

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

  
DOA  
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JOINT PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY AND THE INDIANA OFFICE OF )  
UTILITY CONSUMER COUNSELOR FOR APPROVAL )  
OF SETTLEMENT CONTINUING AN ESTABLISHED )  
MECHANISM FOR THE RECOVERY OF )  
JURISDICTIONAL COSTS INCURRED IN )  
CONNECTION WITH THE MIDWEST INDEPENDENT )  
TRANSMISSION SYSTEM OWNERS, INC. CHARGE )  
TYPES FOR DAY AHEAD REVENUE SUFFICIENCY )  
GUARANTEE DISTRIBUTION CHARGES AND )  
CREDITS AND REAL TIME REVENUE SUFFICIENCY )  
GUARANTEE FIRST PASS DISTRIBUTION CHARGES )  
AND CREDITS. )

CAUSE NO. 43665

APPROVED: JUN 30 2009

**BY THE COMMISSION:**  
**David E. Ziegner, Commissioner**  
**Loraine L. Seyfried, Administrative Law Judge**

On March 31, 2009, Northern Indiana Public Service Company (“NIPSCO”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (“Joint Petitioners”) filed their Joint Petition with the Indiana Utility Regulatory Commission (“Commission”) for approval of a settlement of the issues of recovery of jurisdictional costs incurred in connection with the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO” or “MISO”) charge types for Day Ahead Revenue Sufficiency Guarantee Distribution charges and credits and Real Time Revenue Sufficiency Guarantee First Pass Distribution charges and credits (“RSG Amounts”). The Stipulation and Agreement, including the Settlement Terms attached thereto, was attached to the Joint Petition as Joint Exhibit 1 (“RSG Settlement”). On May 12, 2009, Joint Petitioners prefiled their Direct Testimony. No other party intervened in this proceeding.

Pursuant to public notice duly given and published, proof of which was incorporated into the record by reference and placed in the Commission’s official file, a public hearing was held in this Cause on June 15, 2009 at 1:30 p.m. in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Joint Petitioners appeared by counsel. Joint Petitioners’ prefiled testimony was admitted into evidence without objection. No members of the general public attended the hearing.

Based upon the applicable law and the evidence herein, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the public hearing conducted herein was caused to be published by the Commission. Joint Petitioner NIPSCO is a public utility within the meaning of Indiana Code 8-1-2-1 of the Public Service Commission Act, as amended, and is subject to the jurisdiction of the Commission. The Commission has jurisdiction

over Joint Petitioner NIPSCO and the subject matter of this Cause in the manner and to the extent provided by the laws of the State of Indiana.

2. **Commission Authority To Approve The Settlement Agreement.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406. Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 583 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the RSG Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the RSG Settlement is reasonable, just and consistent with the purpose of Indiana Code 8-1-2, and that such agreement serves the public interest.

3. **Settlement Agreement.** A copy of the RSG Settlement is attached hereto and made a part hereof. The components of the RSG Settlement may be summarized as follows:

- (a) Day-Ahead Revenue Sufficiency Guarantee Distribution Amounts (“DA RSG”) reports by the Midwest ISO on NIPSCO’s S-14 statements may be recovered as fuel costs in NIPSCO’s fuel cost adjustment (“FAC”) proceedings.
- (b) Beginning April 1, 2009, Real-Time Revenue Sufficiency Guarantee 1st Pass Distribution Amounts (“RT RSG”) reports by MISO on NIPSCO’s S-14 statements at an hourly \$/MWh rate will be added to the Real-Time Marginal Energy Component (“MEC”) of Locational Marginal Price (“LMP”) in each hour to compute an Hourly Revenue Sufficiency Guarantee (“RSG”) Reference Point. The following formula shall be used:

$$\text{Hourly RSG Reference Point} = \text{Hourly RT RSG Rate} + \text{Hourly RT MEC}$$

- (c) Each day a “Benchmark” shall be established based upon a generic Gas Turbine (“GT”), using a generic GT heat rate of 12,500 btu/kwh using the day ahead natural gas prices for the NYMEX Henry Hub, plus a \$.60/mmbtu gas transport charge for a generic gas-fired GT.
- (d) The Hourly RSG Reference Point shall then be compared to the Benchmark.
- (e) During those hours when the RSG Reference Point is at or below the Benchmark, the RT RSG charges incurred during those hours may flow through and be recovered as fuel cost in NIPSCO’s FAC proceedings, or recovered through other proceedings authorized by the Commission.

