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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC )
SERVICE COMPANY FOR APPROVAL OF )
MODIFICATION TO AND EXTENSION OF ITS )
ALTERNATIVE REGULATORY PLAN )
APPLICABLE TO NATURAL GAS UTILITY )
SERVICE PURSUANT TO IND. CODE § 8-1-2.5 )
AS APPROVED BY THE INDIANA UTILITY )
REGULATORY COMMISSION IN CAUSE NOS. )
42800 AND 42884. )

CAUSE NO. 43837

APPROVED:

MAR 31 2010

BY THE COMMISSION:

James D. Atterholt, Commissioner
Aaron A. Schmoll, Administrative Law Judge

On December 9, 2009, Northern Indiana Public Service Company ("NIPSCO" or "Petitioner") filed its Verified Petition seeking Commission approval of a modified natural gas alternative regulatory plan ("ARP") pursuant to Ind. Code § 8-1-2.5-1, et seq. On December 14, 2009 a Petition to Intervene was filed by the NIPSCO Choice Marketer Group consisting of Border Energy, CenterPoint Energy Services, Inc., Interstate Gas Supply, Inc., Just Energy Indiana Corp., MX Energy, Nordic Energy Services, LLC, Realgly LLC d/b/a Realgly Energy Services, Spark Energy Gas, LP, Stand Energy Corporation, US Gas & Electric, Inc., and Vectren Retail, LLC ("Marketer Group").

Pursuant to notice as provided for in 170 IAC 1-1.1-15, a Prehearing Conference was convened in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana on January 20, 2010. At the Prehearing Conference, the Commission granted the Petition to Intervene of the Marketer Group and NIPSCO, the Marketer Group, and the Indiana Office of Utility Consumer Counselor ("OUCC") agreed upon various procedural dates to govern this proceeding. On January 27, 2010, the Commission approved its Prehearing Conference Order.

On February 12, 2010 the Parties jointly filed a Stipulation and Settlement Agreement (the "Settlement") in this cause. In support of the Settlement, NIPSCO filed testimony on that date from its witnesses Michael J. Martin, Karl E. Stanley, Steven M. Auld, Stacy A. Djukic, Roger A. Huhn, Victoria A. Vrab and Ronald J. Uzubell. On February 12, 2010, testimony supporting the Settlement was also filed by OUCC witness Leja D. Courter and Marketer Group witness Vincent Parisi.

Pursuant to the terms of the Prehearing Conference Order and notice as provided for in 170 IAC 1-1.1-15, a technical conference was held in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana on February 25, 2010 at 9:30 am EDT. No members of the rate paying public were in attendance at the technical conference. On March 1,

2010, NIPSCO filed Revised Testimony of its witness Michael J. Martin that provided clarification of several issues raised in the technical conference. On March 2, the Presiding Officers issued a docket entry containing several questions for Petitioner's witnesses.

Pursuant to notice as provided for in 170 IAC 1-1.1-15, an evidentiary hearing was held in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana on March 3, 2010 at 9:30. At that hearing, the evidence of all Parties was accepted into the evidentiary record of this proceeding without objection. Petitioner presented its witnesses to respond to the questions raised in the March 2, 2010 Docket Entry. No members of the rate paying public were in attendance at the evidentiary hearing.

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

**1. Notice and Jurisdiction.** Due legal and timely notice of the commencement of the hearing in this cause was given and published by the Commission. Petitioner is a "public utility" within the meaning of Ind. Code § 8-1-2-1(a) and is thereby subject to the jurisdiction of this Commission as provided in the Public Service Commission Act, as amended. In its Verified Petition, NIPSCO stated that it was electing to become subject to Ind. Code §§ 8-1-2.5-5 and 8-1-2.5-6 for purposes of its filing. Petitioner is an "energy utility" providing "retail energy service" within the meaning of Ind. Code § 8-1-2.5-2 and § 8-1-2.5-3, respectively. At the evidentiary hearing, NIPSCO submitted an affidavit confirming that notice had been published as required by Ind. Code § 8-1-2.5-6(d), and agreed to the submission of a late-filed exhibit compiling the proofs of publication of the legal notice once they have been received. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

