ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE: COMPLAINT OF CERTAIN DEVELOPERS AGAINST NORTHERN INDIANA PUBLIC SERVICE COMPANY REQUESTING THAT THE COMMISSION INVESTIGATE NIPSCO'S CHARGES, PRACTICES, ACTS AND SERVICE AND ITS COMPLIANCE WITH RULES AND REGULATIONS GOVERNING THE EXTENSION OF FACILITIES TO SUPPLY GAS AND ELECTRIC SERVICE TO RESIDENTIAL DEVELOPMENTS. RESPONDENTS: NORTHERN INDIANA PUBLIC SERVICE COMPANY	)	CAUSE NO. 43706 APPROVED: NOV 10 2010

BY THE COMMISSION:
David E. Ziegner, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

This proceeding commenced on June 11, 2009 when a Complaint was filed against Northern Indiana Public Service Company ("NIPSCO" or "Respondent") by certain developers, specifically Accent Homes, Inc., Fleming Realty, Inc., KM&N Properties, LLC, Komark, Ltd., McFarland Homes, Naples VPZ Development, LLC, Olthof Homes, Phillippe Builders, Inc., Precision Construction, Inc., Providence Real Estate Development, LLC, Schmidt Farms Development, LLC, Signature Properties, Inc., SLM&D, V3 Realty Company, LLC and Wyngate Development II, LLC. The developers, on behalf of themselves and their related development companies (hereinafter collectively "Developers"), requested that the Commission initiate an investigation into NIPSCO's acts and practices with regard to the extension of facilities to supply gas and electric service to new residential communities. The Developers further requested that the Commission order NIPSCO to comply with the Commission's rules and regulations; refund all sums owed to the developers, including interest; and adopt reasonable guidelines to ensure that NIPSCO complied with the prompt, fair and non-discriminatory scheduling and completion of requested service extensions. On July 8, 2009, NIPSCO filed its Answer, disputing the allegations of the Developers.

The Commission held a prehearing conference on July 9, 2009, and it issued its prehearing conference order on July 30, 2009. On September 4, 2009, the Developers filed their case-in-chief, consisting of testimony and exhibits from its witnesses Brian F. Blackmore, Ronald W. McFarland, Bill Silfies, Jack E. Kovich, Ben G. Houser, John Kremke II, Thomas J. Fleming, Chris C. Kovich, William H. McCabe, Joseph B. Lenehan, John F. Kryda, John T. Borucki, Douglas R. VanDerNoord, Michael L. Muenich, Douglas Terpstra and Reed W. Cearley. On October 5, 2009, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its Notice of Intent not to File Testimony. On October 8, 2009, the Developers submitted Corrected Exhibit JEK-2. On October 13, 2009, NIPSCO filed its case-in-chief consisting of

testimony and exhibits from its witnesses Debora A. Owen, James D. Fiegle and Timothy R. Caister. On October 20, 2009, the Developers filed rebuttal testimony and exhibits from their witnesses Brian F. Blackmore and Reed W. Cearley. On October 22, 2009, the Developers filed Omitted Rebuttal Exhibit RWC-R23 and the substitution of witness David VanDyke for Precision Construction, Inc.

On October 23, 2009, NIPSCO and the Developers filed their Unopposed Joint Motion to Continue Hearing, indicating formally their desire to pursue settlement of the issues presented in this proceeding. The evidentiary hearing was continued on subsequent occasions while the parties continued their efforts to settle the issues. On July 2, 2010, NIPSCO and the Developers filed their Stipulation and Agreement. Also on that date, NIPSCO filed settlement testimony of its witness Timothy R. Caister. On July 6, 2010, the Developers filed settlement testimony of their witnesses Reed W. Cearley, Frank Morin, Thomas J. Fleming, William H. McCabe, Chris C. Kovich, Ronald W. McFarland, Joseph B. Lenehan, John Lotton, David VanDyke, John T. Borucki, Douglas R. VanDerNoord, Ben G. Houser, Michael L. Muenich, Brian F. Blackmore and Douglas Terpstra. On July 6, 2010, the Developers also filed the signature page to the Settlement Agreement of Precision Construction, Inc. On July 21, 2010, the OUCC filed its Notice that It Does Not Oppose Settlement Agreement. On July 26, 2010, the Commission issued a docket entry to NIPSCO and the Developers. The Developers and NIPSCO filed their respective responses to that docket entry on July 27, 2010. On July 28, 2010, NIPSCO also submitted further correspondence and presentation slides.

Pursuant to notice given as provided by law, proof of which was incorporated into the record by reference, the Commission conducted an evidentiary hearing on July 28, 2010 at 9:30 a.m. in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. During the evidentiary hearing, the settlement testimony and exhibits of the Developers and NIPSCO were offered and admitted into the record without objection. No member of the public appeared or participated at the hearing.

Based upon the applicable law and the evidence presented herein, the Commission now finds that:

1. **Commission Jurisdiction and Notice.** Due, legal and timely notice of the hearings in this cause was given and published by Petitioner as required by law. Petitioner is a public utility as defined in Ind. Code § 8-1-2-1(a) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. This Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Respondent's Characteristics.** Respondent is a public utility corporation, organized and existing under the laws of the State of Indiana, having its principal office at 801 East 86th Avenue, Merrillville, Indiana. It is engaged in rendering electric public utility service and gas public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plants and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of electric utility service and gas utility service to the public.

3. **The Agreement.** The Stipulation and Agreement resolves all issues between the Developers and NIPSCO raised in the Complaint filed in this Cause. It also provides a framework for addressing NIPSCO's installation of gas and electric service extensions for all residential developers on a going-forward basis. The Agreement contains the substantive provisions of the comprehensive settlement agreement reached by the parties. The testimony of the parties discussed in detail these substantive provisions, including the proposed gas and electric tariffs implementing the approach. The Agreement and the proposed tariffs are attached hereto and made a part hereof.

4. **Evidence Submitted in Support of the Agreement.**

A. **Developers' Evidence.**

The Developers presented the testimony of Reed W. Cearley in support of the Settlement Agreement. Mr. Cearley was retained by the Developers as a special utility consultant in this proceeding. He has more than 30 years of experience in the electric utility industry. He opined that the Settlement Agreement is a fair and reasonable compromise of the many disputed issues in this proceeding and is in the public interest.

Mr. Cearley initially discussed the policy underlying the regulations and tariffs governing service extensions. The primary purpose of the regulations is to provide a means of ensuring payment for the extension of gas and electric service to new residential developments. Typically, the construction of a new residential development results in new customers for a utility such as NIPSCO, and the revenue from those new customers will support the cost of the extension. Because ownership of the extensions remains with the utility, the cost of the extensions, like most costs of a utility, are not charged to specific customers but are recoverable from all customers through base rates.