- (f) Unless NIPSCO has an approved tracker authorizing recovery of RT RSG charges that exceed the Benchmark (“Contestable RT RSG Charges”), during those hours when the RSG Reference Point is above the Benchmark, NIPSCO may seek recovery of Contestable RT RSG Charges, subject to Commission approval, provided NIPSCO submits to the Commission and OUCC, at the time of their respective filing, supporting documentation establishing the reasonableness of the requested recovery. The OUCC does not waive any right to challenge NIPSCO’s request for recovery of the Contestable RT RSG Charges.
- (g) The standard to be used to review such Contestable RT RSG Charges will be one of the reasonableness of the decisions under the circumstances which were known (or which reasonably should have been known) at the time the charges were incurred.
- (h) Any Contestable RT RSG Charges not addressed in NIPSCO’s FAC proceeding may be deferred, and NIPSCO may seek recovery, subject to Commission approval in a general rate case in which basic rates and charges are established, provided that NIPSCO will bear the burden of proving the reasonableness of such costs.
- (i) RT RSG on re-settlement statements (e.g. S-55, S-105, etc.) shall be reconciled in the FAC in the current period, and not subject to the Benchmark.
- (j) DA RSG Distribution Charges shall be allocated between intra-system sales and firm inter-system sales on a per kWh basis. RT RSG First Pass Distribution Charges associated with Load Schedule Imbalance shall be allocated between intra-system sales and firm inter-system sales on a per kWh basis. RT RSG First Pass Distribution Charges associated with Physical Schedule Imbalance, Deficient Energy (f/k/a Asset Owner Under Generation), Excessive Energy (f/k/a Asset Owner Over Generation), Asset Owner Derate Volume Deviation and Asset Owner Must-Run Volume Deviation in a given hour shall be allocated to opportunity sales in that hour on a per kWh basis. The remaining RT RSG First Pass Distribution Charges shall be allocated between intra-system sales and firm inter-system sales on a per kWh basis.
- (k) The Joint Petitioners recognize that the MISO market is still evolving and agree to work collaboratively to reduce RSG charges while supporting the operational needs of the MISO footprint; reflect fair and reasonable costs to Indiana retail customers; and create fair and reasonable cost recovery mechanisms for Indiana utilities.
- (l) The RSG Settlement will be binding upon the Joint Petitioners for DA RSG and RT RSG charges incurred through March 31, 2011. The Joint Petitioners further agree that the RSG Settlement will renew for additional two year terms, unless one party notifies the other party that it does not wish to extend the RSG Settlement at least 60 days prior to the termination date, or the Commission enters an Order finding that the RSG Settlement should not be extended.

4. **Testimony in Support of the Settlement Agreement.** The Joint Petitioners’ direct testimony was submitted by Curtis L. Crum, Director, Generation Dispatch and Energy Management at NIPSCO and Stacie R. Gruca, a Utility Analyst for the OUCC. Mr. Crum testified that the RSG Settlement extends the RSG Benchmark previously approved by the Commission in

Cause No. 43471 (the "Current Settlement"). Mr. Crum provided a brief explanation of the benefits to NIPSCO's customers of NIPSCO's participation in the Midwest ISO. He stated that the Midwest ISO gives all participants open access to the transmission system and all available resources are centrally dispatched using simultaneous co-optimization. It provides a transparent and liquid energy market across the entire footprint of the Midwest ISO. Furthermore, on-going coordination between Midwest ISO and adjacent ISO systems increases grid reliability and makes it possible to regionally coordinate transmission expansion. He stated, while benefiting from improved grid reliability, the greater benefit for NIPSCO and its customers is the transparent and liquid energy market that brings about an even playing field for all utilities. This allows NIPSCO to make more economic purchases from the open market with the benefits flowing directly to its customers.

Mr. Crum testified that MISO now provides the same level playing field for ancillary services (regulation and contingency reserves) while also more effectively and economically allocating resources to provide those reserves. This provides an opportunity to reduce the overall amount of reserves being held by market participants, further reducing the cost of providing those reserves to customers.