**2. Petitioner's Characteristics.** NIPSCO provides natural gas utility service to more than 700,000 customers in Adams, Allen, Benton, Carroll, Cass, Clinton, Elkhart, Fulton, Huntington, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Miami, Newton, Noble, Porter, Pulaski, Saint Joseph, Starke, Tippecanoe, Wabash, Warren, Wells, White and Whitley Counties in the State of Indiana, and owns, operates, manages and controls plant and equipment used and useful for purpose.

**3. Relief Requested.** By its December 9, 2009 *Verified Petition*, NIPSCO seeks Commission approval of modifications to the ARP that has governed the provision of various retail natural gas services since 1997 (the "NIPSCO Gas ARP"). Specifically, NIPSCO seeks to extend the term of the NIPSCO Gas ARP approved by the Commission in consolidated Cause Nos. 42800 and 42884, along with approval of various modifications thereto in this proceeding. By the Settlement filed with the Commission on February 12, 2010, the Parties submit terms and conditions of a modified ARP supported by testimony from all Parties of record for our consideration and approval. No evidence has been submitted by any Party opposing approval of the proposal to extend the NIPSCO Gas ARP as modified by the Settlement.

**4. The Currently Approved NIPSCO Gas ARP.** The following are programs and services that have been approved by the Commission and are part of the current NIPSCO Gas ARP effective through the expiration of the current term on April 30, 2010:

- a. NIPSCO Choice – a supplier choice program for NIPSCO residential, commercial and small industrial customers under tariff Rider SCDS to tariff Rates 311, 315, 317, 321, and 325. The Choice program was originally approved by the Commission in Cause No. 40342.
- b. Rate 330 – a negotiated sales rate for large volume sales customers originally approved by the Commission in Cause No. 40342.
- c. Liquefied Natural Gas (“LNG”) Service – A negotiated rate interruptible service under tariff Rate 340 provided from NIPSCO’s LNG facilities when available. This service was originally approved in Cause No. 40342.
- d. Optional Storage Service – a negotiated rate offered by NIPSCO to transportation customers under tariff rates 342 and 342A for long-term storage using on-system storage assets originally approved by the Commission in Cause No. 40342.
- e. Firm Distribution Transportation Service (“FDTS”) – a firm delivery service available to customers requiring a minimum average of 50 dekatherms (“Dth”) usage per day under tariff Rate 343. FDTS was originally approved by the Commission in Cause No. 40342.
- f. Supplier Aggregation Service (“SAS”) – SAS service under tariff rate 345 allows for the aggregation of customer load by qualifying third-party gas suppliers (“Marketers”) to Choice customers receiving service under Rider SCDS. SAS was originally approved by the Commission in Cause No. 40342.
- g. Firm No-Notice Backup Supply Service (“FNBS”) – a negotiated rate firm no-notice backup service under tariff Rate 346 available to transportation customers and Marketers. FNBS was originally approved by the Commission in Cause No. 40342.
- h. Gas Parking Service and Gas Lending Service – negotiated rates offered by NIPSCO to transportation customers under tariff rates 347 and 348 for short term storage using on-system storage assets originally approved by the Commission in Cause No. 40342.
- i. Firm Peaking Capacity Service (“FPCS”) – a negotiated firm capacity service available to transportation customers and aggregators under tariff Rate 349. FPCS was originally approved by the Commission in Cause No. 40342.
- j. Price Protection Service (“PPS”) – a fixed price program offered by NIPSCO under Rider PPS to residential, commercial, and small industrial customers receiving service under tariff Rates 311, 315, 316, 317, 321, and 325. PPS was originally approved by the Commission in Cause No. 40342.
- k. Fixed Bill Option (“DependaBill Service”) – a fixed bill program offered by NIPSCO under its Fixed Bill Rider to residential, commercial, and small industrial customers receiving service under tariff Rates 311,315, 316, 317, 321, and 325. This service was originally approved by the Commission in Cause No. 42097.