Mr. Cearley explained that the proposal in the Settlement Agreement tracks the Commission's regulations. The main premise of the new approach is what has been described as the "Margin Test." The Margin Test is a comparison by NIPSCO of the estimated marginal costs of an extension to a development with the estimated marginal revenue from that extension. If the Margin Test is met, i.e., if the marginal revenue equals or exceeds the marginal cost for that development, then NIPSCO will provide the extension without charge. If the marginal cost exceeds the expected marginal revenue from the extension, then the developer pays the difference, i.e., its "Contribution." Mr. Cearley explained that the Margin Test is not novel—the process tracks the language of the Commission's regulations and is consistent with the tariffs of the other Indiana utilities.

Mr. Cearley discussed how NIPSCO and the Developers determined the Margin Costs. Under the Settlement Agreement, Margin Costs are defined as 52% of the Total Costs for a development; Total Costs means the total amount of actual costs, including overhead, for the extension of gas or electric facilities to a specific development as estimated by NIPSCO using the information provided to the Commission in NIPSCO's annual filings pursuant to 170 IAC 4-1-27(E) and 170 IAC 5-1-27(D). The figure for Margin Costs—52% of the total costs including overhead—is the result of compromise negotiations between NIPSCO and the Developers and

roughly equates with the portion of the total costs that NIPSCO and the Developers believe are directly related to a specific project.

In the Developers' response to the Commission's July 26, 2010 docket entry, Mr. Cearley explained that "directly related to a specific project" means the costs that benefit and are directly assignable to a specific project. Essentially, the "directly related" costs are the marginal costs for the extension, i.e., the costs incurred by NIPSCO that it would not otherwise incur absent the installation of the extension. He explained that NIPSCO's Material and Labor Estimate form identified four categories of costs: Direct Material and Labor Costs, Other Costs, Overhead, and Transformers (electric contracts only). NIPSCO agreed that "overhead costs," though shown in both the estimated and actual costs for a project, are not the responsibility of the developer, and overhead costs are expressly excluded in the existing tariffs. NIPSCO contended that the Other Costs are direct costs, and the Developers contended that the Other Costs are overhead costs. As a result of their settlement negotiations, NIPSCO and the Developers agreed that 52% of the total cost is a fair approximation of the directly-related, marginal costs for the installation of gas and electric extensions.

Mr. Cearley also discussed how NIPSCO and the Developers arrived at the Margin Credits under the Settlement Agreement. "Margin Credits" mean the product of the number of meters proposed for a development times the Electric Credit or Gas Credit, as applicable, at the time of application by a developer for an extension of gas or electric service. The "Electric Credit" means the margin credit per residential electric meter, which NIPSCO and the Developers agreed shall be $3,500. The "Gas Credit" means the margin credit per residential gas meter, which NIPSCO and the Developers agreed shall be $1,800. Mr. Cearley explained that generally the Electric Credit and Gas Credit are based upon an estimate of the present value of gross margin for an average residential customer. In the Developers' response to the Commission's July 26, 2010 docket entry, Mr. Cearley explained that an "average residential customer" is a customer using the average amount of electricity or the average amount of gas per residential customer as identified in NIPSCO's most recent rate case filings. The present value of gross margin was determined over a 6-year period. Mr. Cearley stated that the amounts of the Electric Credit and Gas Credit resulted from compromise settlement negotiations that reflect a number of factors. These factors include the fact that the Commission's regulations use a gross revenue, rather than gross margin, basis for calculating estimated revenue from a new residential development, which may produce a higher estimate given the significant increases in fuel costs. The Developers also raised arguments regarding the impact of including unfinished square footage of homes (particularly basements), as well as the variability of customer use. Finally, the Developers took into account the relative cost differences between the installation of electric service and gas service extensions. Considering all these factors, NIPSCO and the Developers ultimately agreed upon an average electric and gas credit per new meter that they considered a fair investment per new customer.

Mr. Cearley noted that the Settlement Agreement provides for adjustment of the Electric Credit and Gas Credit in a base rate case initiated after 2010 or in a separate proceeding initiated in accordance with the Commission's rules and regulations. This will allow time for the implementation and review of the new approach, which can be adjusted, if necessary, in NIPSCO next rate case or through a separate proceeding. Mr. Cearley further noted that the Settlement Agreement affords NIPSCO with additional protections regarding service extensions.

He explained that prior to beginning the installation of facilities for electric or gas service, the Applicant for such service will provide NIPSCO with proof of fee ownership of the land comprising the development and proof of approval of the local governmental entity authorizing construction of the development to begin. This will assure NIPSCO that the developer has a substantial financial investment in the development and has taken the necessary steps to proceed with the development. He further explained that either NIPSCO or a developer may request that the Commission review the reasonableness of the terms of any contract for the extension of service. Mr. Cearley opined that the Margin Test approach should achieve the objectives of the regulations governing the extension of electric and gas service to new residential communities and should encourage economic development.

Mr. Cearley also opined that the Margin Test approach should make NIPSCO's practices with regard to service extensions consistent with those of other utilities. In the Developers' response to the Commission's July 26, 2010 docket entry, Mr. Cearley explained that Indiana electric utilities Indiana Michigan Power Company and Duke Energy Indiana, Inc., and Indiana gas utilities Southern Indiana Gas and Electric Company ("Vectren") and Citizens Gas and Coke Utility all follow a process of installing extensions, without charge, when the estimated revenue from a development exceeds the estimated costs of installing the extension. If the estimated costs exceed the estimated revenue, the tariffs of the other Indiana utilities allow for the installation of the service extensions upon the payment of or guarantee of the amount by which the estimated costs exceed the estimated revenues. Mr. Cearley explained that the electric utilities have not transitioned to a gross margin methodology but continue to estimate revenue on a gross revenue basis over a 2.5-year period. The gas utilities have transitioned to a gross margin methodology but use a 5.5-year time period. Mr. Cearley noted that the tariffs of these utilities do not identify the manner in which the utilities' estimate the expected revenue from new customers.

Mr. Cearley stated that NIPSCO's Margin Test is intended to provide an open and fair process for comparing the expected revenue from new NIPSCO customers and the directly-related costs associated with the extension of gas and electric service by NIPSCO. Like other Indiana utilities, NIPSCO typically will install the extensions without charge when the expected revenue exceeds the estimated costs, and it will require a contribution when the costs exceed the revenue. NIPSCO's Margin Test provides more detail than the tariffs of other Indiana utilities as to precisely how NIPSCO will calculate the expected revenue from a new development and how it will calculate the estimated costs, but in the end it should accomplish the same result. Mr. Cearley opined that the Margin Test provides developers with a straightforward, reasonable and understandable process for determining if, when and to what extent a developer may have to contribute to the cost of an extension of gas and electric service.