Mr. Crum stated that the RSG Amounts are assigned to market participants for their participation in the Day-Ahead and/or Real-Time markets and are not a socialized and/or uplift charge. For example, this would include the recovery of fuel-related costs by other market participants for running generation committed by MISO to ensure adequate capacity is available to meet demand and reserve obligations and to ensure system reliability within the Midwest ISO footprint. This generation would provide additional supply and creates downward pressure on LMPs which would also lower overall purchased power costs reconciled through the FAC. Mr. Crum noted that this belief was echoed by Joint Petitioners NIPSCO, Indianapolis Power & Light Company and Vectren Energy Delivery of Indiana, Inc. in their September 22, 2008 response to a Commission docket entry in Phase II of Cause No. 43426. He also stated that the OUCC and two active intervening parties in Phase II of Cause No. 43426 also responded similarly as to the appropriateness of classifying these two charge types as fuel charges includable in the FAC.

Mr. Crum explained that while there are no differences between the calculation of the proposed RSG Benchmark and the previously approved benchmark in the Current Settlement, there are three minor differences between the components of the Settlement Terms. The first difference is the effective date to reflect the new agreement extending beyond the previous agreement. The second difference contemplates the recovery of RT RSG charges through proceedings other than an FAC should the Commission approve NIPSCO's pending request in Cause No. 43526 for the establishment of an applicable tracker. The third difference is the term of the agreement, moving from a one year term to a two year initial term with automatic renewals. Mr. Crum explained that this term was developed and supported by the parties' familiarity with the MISO market and is consistent with the term approved by the Commission in Cause No. 43414 for the daily Purchased Power Benchmark.

Mr. Crum detailed the benefits of the RSG Benchmark. He stated that the daily RSG Benchmark reflects the price changes in natural gas that may influence the peak energy component of MISO's LMP. In addition, it continues to be identical to the daily Purchased Power Benchmark approved by the Commission in Cause No. 43414, in which the Commission stated, "the use of a daily floating benchmark, generally reflecting price trends in a utility's marginal fuel cost, is reasonably consistent with the intent of the findings in Cause No. 41363."

Mr. Crum noted that in testimony filed in Cause No. 43471, NIPSCO had indicated that it expected the Midwest ISO's Ancillary Services Market ("ASM") would reduce RSG costs because more generation would be available to the Midwest ISO to dispatch on short notice. He stated that a review of the RSG Report, which is updated every Tuesday on MISO's website, confirms that RSG charges for January, February and March 2009 are less than the respective month in the prior two years. Mr. Crum concluded with his belief that it was proper for the RSG Amounts be passed through the FAC on an ongoing basis because these RSG components create downward pressure on LMPs and reduce overall purchased power costs due to additional supply necessary for reliability and efficiency. He also stated that netting RSG Amounts on an ongoing basis through the FAC results in current customers paying the actual net cost of current transactions thereby promoting intergenerational equity and serving to send more accurate, current price signals useful for conservation and for budgeting bills.

Ms. Gruca testified that the RSG Settlement is in the public interest and consistent with FAC proceedings as administered by the Commission. Ms. Gruca stated that the terms of the RSG Settlement are essentially the same terms included in the Current Settlement. She stated that the only differences between the RSG Settlement and the Current Settlement are that: (1) the proposed agreement has an effective date of April 1, 2009 and a two-year term through March 31, 2011, with automatic two-year renewals, and (2) the possibility of recovery of RT RSG charges at or below the Benchmark through other proceedings authorized by the Commission, and the recovery of RT RSG charges above the Benchmark through an approved tracker, should the Commission approve a MISO tracker in NIPSCO's pending rate case. She stated that the calculation of the proposed RSG Benchmark, as well as all other term components, remains the same as the Current Settlement.

Ms. Gruca stated that the RSG Settlement continues to provide safeguards that will ensure that service providers respond appropriately to price signals on behalf of their customers. She stated that the RSG Settlement continues to utilize a daily benchmark based on actual costs to compare MISO Day 2 charges, which the OUCC believes will more accurately reflect market conditions upon which daily decisions are based. Ms. Gruca stated that use of a Commission approved benchmark has proven to be an effective means to audit RSG charges as a result of the prior agreements in Cause Nos. 42962, 43471 and 43475, and also to audit purchased power pursuant to Cause Nos. 42770, 38706 FAC67, and 43414.

Ms. Gruca testified that there are additional benefits of continuing to utilize a daily RSG Benchmark. She stated that the RSG Settlement will help to preserve the summary nature of the FAC by continuing to allow parties to readily identify costs above and below the RSG Benchmark, providing the Petitioner with certain guidelines of RSG costs that may be included for recovery in FAC proceedings, as well as providing the OUCC transparency of RSG costs above RSG Benchmark to be analyzed.