l. Gas Cost Incentive Mechanism (“GCIM”) – a sharing mechanism providing an incentive for NIPSCO to optimize its gas supply purchases so as to produce shared benefits for NIPSCO and its jurisdictional customers subject to the GCA. The GCIM was originally approved by the Commission in Cause No. 40342. The sharing mechanism was modified in consolidated Cause Nos. 42800 and 42884 to a uniform 50% / 50% sharing of benefits with GCA customers.

m. Capacity Release Incentive – a sharing mechanism providing an incentive for NIPSCO to optimize its release of under-utilized pipeline capacity so as to produce shared benefits for NIPSCO and its jurisdictional customers subject to the GCA. The Capacity Release Incentive was originally approved by the Commission as an amendment to the ARP approved in Cause No. 40342.

n. Pipeline Demand Cost Reduction – a mechanism whereby upstream pipeline and storage capacity costs associated with NIPSCO’s Supplier of Last Resort (“SOLR”) obligation are shared between gas marketers participating in the Choice Program, NIPSCO, and NIPSCO’s remaining jurisdictional customers. The Pipeline Demand Cost Reduction was originally approved by the Commission in Cause Nos. 42800 and 42884.

**5. The Settlement.** The *Stipulation and Settlement Agreement* submitted by the Parties proposes resolution of all issues associated with the relief requested by NIPSCO in its *Verified Petition*, including the extension of the current ARP with specific modifications. By the terms of the proposed Settlement, NIPSCO’s currently approved ARP would remain unchanged except for certain specified modifications. Settlement, ¶ C. 8.

Rather than restating every aspect of the Settlement here, the Settlement, together with all Exhibits thereto, is appended to this Order and incorporated herein by reference. The most significant proposed modifications to the ARP are identified in Paragraphs C. 11 and C. 12 of the Settlement, and implement a number of measures to eliminate the subsidy of the Choice program by both NIPSCO and its non-Choice customers through the assignment of upstream pipeline and storage capacity to marketers, and creation of an on-system bank to place the Marketers in control of their own capacity. Because NIPSCO retains the SOLR responsibility, it retains the ability to recall the capacity released to Marketers. In the absence of such a recall, however, costs associated with the duplicate pipeline and storage capacity borne by NIPSCO and its GCA customers to support NIPSCO’s SOLR obligation are eliminated.

As in previously approved versions of the NIPSCO Gas ARP, revenues generated through the release of NIPSCO system capacity not required for service to GCA customers is shared on an 85%/15% basis with customers, but the minimum revenues from such releases are reduced to \$1.0 Million in the first year of the proposed two year term. In the second year of the term, the minimum capacity release revenue under the Settlement is the lower of \$1.0 Million or the actual capacity release revenues in the first year. The reduced guarantee is a reflection of both lower capacity values in the market and less available capacity due to the assignments made to Marketers.

The Settlement also proposes approval of a revised standardized SAS contract to be executed between NIPSCO and participating marketers. The revised SAS contract incorporates a Code of Conduct for Marketers as well as detailed operational parameters for participation in the Choice program. It also contains standardized terms for an optional Receivables Purchase Agreement. Under the revised SAS Contract, Marketers may choose among three nomination options, including a new third option that provides for daily nominations posted to an electronic bulletin board to complement the existing two options available under the current ARP.

**6. Evidence Presented in Support of the Settlement.** NIPSCO Director of Regulatory and Governmental Policy – Indiana Michael J. Martin presented testimony in support of the Settlement. Mr. Martin’s testimony identified NIPSCO’s goals and objectives for the renewal of the NIPSCO Gas ARP, explained the history of the NIPSCO Gas ARP, and provided an overview of NIPSCO’s proposal from a policy perspective. Mr. Martin sponsored revised tariffs for Rate 345 and Rider SCDS, and also provided clarification of several issues raised during the February 25, 2010 technical conference.