Mr. Cearley also discussed in his testimony the manner in which the Settlement Agreement addresses the existing contracts between NIPSCO and the Developers. He explained that NIPSCO will apply the Margin Test to all existing, open contracts. To the extent that an existing development meets the Margin Test, i.e., if the Margin Credits for that development exceed the Margin Costs, then the contract will be terminated. If an existing development does not meet the Margin Test, then the developer will be required to make a Contribution in the amount that the Margin Costs exceed the Margin Credits. All Developers who participated in this proceeding elected to transition to the new Margin Test approach with regard to their open

contracts, which met the Margin Test. The Developers agreed to forego any further claims under closed contracts—those contracts which were satisfied or expired prior to the Complaint Date of June 11, 2009. Mr. Cearley explained that the developers will receive a refund of the remaining deposits held by NIPSCO under Option A contracts in accordance with a specified payment schedule set forth in the Settlement Agreement. NIPSCO will also refund post-Complaint principal payments made by the Developers or by non-complainant developers in accordance with the schedule set forth in the Settlement Agreement. Developers will forego any refund of pre-Complaint principal payments and interest payments made to NIPSCO under open contracts. Mr. Cearley explained that non-complainant developers will be entitled to the same treatment under the Settlement Agreement and the tariffs if they elect to transition their open contracts to the new Margin Test approach. The payment of refunds to the Developers and to the non-complainants involves a staggered payment schedule to reflect the staggered expiration dates of the open contracts. The time periods for the actual payments may be slightly different because the Developers cannot receive any refund until after a Commission order approving the Settlement Agreement and because NIPSCO will need time to review the open contracts of the non-complainant developers in the same manner that it has already reviewed the Developers' open contracts.

The Developers also submitted settlement testimony from a representative of each of the developers, specifically Frank Morin of Accent Homes, Inc; Thomas J. Fleming of Fleming Realty, Inc.; William H. McCabe of KM&N Properties, LLC and Naples VPZ Development, LLC; Chris C. Kovich of Komark, Ltd.; Ronald W. McFarland of McFarland Homes; Joseph B. Lenehan of Olthof Homes; John Lotton of Phillippe Builders, Inc.; David VanDyke of Precision Construction, Inc.; John T. Borucki of Providence Real Estate Development, LLC; Douglas R. VanDerNoord of Schmidt Farms Development, LLC; Ben G. Houser of Signature Properties, Inc.; Michael L. Muenich of SLM&D; Brian F. Blackmore of V3 Realty Company, LLC; and Douglas Terpstra of Wyngate Development II, LLC (collectively "Developers Witnesses"). These witnesses submitted testimony on behalf of their respective development companies and their related companies in support of the Settlement Agreement.

The Developer Witnesses discussed the importance of the service extension regulations. Residential developments cannot proceed without the installation of gas and/or electric services. They indicated that continued problems with the installation of gas and electric service to new residential developments will hamper economic development in northwest Indiana. The Developer Witnesses confirmed that they were kept informed and offered their input throughout the settlement negotiations, which began before the Complaint was filed but intensified in late 2009. Although NIPSCO and the Developers held different views on many of the issues, throughout the negotiations, both sides made significant compromises, and the settlement process moved forward. The resulting Settlement Agreement addresses both the prospective treatment of service extensions and the Developers' concerns regarding existing contracts.

The Developer Witnesses discussed the prospective treatment of service extensions under the Settlement Agreement. Essentially, NIPSCO and a developer will review, consider, and resolve issues relating to service extensions prior to installation of the service extension by NIPSCO. NIPSCO will perform the Margin Test, i.e., NIPSCO will determine its expected marginal costs for installing the extension and will compare those costs to its expected revenue from new customers in the development. If a developer meets the Margin Test, then NIPSCO

will proceed to install the service extension without charge. If a developer does not meet the Margin Test, then the developer may pay the shortfall under the Margin Test, i.e., the Contribution, and then NIPSCO will proceed with the installation without further charge.

The Developer Witnesses opined that the calculation of the Margin Costs under the Margin Test is fair and reasonable. They explained that in NIPSCO's existing contracts with developers, NIPSCO estimated the "direct material and labor costs" for a particular development, which did not include overhead costs. The Developers disagreed with and challenged a number of the costs included by NIPSCO in its estimate of "direct costs," asserting that many of those costs were actually indirect, overhead costs. The Developers also questioned whether NIPSCO had adequately provided information regarding costs to the Commission, and challenged whether developers should have to guarantee estimated costs which exceeded the actual costs of a development. The Developer Witnesses stated that NIPSCO and the Developers ultimately concluded and agreed to use 52% of the total costs (including overhead), which roughly equates with NIPSCO's marginal costs incurred in installing a service extension for a development. The Developer Witnesses noted that prospectively NIPSCO will also submit information to the Commission in its annual filings supporting the calculation of all its costs.

The Developer Witnesses also opined that the calculation of the Margin Credits under the Margin Test is fair and reasonable. They explained that in NIPSCO's existing contracts with developers, credits were calculated based upon a formula that used the square footage of a home multiplied by a set rate per square foot. The Developers challenged numerous aspects of this formula, including the lack of any update to the formula, the lack of any adjustment for changes in fuel costs and the failure to account for unfinished square footage in homes, particularly unfinished basements. The Developer Witnesses explained that during the settlement negotiations, it became apparent that accurately estimating the precise revenue from each new customer is a difficult—and perhaps impossible—task. Accurately estimating expected revenue from each new home would also impose a significant administrative burden on both NIPSCO and developers. NIPSCO generally proposed a methodology that excluded fuel costs from the calculation of expected revenue. Based upon that methodology, and considering an average new gas or electric customer, NIPSCO and the Developers agreed to a flat credit per new meter of $3,500 for electric customers and $1,800 for gas customers. The Developers opined that although these flat credits may produce a slightly lower number for estimated revenue than using a gross revenue formula, on average, these flat credits are reasonable.

Finally, the Developer Witnesses opined that overall the Margin Test is fair and reasonable. They explained that historically the credits from new meters in a development were generally sufficient to cover NIPSCO's direct (marginal) costs incurred in installing gas and electric service extensions, and that historically the number of planned homes and expected revenue from those homes in a development usually justified the cost of installing gas or electric service. The Developer Witnesses testified that recently, however, developers have paid increasing amounts for extensions due to issues with regard to the calculation of costs and credits, which problems were magnified by the slowdown in construction caused by the recent recession. The Developer Witnesses testified that the new Margin Test approach will allow NIPSCO to address and resolve those problems and will allow NIPSCO to install gas and electric service, without charge, in developments that make economic sense. The Developer Witnesses

opined that the Margin Test is consistent with NIPSCO's historical practice and will encourage economic development in northwest Indiana.

The Developer Witnesses confirmed that the Settlement Agreement resolves the Developers' concerns with regard to their existing contracts. They indicated that NIPSCO had applied the Margin Test to all existing "open" contracts in the same manner that it will apply the Margin Test to new developments. The Developer Witnesses indicated that with regard to their open contracts, those contracts met the Margin Test. Some of the Developers are entitled to refunds of either their remaining Option A deposits or their post-Complaint principal payments. Pursuant to the Settlement Agreement, the Developers have agreed to forego any further claims against NIPSCO relating to any open contracts or closed contracts as of the date of the Settlement Agreement. The Developer Witnesses all testified that this constitutes a significant compromise on the part of their development companies, but it will facilitate the ability of developers and NIPSCO to move forward and concentrate on existing and new developments. The Developer Witnesses opined that this will be a win-win situation for NIPSCO, customers, developers and the northwest Indiana community as a whole.