Ms. Gruca testified that as indicated by OUCC Witness Ms. Joan Soller in settlement testimony in Cause No. 42962, and in her settlement testimony in Cause No. 43471, NIPSCO receives MISO settlement statements providing a billing determinant expressed in dollars per megawatt hour. Consistent with the historical inclusion of RSG charges and purchased power in the FAC, this RSG Benchmark continues to allow a comparison of the level of charges with an appropriate benchmark. Ms. Gruca stated that the OUCC determined the terms approved in Cause Nos. 42962, 43471 and 43475 were consistent with the Commission's Order in Cause No. 42685 and that the terms of the RSG Settlement remain essentially the same as the terms approved in

Cause Nos. 42962, 43471 and 43475. Thus, she concluded, the OUCC believes the RSG Settlement remains consistent with Cause No. 42685.

Ms. Gruca also explained that a two-year extension of the RSG Benchmark with automatic renewals appears reasonable in light of the fact that RSG charges are still being modified as a result of the ASM, which may affect RSG Amounts once the Commission issues its ruling in Phase II of Cause No. 43426. She stated that this extension will minimize regulatory changes in the interim period until the Commission's ruling and will allow all participants to gain actual experience and further understanding of the ASM market. Also, with the Midwest ISO market continuing to evolve, the RSG Benchmark allows stability, as well as a "check and balance" or feedback method allowing parties to analyze costs and benefits for the future. Finally, Ms. Gruca noted that the RSG Settlement allows the OUCC or NIPSCO to terminate the agreement upon 60-day notice at any of the future automatic renewal events.

Ms. Gruca stated that customers will continue to benefit from MISO economic dispatch when the lowest cost electricity is made available by the MISO market and utilized by Indiana utilities in accordance with Indiana Code 8-1-2-42(d)(1). She stated that RSG Amounts can best be made apparent to customers through the FAC process and will continue to help facilitate the market by covering actual costs which are incurred to dispatch generation and include fuel components. Ms. Gruca also noted that as approved by the Commission in Cause Nos. 42962 and 43471, the RSG Settlement continues to use a benchmark to review the recovery of RSG Amounts in the FAC proceeding.

The OUCC recommended the Commission approve the RSG Settlement, relating to the recovery of RSG Amounts assessed by MISO for a two-year term through March 31, 2011, with automatic two-year renewals, unless NIPSCO or the OUCC wish to terminate the RSG Settlement prior to this date.

**5. Commission Discussion and Findings.** The Midwest ISO energy market offers participants the opportunity to ensure that load is served through the regional, security constrained economic dispatch, which uses the most reliable and economic generator available to serve load. Customers benefit from economic dispatch, and MISO's payment of RSG Make Whole payments and assessments of RSG charges help facilitate the economic dispatch of the MISO market. A comparison of the level of RSG Amounts with an appropriate benchmark is generally consistent with the use of an appropriate benchmark in determining the inclusion of purchased power costs in the FAC.

In the Commission's June 1, 2005 Order in Cause No. 42685, we stated that "[u]tilities should be encouraged to pursue cost-effective means of power acquisition and the Day 2 markets should be an integral part of meeting this objective. The charges and credits settled in the Day-ahead and Real-time markets are designed to drive such efficiency and reliability." *Id.* at p.36. Substantial evidence has been submitted to the Commission regarding Joint Petitioners' request for approval to include in NIPSCO's FAC proceedings the jurisdictional costs incurred in connection with the Midwest ISO RSG Amounts. We find that such RSG Amounts are an integral part of the MISO markets and are designed to drive the efficiency and reliability of the MISO markets.

As noted by the parties, the RSG Settlement submitted by Joint Petitioners effectively continues the settlement approved in Cause No. 43471. In its July 16, 2008 Order, the Commission

found the settlement to provide "a workable mechanism that will allow the parties to readily identify costs that may be included for recovery in FAC proceedings while providing safeguards that will also allow for exploration of costs that fall outside the benchmark." *Id.* at p.8. We continue to find this to be true. Accordingly, we find that the RSG Amounts below the RSG Benchmark shall be recoverable in NIPSCO's FAC proceedings. Further, NIPSCO may either seek recovery of contestable RSG Amounts in its FAC proceedings or defer them for consideration in its next general rate case proceeding.