Mr. Martin testified that NIPSCO proposed to continue an array of alternative products and choices for its retail customers, but explained that the NIPSCO Choice program should be self-sustaining. He testified that in the previous Settlement approved by the Commission that extended the NIPSCO Gas ARP through its current term, the Parties had acknowledged the need to eliminate subsidization of the Choice program. Exhibit MJM-1R at 8. He testified that NIPSCO will continue to operate as the SOLR that bears ultimate responsibility for the provision of gas to customers, but that by assigning upstream pipeline and storage capacity costs directly to marketers on a recallable basis, NIPSCO could eliminate the cost of duplicate capacity previously required to support the SOLR function.

Mr. Martin graphically demonstrated the increase in enrollment in the Choice program from 2004 through 2009 and documented that 14% of Residential customers and 25% of Commercial customers currently received service from an alternate provider. He explained that the significant growth in enrollment had resulted in unintended negative consequences for both NIPSCO and its non-Choice customers. Exhibit MJM-1R at 7.

Mr. Martin identified and explained the components of the currently approved NIPSCO Gas ARP, and indicated that the Settlement contemplates renewal of a majority of the current programs and services without change. He testified that NIPSCO’s PPS and Depend-a-Bill services, Rate 330, its Parks, Loans and Optional Storage services would receive no modification, and that the Choice program would remain in place unmodified other than for the elimination of subsidization. Exhibit MJM-1R at 6.

In his Revised Direct Testimony, Mr. Martin discussed the modifications necessary to the NIPSCO Gas ARP as contemplated by the Settlement. He explained that NIPSCO proposed to eliminate the Pipeline Demand Cost Reduction Program and to reduce the amount of guaranteed capacity release revenues subject to 85%/15% sharing. He testified that these changes were necessary because under the Settlement, NIPSCO would release upstream pipeline and storage capacity directly to marketers, and thereby would have a more limited ability to engage in capacity releases for the benefit of jurisdictional customers. Exhibit MJM-1R at 8. He explained

that the new capacity release revenue guarantee of \$1.0 Million would be in place during the first year of the two-year proposed extension, and that in the second year NIPSCO would guarantee minimum capacity release revenues of the lower of \$1.0 Million or the actual revenues achieved in the first year. Mr. Martin clarified the operation of the new minimum guarantee in his Revised Direct Testimony through the use of examples of the application of the second year minimum revenue guarantee under different assumptions about first year revenues. Exhibit MJM-1R at 17-18.

Mr. Martin explained that by eliminating the option for marketers to deliver gas to NIPSCO's city gate and instead assigning a pro rata share of NIPSCO's upstream assets to marketers on a recallable basis, the Settlement eliminates duplicate capacity required as back-up in support of NIPSCO's SOLR function. Exhibit MJM-1R at 10. He explained that the change was necessary because as customer enrollment in the Choice program had increased over the years, NIPSCO's SOLR cost of maintaining a portfolio of assets to support its SOLR function had proportionally increased resulting in a subsidization of Choice by the jurisdictional GCA customers. *Id.* He noted that the settlement reached in consolidated Cause Nos. 42800 and 42884 had partially resolved the subsidization, but that the parties had recognized the need to eliminate it in this proceeding. Exhibit MJM-1R at 9.

Mr. Martin identified the creation of a third nomination option for marketers as another modification to the ARP encompassed in the Settlement. He testified that the new option allows marketers to make daily nominations in an effort to better optimize daily gas deliveries. He explained that this new "Option III" would reconcile daily nominations to actual usage and cashed out on a monthly basis. He also explained that because NIPSCO's system consists of two systems with minimal physical interconnection, marketers would be required to nominate gas into either or both of NIPSCO's zones rather than generally to any of NIPSCO's city gate stations because the city gate option had been eliminated. Exhibit MJM-1R at 12.