The Developer Witnesses all opined that the Settlement Agreement is fair and reasonable and in the public interest. As developers in northwest Indiana, the Developer Witnesses opined that the Settlement Agreement represents a fair compromise on numerous disputed issues, will foster improved cooperation between NIPSCO and developers in northwest Indiana, and will benefit northwest Indiana through continued economic development.

B. NIPSCO's Evidence.

NIPSCO presented the testimony of Timothy R. Caister, Director of Electric Regulatory Policy for NIPSCO, who sponsored Joint Exhibit 1, the Stipulation and Agreement executed by the settling parties. Mr. Caister initially explained the lengthy settlement negotiations that occurred between NIPSCO and the Developers. Throughout the summer and fall of 2009, NIPSCO and the Developers exchanged discovery requests and prepared for litigation of an evidentiary hearing on the issues raised in the Complaint. In December 2009, the parties began serious discussions on settlement, which continued throughout the first half of 2010. The settlement discussions took time due to the many complexities involved in the proceeding, but the parties ultimately were able to reach a satisfactory and reasonable outcome, including a new and improved process by which NIPSCO proposed to handle residential developments in the future. The parties also resolved issues regarding payments made by Developers.

Mr. Caister identified the two central issues resolved by the Settlement Agreement and the proposed tariff modifications: (1) resolution of the pending complaint proceeding and the associated claims and issues; and (2) implementation of a new residential development policy that will apply to all new developments and to those developers electing to transition to the new policy for their currently-effective contracts. Pursuant to the Settlement Agreement, the Developers have agreed to release all related claims against NIPSCO. The parties agreed that it is more advantageous to settle this proceeding according to the Settlement Agreement than to pursue an uncertain litigation result. Mr. Caister noted that the Settlement Agreement is a comprehensive resolution, and no one certain term or condition is severable from another. The

parties devoted months of time and resources to reach this accord, and each term and condition has meaning towards the resolution of the claims and issues in this proceeding.

Mr. Caister described the new process established by the Settlement Agreement. Pursuant to the Margin Test, NIPSCO will compare the Margin Costs, a predetermined percentage of NIPSCO's total cost of providing service (defined in the agreement as 52% of the total cost of the extension), with the Margin Credits, the estimated revenue from the development. Generally, all developers would be responsible only for the difference between the Margin Costs and the Margin Credits. This new calculation method provides improved certainty because it allows developers to know the exact cost of the project before work begins.

Mr. Caister also sponsored NIPSCO's response to the Commission's July 26, 2010 docket entry. In NIPSCO's electric tariff, Margin Costs are defined as the product of 0.52 multiplied by the total amount of actual costs for the extension of electric facilities to a specific development. NIPSCO explained that "the total amount of the actual costs for the extension of electric facilities to a specific development" will include the cost of the extension using the information provided to the Commission in NIPSCO's annual filings pursuant to 170 IAC 4-1-27(E), including all overhead and other items. This will include "Other Costs"—each cost item is quantified and assigned to each project either directly or indirectly according to NIPSCO's accounting or operating application and allocation methodologies. Construction overhead costs are applied to construction and retirement work orders in a period pursuant to an overhead rate factor. In this way, all overhead dollars are spread to the specific work orders. The overhead costs are not included in the Margin Costs by the operation of the 0.52 multiplier. This is consistent with NIPSCO's historic and current new residential development policy to exclude overhead costs.

Mr. Caister explained the manner in which the Margin Credits were developed. The Developers sought relief, among other things, related to NIPSCO's calculation of revenue estimates from new homes. The new process moves to a simpler process where each home is given a standard credit. The proposed credits per home of $3,500 for electric service and $1,800 for gas service were developed generally based upon an estimate of the present value of gross margin for an average residential customer, and are consistent with NIPSCO's policy supporting and its proposal in its pending electric base rate case (Cause No. 43526) and its pending gas base rate case (Cause No. 43894). The standard credits eliminate the need to conduct a calculation of estimated revenue for each individual home in a development based on the square footage of each home.

Mr. Caister explained how NIPSCO will apply the new process to current developments. NIPSCO will apply the Margin Test to the existing development, and if a developer elects to transition to the new process, the developer will pay the amount by which the Margin Costs exceed the Margin Credits, defined in the Agreement as the Contribution. To the extent NIPSCO is presently holding cash from the developer pursuant to an Option A contract, once the Contribution is paid, NIPSCO will refund the remaining deposit held by NIPSCO on the date of refund. For Option C contracts, where the developer provided a letter of credit ("LOC"), once any required Contribution has been paid, the LOC will be returned to the developer. Principal payments received since the Complaint Date will be refunded in accordance with the Agreement. NIPSCO will apply the same terms to non-complainant developers. Mr. Caister sponsored an

exhibit consisting of correspondence and a Powerpoint presentation explaining the Settlement Agreement to non-complainant builder/developers. The timeline for applying the Margin Test to non-complainant developers is different than for the Developers because NIPSCO has been analyzing the data for the contracts of the Developers for over a year. NIPSCO will need time to run the Margin Test on non-complainant developer contracts, determine if and the extent of any Contribution or refund required for those contracts, and communicate that information to the non-complainant developers. The Agreement also allows the non-complainant developers time to decide whether to transition their existing open contracts to the new process.

Mr. Caister then discussed the prospective treatment of residential developments under the proposed tariffs. The proposed tariffs would eliminate certain aspects of NIPSCO's current tariffs and policies and implement a simpler approach for applicants. The new tariff language would provide for a comparison of the expected gross margin from a new residential development with a certain level of estimated cost to serve that development, i.e., the Margin Test. If the Margin Costs do not exceed the expected gross margin, then NIPSCO would move forward with construction of the facilities without a requirement of a Contribution. Conversely, if the Margin Costs exceed the expected gross margin, then NIPSCO would require the amount by which the Margin Costs exceed the expected gross margin, i.e., the Contribution, to be paid by the applicant before commencement of construction. Mr. Caister noted that the Settlement Agreement defines exceptions to that approach that could apply in certain circumstances, and it provides both developers and NIPSCO with the option to submit a dispute to the Commission for resolution.

Mr. Caister sponsored proposed tariffs for gas and electric service, attached to the Settlement Agreement, which would implement the new approach and that delineate changes to NIPSCO's General Rules and Regulations. Exhibits A and B each contain two proposed tariffs—one under the existing tariff series (800 series for electric and 300 series for gas) and one under the tariff series proposed in each of NIPSCO's pending base rate cases (500 series for electric and 400 series for gas). The language in each tariff is identical, and if the Commission approves the Settlement Agreement, NIPSCO would make a conforming tariff submission applicable to the current tariff series in effect at that time. Mr. Caister indicated that the parties have devoted a considerable amount of time to this Settlement Agreement and propose that the proposed tariff language remain in effect beyond the currently pending base rate cases. Mr. Caister confirmed that the proposed tariffs will have no impact on rates or rate calculations in the pending rate cases.