Based upon the evidence of record, we find the RSG Settlement is supported by substantial evidence and sound regulatory and public policy. Therefore, we further find that the RSG Settlement is reasonable, proper and in the public interest and should be approved.

6. **Effect of Settlement Agreement.** The parties agree that the RSG Settlement should not be used as precedent in any other proceeding or deemed an admission by any party in any other proceeding, except to the extent necessary to implement or enforce its terms. With regard to future citation of the RSG Settlement, we find that our approval herein should be construed in a manner consistent with our finding in *Petition of Richmond Power & Light*, Cause No. 40434, approved March 19, 1997.

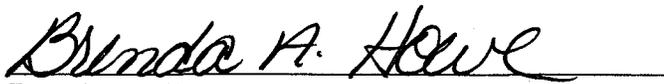
**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Stipulation and Settlement Agreement, including the Settlement Terms, shall be, and hereby is, approved and incorporated herein as a part of this Order, and Joint Petitioners therefore shall abide by the terms thereof.
2. This Order shall be effective on and after the date of its approval.

**HARDY, ATTERHOLT, GOLC, LANDIS, AND ZIEGNER CONCUR:**

**APPROVED: JUN 30 2009**

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

  
**Brenda A. Howe**  
**Secretary to the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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DISTRIBUTION AMOUNTS CHARGES )  
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STIPULATION AND AGREEMENT

This Stipulation and Agreement is made and entered into as of the 30th day of March, 2009, by and between Northern Indiana Public Service Company ("NIPSCO") and the Indiana Office of Utility Consumer Counselor ("IN OUCC").

1. Settlement Framework. The executed Settlement Terms resolving all issues between NIPSCO and IN OUCC (the "Settling Parties") relating to the recovery of Day-Ahead Revenue Sufficiency Guarantee Distribution Amounts and Real-Time Revenue Sufficiency Guarantee 1st Pass Distribution Amounts assessed by the Midwest Independent Transmission System Operator, Inc. ("MISO" or "Midwest ISO") is attached hereto and incorporated as Exhibit A. The Settling Parties agree that their approval of this Stipulation and Agreement constitutes approval of the Settlement Terms attached hereto and incorporated as Exhibit A.

2. Presentation of the Stipulation and Agreement.

(a) The Settling Parties shall jointly move to have this Stipulation and Agreement presented to and approved by the Indiana Utility Regulatory Commission ("Commission").

(b) The Settling Parties agree to the prompt entry of a joint proposed order. The Stipulation and Agreement, including the Settlement Terms, is not severable and shall be accepted or rejected in its entirety without modification or further condition that may be unacceptable to any of the individual Settling Parties. If any such modification or further condition is unacceptable to any of the individual Settling Parties, then the Stipulation and Agreement, including the Settlement Terms, shall be deemed null and void and withdrawn.

3. Effect and Use of Stipulation and Agreement.

(a) The terms of this Stipulation and Agreement, including the Settlement Terms, represent a fair, just and reasonable resolution by negotiation and compromise. As set forth in the Order in *Re Petition of Richmond Power & Light*, Cause No. 40434 (IURC 3/19/97), p. 10, as a term of this Stipulation and Agreement, the Commission must assure the Settling Parties that it is not the Commission's intent to allow this Stipulation and Agreement or the Order approving it, to be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues. This Stipulation and Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Settling Parties may take with respect to any or all of the items resolved herein and any future regulatory or other proceedings.

(b) The evidence presented by the Settling Parties in this Cause constitutes substantial evidence sufficient to support this Stipulation and Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Stipulation and Agreement, as filed.

(c) The issuance of an Order that is deemed Final approving the Stipulation and Agreement, including the Settlement Terms, without modification or further condition shall terminate all proceedings in this Cause.

(d) The undersigned represent and agree that they are fully authorized to execute this Stipulation and Agreement on behalf of their designated clients who will be bound thereby.

(e) The Settling Parties shall not appeal the agreed final Order or any subsequent Commission order to the extent such order is specifically implementing the provisions of this Stipulation and Agreement, including the Settlement Terms, and the Settling Parties shall not support any appeal of any such order by a person not a party to this Stipulation and Agreement.

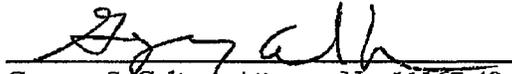
(f) The provisions of this Stipulation and Agreement, including the Settlement Terms, shall be enforceable by any party, before the Commission or in any court of competent jurisdiction.