Mr. Martin clarified the distinction between the treatment of revenues associated with the release of NIPSCO capacity from revenues associated with the release of capacity assigned to a marketer but not used, known as "mitigated capacity". He explained that in order to ensure neutrality among competitors, the Marketer Group had recommended that the 85% share of revenues associated with releases of mitigated capacity be contributed to a low income program, Mr. Martin testified that NIPSCO embraced that concept and that it had been incorporated into the Settlement. *Id.*

Finally, Mr. Martin explained that NIPSCO had not filed a general rate case since before the approval of the NIPSCO Gas ARP in 1997. He testified that the Parties to the Settlement had agreed that this proceeding was not an appropriate forum for a debate on the regulatory and/or accounting treatment of ARP revenues, so all Parties had agreed to preserve their respective arguments on those issues for consideration during NIPSCO's upcoming gas rate case. Exhibit MJM-1R at p. 15.

NIPSCO also presented testimony from its Executive Director of Energy Supply and Trading, Karl E. Stanley. Mr. Stanley's Direct Testimony supported changes to the operating parameters under the Choice program, explained how changes to the Choice program would

eliminate the need for surcharges to Choice customers and the Interstate Pipeline Demand Cost Reduction Program. Mr. Stanley also testified about the credit requirements required of Marketers under the revised SAS Contract.

Mr. Stanley testified that NIPSCO's system can be divided into two zones based on the interstate pipelines serving each. Zone A is served by NGPL, Trunkline, ANR, Vector, and Crossroads pipelines, while Zone B customers generally on the northeast end of NIPSCO's system are primarily served by Panhandle and ANR pipelines. Exhibit KES-1 at 3. He explained that at the inception of the Choice program in 1997, marketers would deliver gas at specified supply locations, and the gas would be delivered via NIPSCO's pipeline capacity. Exhibit KES-1 at 4. Mr. Stanley testified that NIPSCO instituted its "citygate option" and an on-system storage program to make the Choice program more attractive to marketers when Choice enrollment floundered. He explained that the citygate option was not Zone specific, so marketers could deliver gas supply to any of the NIPSCO's citygates, and marketers could inject and withdraw gas from NIPSCO's on-system storage facilities for delivery into either Zone. Exhibit KES-1 at 4-5. He testified that Choice customers paid for the on-system storage at the same average cost per Dth paid by non-Choice customers. While the changes improved enrollment and marketer participation, Mr. Stanley testified that they also created negative consequences because NIPSCO continued to hold sufficient capacity to support all system customers as the SOLR. The fact that marketers were no longer using NIPSCO's capacity meant that costs associated with the SOLR capacity became proportionately larger as more customers enrolled in the Choice, yet there were fewer non-Choice customers on the system to bear those charges. Exhibit KES-1 at 5.

Mr. Stanley testified that the tiered Choice surcharge and Pipeline Demand Cost Reduction Program were initiated as a result of discussions prior to the renewal of the Choice program in 2004 in an effort to address the cost allocation problem created by increased Choice enrollment. Exhibit KES-1 at 6. He testified that although these measures reduced the gap between the costs borne by non-Choice customers, they still fell short in fully eliminating it. Exhibit KES-1 at 6, Exhibit KES-2. Mr. Stanley testified that by releasing each Choice customer's share of interstate pipeline and storage capacity to the marketers, all cost allocation issues would be eliminated, and the Pipeline Demand Cost Reduction Program and tiered Choice surcharge would no longer be required. Exhibit KES-1 at 9.

Mr. Stanley also addressed the collateral required of marketers under the revised SAS Contract. He testified that the revised contract now incorporates seasonal collateral equal to ten average days of January delivery for the winter period, and ten average days of April delivery for the summer period. He explained that the collateral would be calculated by multiplying the total volume for each period times the closing price for the NYMEX March contract on the last business day of September for the winter, and the closing price for the NMEX October contract for the last day of February for the summer. Exhibit KES-1 at 10. Mr. Stanley testified that the purpose of the collateral requirement is to protect NIPSCO and its GCA customers from the price risk associated with the failure of a marketer to deliver gas supplies adequate to serve its projected load. *Id.* He testified that the pricing and timing components of the collateral calculation produced reasonable security in light of the likely length of time required to terminate

the defaulting marketer from the Choice program and the potential price risk to which GCA customers could be exposed. Exhibit KES-1 at 12.