Mr. Caister testified that NIPSCO's proposal is in line with other utilities in Indiana because it defaults, subject to certain exceptions, to the policy that extensions will be made without charge when the estimated margin exceeds the estimated costs. Mr. Caister supported his statement by citing to the tariffs of electric utilities Indiana Michigan Power Company and Duke Energy Indiana, Inc. and to gas utilities Southern Indiana Gas and Electric Company ("Vectren") and Citizens Gas and Coke Utility. Mr. Caister noted that by bringing NIPSCO's tariffs into line with other Indiana utilities, the public interest is served through a consistent and predictable approach throughout the region and state.

Mr. Caister concluded his testimony by explaining that the Settlement Agreement is in the public interest because it resolves contentious litigation, institutes new tariff language and

associated procedures that benefit the parties and other non-complainant builder/developers, simplifies NIPSCO's new residential development policy, is consistent with the Commission's regulations and other utilities' tariffs, and promotes further cooperation between NIPSCO and its customers in the future. The proposed tariff provisions are likewise in the public interest because they provide certainty to both the developers and NIPSCO and because they encourage economic growth through development.

C. OUCC's Evidence.

The OUCC did not submit evidence in this proceeding, but filed a notice that it did not oppose the settlement agreement. In its notice, the OUCC indicated that it is a party to this Cause but is not a signatory to the Settlement Agreement. The OUCC further stated that it had reviewed the Complaint, NIPSCO's Answer, discovery responses, testimony and attachments thereto, the Settlement Agreement and the settlement testimony in this Cause. Based upon its review of that information, the OUCC notified the Commission that it does not oppose the Settlement Agreement.

5. Discussion and Findings. 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.*, 582 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 Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest. The Commission may reject, in whole or in part, any proposed settlement if we determine the settlement is not in the public interest. 170 IAC 1-1.1-17(c).

"In the public utilities field, as in other contexts, the law favors settlements precisely because they help advance matters with far greater speed and certainty, and far less drain on public and private resources, than litigation or other adversarial proceedings." *In re Petition of PSI Energy, Inc.*, Cause No. 42718, Order at 23 (May 24, 2006). Settlement of matters pending before the Commission is encouraged.

NIPSCO and the Developers submitted sworn testimony supporting Commission approval of the Settlement Agreement. The OUCC, after reviewing extensive information regarding the issues in this Cause, notified the Commission that it does not oppose the Settlement Agreement. The witnesses testified to the complexity of the issues being settled and agreed that

the public interest is promoted by bringing the numerous and complex issues to a conclusion. We agree the public interest can certainly be served by avoiding contentious and complex litigation. This is particularly true in this case. NIPSCO's witness, Timothy Caister, testified that this proceeding involves 15 developers and 129 open contracts. At the evidentiary hearing, he testified that there are more than 300 non-complainant developers with more than 1,000 open contracts. Litigation of the issues would consume a tremendous amount of public and private resources, and a settlement that reasonably resolves these issues for developers in NIPSCO's service territory is to be encouraged.

The Settlement Agreement and the proposed tariffs establish a new approach, described as the Margin Test, with regard to NIPSCO's installation of electric and gas service to new residential developments. Though new to NIPSCO's tariffs, the underlying concepts of the Margin Test are not new to Indiana utilities. Through the Margin Test, NIPSCO proposes to compare the estimated marginal costs of an extension to a development with the estimated marginal revenue from the new customers connected to that extension. Under the test, if marginal revenue equals or exceeds the marginal cost for development, then NIPSCO will provide the extension without charge. If the marginal revenues do not exceed the marginal cost for development, then the developer typically pays the difference, which is termed "the Contribution." This approach tracks the language of the Commission's regulations and is consistent with the tariffs of other utilities. As Mr. Caister noted in his testimony, this new calculation method provides improved certainty because it allows developers to know the exact cost of the project before construction of the service facilities begins.

The factors of the Margin Test are defined in the Settlement Agreement and in the proposed tariffs. The Margin Costs are defined as 52% of the total costs of the installation, including overhead. NIPSCO applies construction overhead costs to construction and retirement work orders pursuant to an overhead rate factor. The 52% of total costs figure resulted from compromise negotiations and roughly equates with the portion of the total costs, including overhead, that NIPSCO and the Developers believed are directly related to a specific project, i.e., the marginal costs for the extension. This resolves the dispute between NIPSCO and the Developers as to which costs are "direct" and which costs are "indirect" or "overhead."

The Settlement Agreement also defines the other input to the Margin Test calculation—the Margin Credits. Margin Credits mean the product of the number of meters proposed for a development multiplied by the Electric Credit or Gas Credit. Through their settlement negotiations, NIPSCO and the Developers agreed upon a flat credit of $3,500 for the Electric Credit and $1,800 for the Gas Credit. These numbers were generally based upon an estimate of the present value of gross margin over a 6-year period for a customer using an average amount of electricity or gas with consideration given to other factors. Ultimately, NIPSCO and the Developers agreed upon credit amounts that they believe constitute a fair investment per new customer.

We note that the Settlement Agreement provides for adjustment of the Electric Credit and Gas Credit in a base rate case initiated after 2010 or in a separate proceeding initiated in accordance with the Commission's rules and regulations. This will allow NIPSCO to implement the new approach and permit the parties and the Commission to review and adjust, if necessary, this approach. As Mr. Caister noted in his testimony, the proposed tariffs will have no impact on

rates or rate calculations in the pending rate cases; rather, the proposed tariffs in this proceeding would be effective beyond an order in those pending rate cases.

The Settlement Agreement provides for the resolution of the Developers' existing contracts by applying the Margin Test to those contracts. With regard to the Developers' open contracts, the Margin Test was met. For Developers who have remaining deposits under Option A contracts or who have made post-Complaint principal payments, those Developers will receive refunds pursuant to the schedule specified in the Settlement Agreement. The Developers have agreed to forego any further claims against NIPSCO relating to any open or closed contracts as of the date of the Settlement Agreement. The Agreement brings closure to disputes over numerous contracts and will allow NIPSCO and the Developers to move forward and concentrate on existing and new developments.

The Settlement Agreement provides that NIPSCO will apply the Margin Test to existing contracts of non-complainant builder/developers in the same manner that is has been applied to the Developers who participated in this Cause. Mr. Caister identified the efforts that NIPSCO has made already to communicate this new approach with the non-complainants. Upon approval of the Settlement Agreement, NIPSCO shall apply the Margin Test to the non-complainants' Open Contracts, and notify the non-complainants of the calculation on or before January 4, 2011. Depending on the time remaining on the contract, non-complainants will have at least 90 days to elect whether they will transition to the Margin Test approach or maintain the terms of the existing contracts.