(g) The communications and discussions during the negotiations and conferences which produced this Stipulation and Agreement, including the Settlement Terms, have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be privileged.

ACCEPTED AND AGREED this 30th day of March, 2009.

NORTHERN INDIANA PUBLIC  
SERVICE COMPANY

By:

  
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**SETTLEMENT TERMS  
BETWEEN  
NORTHERN INDIANA PUBLIC SERVICE COMPANY  
AND THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

The matters at issue shall be resolved within the following framework:

1. Day-Ahead Revenue Sufficiency Guarantee Distribution Amounts ("DA RSG") reports by Midwest Independent Transmission System Operator, Inc. ("MISO" or "Midwest ISO") on NIPSCO's S-14 statements may be recovered as fuel costs in NIPSCO's FAC proceedings.

2. Beginning April 1, 2009, Real-Time Revenue Sufficiency Guarantee 1st Pass Distribution Amounts ("RT RSG") reports by MISO on NIPSCO's S-14 statements at an hourly \$/MWh rate will be added to the Real-Time Marginal Energy Component ("MEC") of Locational Marginal Price ("LMP") in each hour to compute an Hourly Revenue Sufficiency Guarantee ("RSG") Reference Point. The following formula shall be used:

$$\text{Hourly RSG Reference Point} = \text{Hourly RT RSG Rate} + \text{Hourly RT MEC}$$

3. Each day a "Benchmark" shall be established based upon a generic Gas Turbine ("GT"), using a generic GT heat rate of 12,500 btu/kwh using the day ahead natural gas prices for the NYMEX Henry Hub, plus a \$.60/mmbtu gas transport charge for a generic gas-fired GT.

4. The Hourly RSG Reference Point shall then be compared to the Benchmark.

5. During those hours when the RSG Reference Point is at or below the Benchmark, the RT RSG charges incurred during those hours may flow through and be recovered as fuel cost in NIPSCO's FAC proceedings, or recovered through other proceedings authorized by the Commission.

6. Unless NIPSCO has an approved tracker authorizing recovery of RT RSG charges that exceed the Benchmark ("Contestable RT RSG Charges"), during those hours when the RSG Reference Point is above the Benchmark, NIPSCO may seek recovery of Contestable RT RSG Charges, subject to Commission approval, provided NIPSCO submits to the Commission and OUCC, at the time of their respective filing, supporting documentation establishing the reasonableness of the requested recovery. The OUCC does not waive any right to challenge NIPSCO's request for recovery of the Contestable RT RSG Charges.

7. The standard to be used to review such Contestable RT RSG Charges will be one of the reasonableness of the decisions under the circumstances which were known (or which reasonably should have been known) at the time the charges were incurred.

8. Any Contestable RT RSG Charges not addressed in NIPSCO's FAC proceeding may be deferred, and NIPSCO may seek recovery, subject to Commission approval in a general rate case in which basic rates and charges are established, provided that NIPSCO will bear the burden of proving the reasonableness of such costs.

9. RT RSG on re-settlement statements (e.g. S-55, S-105, etc.) shall be reconciled in the FAC in the current period, and not subject to the RSG Benchmark.

10. DA RSG Distribution Charges shall be allocated between intra-system sales and firm inter-system sales on a per kWh basis. RT RSG First Pass Distribution Charges associated with Load Schedule Imbalance shall be allocated between intra-system sales and firm inter-system sales on a per kWh basis. RT RSG First Pass Distribution Charges associated with Physical Schedule Imbalance, Asset Owner Under Generation, Asset Owner Over Generation, Asset Owner Derate Volume Deviation and Asset Owner Must-Run Volume Deviation in a given hour shall be allocated to opportunity sales in that hour on a per kWh basis. The remaining RT RSG First Pass Distribution Charges shall be allocated between intra-system sales and firm inter-system sales on a per kWh basis.

11. The Parties recognize that the MISO market is still evolving and agree to work collaboratively to reduce RSG charges while supporting the operational needs of the MISO footprint; reflect fair and reasonable costs to Indiana retail customers; and create fair and reasonable cost recovery mechanisms for Indiana utilities.

12. This Settlement will be binding upon the Settling Parties for DA RSG and RT RSG charges incurred through March 31, 2011. The Settling Parties further agree that this Settlement will renew for additional two year terms, unless one party notifies the other party that it does not wish to extend the Agreement at least 60 days prior to the termination date, or the Commission enters an Order finding that the Agreement should not be extended.