Steven M. Auld, NIPSCO's Director of Gas Systems Operations, provided testimony concerning the nomination options available for Choice marketers. He testified that NIPSCO does a general daily total system load forecast. He explained that the load forecast for Choice marketers is a subset of the general load forecast based on the application of a percentage allocation of volumes that defines the marketer's obligation for delivery. Exhibit SMA-1 at 2. Mr. Auld explained that the Choice program has historically included two nomination options for Choice marketers. Under Option 1 (Company Nomination Option), marketers delivering volumes equal to the daily load forecast provided by NIPSCO have no imbalance, while those delivering a volume different than that provided in the forecast are subject to daily imbalance charges. Under Option 2 (Forecast Option), marketers are provided with a regression formula that allows for the input of forecasted wind, temperature and type of day by the marketer from which the daily nomination is derived. The imbalance between daily nominated volume and actual deliveries is the imbalance volume subject to imbalance charges. Mr. Auld explained that Option 2 presents more risk to GCA customers that warrants imposition of daily imbalance costs. Exhibit SMA-1 at 4.

Mr. Auld explained that the daily forecasting of load for Choice marketers poses operational challenges for NIPSCO because of the need to balance system load. He explained that, in general, NIPSCO system load changes by up to 12,000 Dth for each degree of temperature. He testified that the primary tool available to NIPSCO Gas Control for balancing system load is contractual no notice storage services, so the ability to accurately forecast system load that includes Choice marketer loads is critical in the ability of NIPSCO to manage its no notice resources. Exhibit SMA-1 at 5.

In his direct testimony, Mr. Auld described the new Option 3 for nominations under the Choice program. He explained that because marketers are now assigned upstream capacity and storage capacity, and in recognition of the fact that marketers may have a better understanding of their customers' daily loads, the new option allows marketers to nominate their own daily delivery quantities, there is no daily imbalance. Under Option 3, a monthly reconciliation would take place whereby monthly usage would be allocated by day using a profile of NIPSCO general sales volumes and those volumes reconciled against daily nominations. Exhibit SMA-1 at 6.

Mr. Auld provided documentation of the delivery points available on the NIPSCO system, and explained how liquefied natural gas ("LNG") is used. He explained that each marketer will be assigned a portion of NIPSCO's LNG based on its percentage of system demand that may be included in the marketer's daily nominated quantity used in the allocation calculation. Exhibit SMA-1 at 7. He also explained the relationship between the two Zones on NIPSCO's system in relation to NIPSCO's obligation to provide safe and reliable service. He noted that the relationship between the Zones can dictate availability of supply resources from a pipeline interconnected with one Zone to serve customers on the other and explained that it may be necessary to specify additional delivery points and even create additional Zones as the Choice program grows to ensure safety and reliability. Exhibit SMA-1 at 8-9. He also detailed how operational flow orders ("OFOs") from interstate pipelines impact system operations, and the

operational factors driving the need for NIPSCO to potentially call its own OFO to maintain system integrity. He testified that under such circumstances, NIPSCO may require marketers to make nominations from specific pipelines and/or to specific delivery points and would transfer any pipeline imposed penalties for violation of OFOs to the marketers if they did not comply. Exhibit SMA-1 at 10.

Stacy A. Djukic, Manager of Scheduling and Accounting in NIPSCO's Energy Supply & Trading department, submitted testimony that described the release of capacity and storage to marketers under the modified NIPSCO Gas ARP. Ms. Djukic explained the definition and background of capacity release transactions and how Federal Energy Regulatory Commission rules governing capacity release transactions apply to retail customer choice programs. Exhibit SAD-1 at 2-3. She testified that once capacity allocation to marketers has taken place, marketers would be notified of their allocated volumes and given five business days to accept the releases. Once the release has been accepted, she explained that the transaction will be posted as a prearranged, non-biddable transaction on the electronic bulletin board operated by the pipeline or storage operator. The marketer would then be assigned a contract number allowing nominations to be submitted using the capacity in question. Exhibit SAD-1 at 3-4.