He stated that approximately 300 non-complainant developers have contracts that could be affected by the Settlement Agreement. To the extent any non-complainants are entitled to refunds, those refunds will be paid in accordance with the schedule in the Agreement. The refund schedule for non-complainants affords NIPSCO time to review more than 1,000 contracts of non-complainants and to determine if the non-complainants elect to transition to the Margin Test approach. We also note with approval the approach taken by NIPSCO in its proactive outreach to developers who are not parties to this proceeding through written and web-based communication.

Having reviewed the Settlement Agreement and having considered the testimony supporting it, we find that the Settlement Agreement should be approved in its entirety. We find that the Settlement Agreement represents a reasonable compromise of the disputed issues in this Cause, is supported by probative evidence of record, and is in the public interest. We further find that the proposed tariffs appended to the Settlement Agreement are a reasonable approach to the treatment of future residential developments and non-complainant developers, are consistent with the public interest, and should be approved. We therefore approve the Settlement Agreement and the applicable tariffs attached thereto.

In conclusion, the Commission commends the parties on reaching a compromise in this Cause, which was undoubtedly complicated with the number of parties involved. The Settlement Agreement provides a reasonable outcome that is consistent with the policies and practices of other large utilities.

6. **Effect of Settlement Agreement.** With regard to future citation of the Agreement, we find the Agreement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (March 19, 1997) and the terms of the Agreement regarding its non-precedential effect. The Agreement shall not constitute an admission or a waiver of any position that any of the parties may take with respect to any or all of the items and issues resolved therein in any future regulatory or other proceedings, except to the extent necessary to enforce its terms.

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

1. The Stipulation and Agreement dated July 2, 2010, a copy of which is attached to this Order, is hereby approved by the Commission.

2. NIPSCO is authorized to file conforming tariffs for approval by the Commission's Electric Division and Natural Gas Division that apply to the respective current tariff series in effect on the effective date of this Order.

3. This Order shall become effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: NOV 10 2010

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission

OFFICIAL EXHIBITS

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE: COMPLAINT OF CERTAIN DEVELOPERS AGAINST NORTHERN INDIANA PUBLIC SERVICE COMPANY REQUESTING THAT THE COMMISSION INVESTIGATE NIPSCO'S CHARGES, PRACTICES, ACTS AND SERVICE AND ITS COMPLIANCE WITH RULES AND REGULATIONS GOVERNING THE EXTENSION OF FACILITIES TO SUPPLY GAS AND ELECTRIC SERVICE TO RESIDENTIAL DEVELOPMENTS.	)	CAUSE NO. 43706
RESPONDENT: NORTHER INDIANA PUBLIC SERVICE COMPANY	)	

FILED
July 02, 2010
INDIANA UTILITY
REGULATORY COMMISSION

IURC JOINT
EXHIBIT No. 1
7-28-10 AT
DATE REPORTER

JOINT SUBMISSION OF SETTLEMENT AGREEMENT

Northern Indiana Public Service Company ("NIPSCO") and the NIPSCO Developer Group, by counsel, submit the attached Settlement Agreement to the Indiana Utility Regulatory Commission for approval in resolution of all issues in this proceeding, and proposing approval of modifications to NIPSCO's Rules and Regulations for Electric and Natural Gas Utility Service governing the extension of utility facilities to residential developments. In support, NIPSCO and the NIPSCO Developer Group state the following:

1. The Settlement Agreement attached hereto will be submitted to the Commission as Joint Exhibit 1 at the evidentiary hearing in this cause to be held on June 27, 2010. NIPSCO, as well as all Developers except Precision Construction, Inc., have executed the Settlement Agreement.

2. An executed signature page for Precision Construction, Inc. will be filed with the Commission on July 6, 2010.

3. In addition to the Settlement Agreement, also attached hereto are redlined tariff sheets provided for the convenience of the Commission.

WHEREFORE, NIPSCO and the NIPSCO Developer Group jointly request approval of the Settlement Agreement in this proceeding and for all other just and proper relief.

Respectfully Submitted,

Northern Indiana Public Service Company

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JOINT EXHIBIT 1

(Executed Settlement Agreement)

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE: COMPLAINT OF CERTAIN DEVELOPERS AGAINST NORTHERN INDIANA PUBLIC SERVICE COMPANY REQUESTING THAT THE COMMISSION INVESTIGATE NIPSCO'S CHARGES, PRACTICES, ACTS AND SERVICE AND ITS COMPLIANCE WITH RULES AND REGULATIONS GOVERNING THE EXTENSION OF FACILITIES TO SUPPLY GAS AND ELECTRIC SERVICE TO RESIDENTIAL DEVELOPMENTS.	)	CAUSE NO. 43706
RESPONDENT: NORTHERN INDIANA PUBLIC SERVICE COMPANY	)	

STIPULATION AND AGREEMENT

This Stipulation and Agreement (the "Agreement") is entered into this 2nd day of July, 2010 by and between Northern Indiana Public Service Company ("NIPSCO"), and the NIPSCO Developer Group ("Developers") consisting of the developers and entities identified on the signature page of this Agreement.

A. Procedural Background.

1. On June 11, 2009, Accent Homes, Inc., Fleming Realty, Inc., KM&N Properties, LLC, Komark, Ltd., McFarland Homes, Naples VPZ Development, LLC, Olthof Homes, Phillippe Builders, Inc., Precision Construction, Inc., Providence Real Estate Development, LLC, Schmidt Farms Development, LLC, Signature Properties, Inc., SLM&D, V3 Realty Company, LLC and Wyngate Development II, LLC and various related parties (collectively, "the

Developers") filed a *Complaint* with the Indiana Utility Regulatory Commission (the "Commission") that initiated this proceeding.

2. On July 8, 2009, NIPSCO filed its *Answer* with the Commission.

3. On September 4, 2009, the Developers filed their case-in-chief consisting of testimony and exhibits from its witnesses Brian F. Blackmore, Ronald W. McFarland, Bill Silfies, Jack E. Kovich, Ben G. Houser, John Kremke II, Thomas Fleming, Chris C. Kovich, William H. McCabe, Joseph Lenehan, John F. Kryda, John T. Borucki, Douglas R. VanDerNoord, Michael L. Muenich, Douglas Terpstra, and Reed W. Cearley.

4. On October 13, 2009, NIPSCO filed its case-in-chief consisting of testimony and exhibits from its witnesses Debora A. Owen, James D. Fiegle and Timothy R. Caister.

5. On October 20, 2009, the Developers filed rebuttal testimony from its witnesses Brian F. Blackmore and Reed W. Cearley.

6. Discussions between NIPSCO and the Developers have continued throughout the pendency of this proceeding, and beginning with an *Unopposed Joint Motion to Continue Hearing* filed with the Commission on October 23, 2009, the Parties formally indicated a desire to pursue settlement of the issues presented in this proceeding, and have since that time negotiated to that end. This Agreement is the result of those efforts.

