism and Environmental Expense Recovery Mechanism ("ECRM/EERM") costs. In its May 2, 2012 Order in this Cause, the Commission approved using a 12 coincident peak ("CP") methodology for future ECRM/EERM costs. Industrial Group also presented a secondary argument that if the 12 CP methodology is used, the Commission should have excluded interruptible load from the cost allocators.

Initially, we note that Industrial Group was a settling party in Cause No. 43969, and the Commission, in approving the Settlement Agreement, moved to this Cause consideration of the appropriate allocation methodology for ECRM/EERM costs. No party, including Industrial Group, objected. Accordingly, Industrial Group is precluded from raising any error that the Commission should be bound by 170 IAC 4-6-15. *See Indianapolis Downs LLC v. Herr*, 834 N.E.2d 699, 703 (Ind. Ct. App. 2005), *trans. denied* (claim preclusion branch of res judicata precludes an issue from being relitigated by a party to the prior litigation).

Due to the complexity of all of the issues raised in Cause No. 43969, the Commission's Order approving the Settlement Agreement explicitly shifted ECRM/EERM allocations to this Cause for a Commission determination, thereby allowing the Commission to approve the settling parties' negotiated revenue allocations for purposes of NIPSCO's base rates. In weighing the issues raised in Cause No. 43969, the Commission found that this result was in the public interest. Accordingly, the Commission approved the Settlement Agreement with the understanding that ECRM/EERM allocations were still at issue and would need to be resolved in NIPSCO's next ECR Cause, and in fact, did so in the Commission's May 2, 2012 Order in this Cause.

With respect to Industrial Group's secondary issue, we note that our May 2, 2012 Order in this Cause addressed this issue, and Industrial Group presents no additional basis for the Commission to reconsider its prior determination.

In conclusion, having considered the issues raised by Industrial Group in its Petition, we hereby deny Industrial Group's Petition.

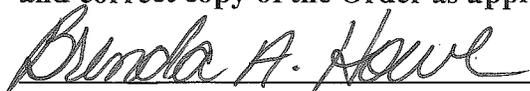
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Industrial Group's Petition for Reconsideration, filed on May 22, 2012, is hereby denied.
2. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: AUG 15 2012

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



Brenda A. Howe
Secretary to the Commission