Ms. Djukic testified that marketers would be required to interact with the pipeline and storage capacity providers and that releases of capacity would be done on a quarterly basis. She explained that the marketer accepting the release would pay the same rate for the capacity as that contained in NIPSCO's underlying capacity contract with the operator, and that the marketer would be invoiced directly by the operator on that basis. Exhibit SAD-1 at 5. She noted that each marketer would be required to comply with creditworthiness standards imposed by each pipeline or storage operator, and once qualified would be provided with login identification and a password for the posting of transactions concerning the capacity. Exhibit SAD-1 at 6.

NIPSCO also submitted testimony from its Director of Resource Planning in its Energy Supply & Trading department, Roger A. Huhn. Mr. Huhn's testimony explained the process by which assets would be allocated to the marketers under the modifications of the NIPSCO Gas ARP contained in the Settlement. He testified that NIPSCO would allocate upstream assets on a "temporary" (i.e.: recallable) basis based on each marketer's percentage of NIPSCO's most recent annual peak demand, adjusted for movements into and out of the Choice program. Exhibit RAH-1 at 3. He testified that it was critical that the releases be done on a recallable basis so that NIPSCO can have access to the capacity in the event of an emergency or in the event that a customer returns to regulated NIPSCO gas service. Exhibit RAH-1 at 23. Mr. Huhn supported the calculation of the "Choice Marketer Demand" using the most recent year's annual peak day demand. He explained that NIPSCO's peak during the 2008-2009 gas year was on January 15, 2009 with peak sales demand of 1,047,215.2 Dth. He testified that on that day, Choice customer demand made up 20.96% of the system peak, and NIPSCO system sales the remaining 79.04%. Based on that calculation, Choice marketers would as a group be allocated 20.96% of the upstream capacity and storage assets amounting to an aggregate 224,655 Dth per day for the 2009-2010 gas year. Exhibit RAH-1 at 4.

Mr. Huhn testified that because NIPSCO is separated into two operational Zones served by different assets, marketers would be allocated their proportionate share of upstream assets

based on their share of load demand in each Zone. He noted that marketers currently have a load base in both Zone A and Zone B and receive daily forecasts of supply requirements into each Zone. Exhibit RAH-1 at 5. He explained that marketers would also be allocated a proportionate share of the inter-Zone transfer capacity based on their pro rata share of load in the respective Zones, and provided an example of the calculations of both the upstream assets into each Zone as well as the inter Zone capacity. See Exhibit RAH-1 at 6-11. Mr. Huhn testified that upstream assets would be allocated on a quarterly basis unless the volumetric size of the Choice program varies by more than 10%, or the proportionate share of load for a single marketer changes by 15% or more during the quarter. He clarified that some storage facilities do not permit releases of capacity, and that in that instance NIPSCO will assign those assets on a seasonal basis, or more frequently if required. Exhibit RAH-1 at 12. He explained that the allocation of capacity to marketers directly is more conducive to shifts in marketer loads and provides marketers with opportunities to take advantage of price differences between asset bases. Exhibit RAH-1 at 12-13.

Mr. Huhn echoed Ms. Djukic's testimony that marketers would be responsible for dealing directly with pipelines and storage operators for payment and scheduling, and confirmed that the same rules and price rates applicable to NIPSCO before release or assignment would be applicable to marketers. Exhibit RAH-1 at 13. He testified that marketers have the option of making an annual election to mitigate its allocation of upstream capacity, but would remain responsible for payment to NIPSCO for the capacity through the Upstream Asset Mitigation Service ("UAMS") calculated on a quarterly basis. Exhibit RAH-1 at 14. He clarified that the UAMS is not available on an asset by asset basis, but rather is available only for the declination of the entire allocated portfolio for a given year to avoid creation of a subsidy paid by GCA customers. Mr. Huhn indicated that NIPSCO would not allocate assets serving its "island system" because it makes up only 1% of the system, is served by only a single pipeline, and the contracts are so small that allocation would be unreasonably burdensome to both NIPSCO and the marketers and NIPSCO should retain full control of the assets feeding this area in order to ensure system integrity. Exhibit RAH-1 at 15.