B. <u>Definitions</u>.

7. The following definitions shall apply throughout this Agreement:

a. "Agreement" shall mean this document including all of its provisions, Attachments and Exhibits.

b. "Applicant" shall mean an entity applying, or entities jointly applying, to NIPSCO for extension of gas and/or electric service to a Development.

c. "Complaint Date" shall mean June 11, 2009.

d. "Contribution" shall mean a cash contribution in aid of construction from an Applicant for a Development as determined under the Margin Test. The amount of the Contribution, if any, equals the amount by which the Margin Costs exceed the Margin Credits as determined pursuant to the terms of this Agreement.

e. "Development" shall mean a real estate development consisting of single or multiple family dwellings for which an extension of gas or electric service is requested by an Applicant. For purposes of the Margin Test, and subject to the requirements of Paragraph 8(c), NIPSCO will calculate the Margin Test for a Development based upon all phases of the Development identified by the Applicant at the time the application is made.

f. "Effective Date" shall mean the effective date of the tariffs appended to this Agreement as Exhibits A and B, subject to the provisions of Paragraph D.11 of this Agreement. NIPSCO shall submit the tariffs (Exhibits A and B) to the Commission for filing within 35 calendar days

following the date of an order approving the Agreement, subject to the provisions of Paragraph D.11 of this Agreement .

g. "Election Date" shall mean the date on which a Developer or Non-Complainant makes the election specified in Paragraph 9.d.

h. "Electric Credit" shall mean the margin credit per residential electric meter for purposes of the Margin Test. The Parties agree that the Electric Credit shall be equal to $3,500, subject to adjustment as described in Paragraph C.8.d. of this Agreement.

i. "Gas Credit" shall mean the margin credit per residential gas meter for purposes of the Margin Test. The Parties agree that the Gas Credit shall be equal to $1,800, subject to adjustment as described in Paragraph C.8.d of this Agreement.

j. "LOC" shall mean an irrevocable letter of credit in favor of NIPSCO posted as financial assurance consistent with Option C of the current NIPSCO line extension policy and tariff.

k. "Margin Costs" shall mean the Total Costs for a Development multiplied by 52% (fifty-two percent).

l. "Margin Credits" shall mean the product of the number of meters proposed for a Development times the Gas Credit or Electric Credit, as applicable, at the time of application.

m. "Margin Test" shall mean the comparison of the Margin Costs with the Margin Credits for a Development. A Contribution will be required from an Applicant when and to the extent the Margin Costs exceed the Margin Credits for a Development.

n. "Non-Complainant" shall mean an entity with an Open Contract that is not one of the Developers.

o. "Open Contracts" shall mean contracts between NIPSCO and Developers or Non-Complainants executed pursuant to NIPSCO's current line extension policy and tariff that are open, effective and have not terminated or been satisfied by their terms as of the Complaint Date.

p. "Order Date" shall mean the date of a Final Order by the Commission in this proceeding approving this Agreement consistent with the provisions of Paragraph D.11 of this Agreement.

q. "Payment" shall mean the payment of money to NIPSCO by a Developer or Non-Complainant inclusive of draws against a LOC under an Option C Contract.

r. "Subsequent Connectors" shall mean Developments receiving service from NIPSCO gas or electric service facilities previously installed to serve a prior Development.

s. "Total Costs" shall mean the total amount of actual costs for the extension of gas or electric facilities to a specific Development as estimated by

NIPSCO using the information provided to the Commission in NIPSCO's annual filings pursuant to 170 IAC § 4-1-27(E) and 170 IAC § 5-1-27(D).

C. Substantive Terms of Settlement.

8. Prospective Treatment of New Developments. All Developments for which extension of gas and/or electric service by NIPSCO is requested by any developer on or after the Effective Date shall be governed by the following process:

a. Applicant shall provide NIPSCO with a written request for extension of gas and/or electric service to a Development on a form provided by NIPSCO. Separate forms shall be submitted for gas and electric services in the event extension of both services is requested for a Development.

b. NIPSCO shall provide Applicant with a written estimate of the Total Costs for extension of gas or electric facilities to a Development along with the results of the Margin Test for the Development. The estimate shall state the amount of any Contribution required from Applicant prior to the extension of gas and/or electric service(s) to the Development, and will show the calculation of that Contribution.

c. Applicant shall pay NIPSCO the required Contribution prior to the commencement of work to extend facilities to the Development. Such Contribution shall be non-refundable, subject to reimbursement for Subsequent Connectors as specified in Exhibits A and B. Prior to commencement of work to extend facilities to the Development, Applicant

shall also provide NIPSCO with proof of the Applicant's fee simple ownership of the land comprising the Development and approval of the local governmental entity authorizing construction of the Development to begin.

d. The Gas Credit, Electric Credit, and the calculation of the Contribution required shall all be subject to adjustment in any proceeding proposing adjustment to NIPSCO's basic rates and charges initiated after 2010, or in a separate proceeding filed in conformance with the Commission's rules and regulations. The methodology supporting the Gas Credit and Electric Credit in this Agreement is generally based upon an estimate of the present value of gross margin for an average residential customer. However, Parties are not limited to supporting that methodology in any future proceeding where adjustment(s) are proposed.

e. Contributions required for an individual contract may not be netted against excess Margin Credits from other contracts.

f. Attached hereto as Exhibits A and B are NIPSCO's proposed gas and electric tariffs memorializing this prospective treatment. Exhibits A and B are submitted to the Commission for approval in this proceeding. The gas and electric tariffs submitted as Exhibits A and B shall govern the prospective treatment of new developments on and after the Effective Date.

9. Treatment of Existing Developments. Developments for which any Developer or Non-Complainant has an Open Contract shall be addressed as follows:

a. NIPSCO has reviewed the Developers' Open Contracts, has determined the amounts due from and to Developers based upon application of the Margin Test to all Open Contracts of Developers, and has reached agreement with Developers on the amounts due from and to Developers regarding their Open Contracts through the date of the filing of the Agreement. The Parties agree that the amounts due from and to Developers are subject to adjustment for events occurring between the date of agreement and the date of any Contribution or refund required by operation of Paragraph 9.e. of this Agreement. All Developers agree and elect to transition to the new process described in this Agreement.

b. NIPSCO shall determine the amounts due from and to all Non-Complainants based on the application of the Margin Test to all Open Contracts of Non-Complainants and shall provide each Non-Complainant with a list of its Open Contracts showing the calculation of the Margin Test, along with the calculation of any Contribution that may be required, on or before the later of thirty (30) days after the Order Date or January 4, 2011.

c. The analysis described in subparagraph 9.a. and b. shall also quantify any other amounts that may be subject to adjustment or refund according to the following criteria:

i. For Open Contracts under Option A, the Margin Test shall be conducted, and any cash payments made by Developer or Non-Complainant and held by NIPSCO shall be refunded net of any required Contribution consistent with Paragraph 9.e.. of this Agreement. Option A Contracts will remain open and continue to be subject to their terms and conditions until the payment of any refunds, at which time such Open Contracts will be terminated.

ii. For Open Contracts under Options B, C, D and E, the LOC obligation or any other financial guarantee obligation to NIPSCO provided by the Developer or Non-Complainant shall terminate on the latest of (a) 30 days after the Order Date; (b) the Election Date; or (c) if a Contribution is required after application of the Margin Test, the date of payment by the Developer or Non-Complainant of the required Contribution.

iii. For Open Contracts under Options B, C, D and E, the Open Contract will terminate on the latest of the following dates: (a) 30 days after the Order Date; (b) the Election Date; (c) the date of payment by NIPSCO of any refund owed to the Developer or Non-Complainant pursuant to Paragraphs 9.c.vii.a and 9.e.; or (d) if a

Contribution is required after application of the Margin Test, the date of payment by the Developer or Non-Complainant of the required Contribution.

iv. For Open Contracts under Options B, C, D, and E, in the event that a Contribution is required after application of the Margin Test, Developer or Non-Complainant shall pay the full Contribution within ninety (90) days of the later of (a) 30 days after the Order Date or (b) the Election Date. If the Developer or Non-Complainant does not pay the full Contribution within the required timeframe, the Developer or Non-Complainant will be deemed to have elected to remain subject to the terms and conditions of the original Open Contract, including without limitation the payment of any amounts deferred pursuant to 9.c.vii.b).

v. For Open Contracts under Options B, C, D, and E, Payments made prior to the Complaint Date shall not be subject to adjustment or refund.

vi. For Open Contracts under Options A, B, C, D, and E, Contributions required for an individual contract may not be netted against Margin Credits or refunds from other contracts.

vii. For Open Contracts under Options B, C, D, and E:

a) Non-interest payments made after the Complaint Date shall be subject to refund. Refunds made pursuant to this provision shall be made in accordance with the schedule identified in Paragraph 9.e. of this Agreement.

b) for Open Contracts under Options B, D, and E, any interest payments made prior to the date of the filing of this Agreement with the Commission shall not be subject to adjustment or refund.

c) For Open Contracts under Options B, C, D, and E, Payments due after the filing of this Agreement with the Commission, and any Payments which NIPSCO has agreed to defer as of the filing of this Agreement, may be deferred so long as any LOC or financial guarantee provided in the Open Contract remains in place through the latest of (a) 30 days after the Order Date; (b) the Election Date; or (c) if a Contribution is required after application of the Margin Test, the date of payment by the Developer or Non-Complainant of the required Contribution.

d. Within sixty (60) days after the receipt of the list identified in Paragraph 9.b., each Non-Complainant shall provide NIPSCO with an election for each Open Contract to either:

i. Maintain the Open Contract for the duration of its term, according to its terms and based upon NIPSCO's current policy and procedures regarding those contracts, or

ii. Transition to the new process based upon the analysis described in Paragraphs 9.a. and b. and pay any required Contribution to NIPSCO consistent with the provisions of Paragraph 9.c.iv. of this Agreement.

e. In the event the Developer or Non-Complainant elects to transition to the new process and is entitled to receive any refund as calculated by NIPSCO pursuant to Paragraphs 9.a,b and c of this Agreement, such refund shall be paid by NIPSCO according to the following schedule in recognition of the staggered expiration of current Open Contracts:

		For Developers	**For Non-Complainants**
i.	For Open Contracts expiring within 2 years of the Effective Date:	The later of 30 days after the Order Date or January 4, 2011	90 days after Election Date
ii.	For Open Contracts expiring more than 2 years but less than 4 years after the Effective Date:	The later of 30 days after the Order Date or March 4, 2011	180 days after Election Date
iii.	For Open Contracts expiring more than 4 years after the Effective Date:	The later of 30 days after the Order Date or June 4, 2011	365 days after Election Date

f. During the period between the execution of this Agreement and the Effective Date, new contracts for new Developments shall continue to be executed under one of the options available under NIPSCO's current line extension policy and procedures, subject to a Developer or Non-Complainant's right to elect to transition to the new process on or after the Effective Date.

g. All facility extensions made after the Effective Date shall be governed by the provisions of the tariffs attached hereto as Exhibits A and B.

D. <u>Procedural Aspects of Settlement and Presentation of this Agreement</u>.

10. NIPSCO and Developers agree to jointly present this Agreement to the Commission for its approval in this proceeding, and agree to present supplemental testimony as necessary to provide an appropriate factual basis for such approval.

11. If the Agreement is not approved by the Commission, the Parties agree that the terms hereof shall be privileged and shall not be admissible in evidence or in any way discussed in any subsequent proceeding. Moreover, the concurrence of the parties with the terms of this Agreement is expressly predicated upon the Commission's approval of the Agreement in its entirety without any material modification or any material further condition deemed unacceptable by any party. If the Commission does not approve the Agreement in its entirety, the Agreement shall be null and void and deemed withdrawn, unless otherwise agreed in writing by the parties within fifteen (15) days of the Order Date.

12. The terms of this Agreement 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 at page 10, as a term of this Agreement, the Commission must assure the 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 Agreement is solely the result of compromise in the settlement process. Each of the parties hereto has entered into this Stipulation and Settlement solely to avoid further disputes and litigation with the attendant inconvenience and expenses.

13. The evidence of record presented by the Parties in this Cause of this Agreement constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusion of law necessary for the approval of this Agreement, as filed. The Parties agree to the admission into the evidentiary record of this Agreement, along with testimony supporting it without objection.

14. NIPSCO and the Developers agree that this Agreement, including the determinations made pursuant to Paragraph 9.a., resolves any and all disputes concerning or related to the issues enumerated in the Complaint initiating this proceeding, and further agree to release and forever hold each other harmless from any claims of any type relating to those issues through and including the date of this Agreement.

15. The issuance of a final Order by the Commission approving this Agreement without any material modification shall terminate all proceedings in regard to this Cause.

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

17. The Parties shall not appeal the agreed final Order or any subsequent Commission order as to any portion of such order that is specifically implementing, without modification, the provisions of this Agreement and the Parties shall not support any appeal of the portion of such order by a person not a party to this Agreement. The provisions of this Agreement shall be enforceable by any party at the Commission or in any court of competent jurisdiction, whichever is applicable.

18. The communications and discussions during the negotiations and conferences which produced this Agreement have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be privileged.

19. The Parties agree that all previous or contemporaneous understandings, agreements or other discussion regarding the prospective treatment of new developments shall be merged into the tariff as approved and effective.

ACCEPTED AND AGREED this 2nd day of July, 2010.

Northern Indiana Public Service Company

Frank A. Shambo
Vice President, Regulatory & Legislative Affairs

Developers

Shaw R. Friedman
Robert W. Wright
Counsel for Developers

ACCEPTED AND AGREED this 2nd day of July, 2010.

Northern Indiana Public Service Company

Frank A. Shambo
Vice President, Regulatory & Legislative Affairs

Developers

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