In his direct testimony, Mr. Huhn indicated that marketers choosing to accept allocations of capacity would be free to make use of those assets in any feasible way consistent with the operators' rules other than in the case of a system emergency or OFO declared by NIPSCO. He explained that as SOLR, NIPSCO reserves the right to recall capacity and assess penalties in the event of non-compliance with an OFO by a marketer. Exhibit RAH-1 at 17.

Mr. Huhn also testified that NIPSCO maintains 30,000 Dth per day of No-Notice Storage on ANR that is critical for the balancing of the system during the winter and therefore would not be physically allocated to marketers. He explained that instead, marketers would be charged for a portion of the cost for those assets that would be used along with NIPSCO's LNG to support an on-system "bank". That on-system bank is available for marketers to nominate from in each operational Zone on a day-ahead basis. Exhibit RAH-1 at 17-18. He provided an example of how nominations into and out of the on-system bank would work, and identified the minimum storage levels required for on-system assets. Exhibit RAH-1 at 19-20. Mr. Huhn went on to explain the process for storage bank inventory transfer processes and pricing for use in the event that a marketer's on-system storage bank inventory falls above the maximum, or below the

minimum required. For off-system inventory transfers, he indicated that the exchange would take place according to the rules imposed by the storage operator but that NIPSCO could, at its option, make an offer to effectuate the transfer. He also clarified that marketers would be required to nominate inter-Zonal transfers on a day-ahead basis to ensure operational stability. Exhibit RAH-1 at 22-23.

Mr. Huhn provided additional testimony about the operational aspects of the three nominating options for marketers available under the modified NIPSCO Gas ARP. He explained that under Option 1, imbalances in deliveries would be cashed out at NIPSCO's weighted average cost of gas ("WACOG") so long as deliveries were consistent with the NIPSCO forecast. In the event a marketer's delivery was below the forecast provided by NIPSCO under Option 1, he said that the imbalance would be cashed out at the higher Daily Imbalance Cash-Out Provision ("DICOP") specified in the Rate 345 tariff. Exhibit RAH-1 at 24. Mr. Huhn indicated that the end of each month, the monthly reconciliation would be calculated by totaling daily deliveries and required nominations and cashed out at the appropriate rate. *Id.* In contrast to Option 1, he explained that under Option 2 imbalances would be calculated by comparing required daily nominations using actual weather statistics at Hammond, Indiana and actual deliveries, and would be cashed out at the DICOP rate. Monthly aggregate imbalances under Option 2 will continue to be cashed out at a WACOG rate. Under the new Option 3, Mr. Huhn explained that no daily imbalance is calculated because the marketer is making its own nominations, but that a monthly imbalance is calculated based on the aggregated difference between daily deliveries and calculated daily supply at the DICOP rate. Exhibit RAH-1 at 25.

Mr. Huhn explained that marketers in the Choice program will have the ability to trade imbalances with other marketers using the same forecasting option, and detailed guidelines for that trading. Exhibit RAH-1 at 26. He explained the fees that would be charged for imbalance trading transactions, and clarified that marketers will retain the option to make an annual election to cash out imbalances on a monthly or annual basis. Exhibit RAH-1 at 27-28.

Mr. Huhn testified that the modifications to the Choice program will be beneficial for NIPSCO and its GCA customers by eliminating the operational issues associated with growth in the Choice program. He also indicated that the changes will benefit NIPSCO operationally by eliminating the need for NIPSCO to compensate for over or under-deliveries into NIPSCO Zones by marketers under the program as it currently exists. Finally, the elimination of the potential for duplicate capacity, the elimination of the tiered surcharge, and the elimination of the need for the Interstate Pipeline Demand Cost Reduction program reduces costs for Choice customers, NIPSCO and its GCA customers. Exhibit RAH-1 at 28.

Victoria A. Vrab, NIPSCO's Manager of Gas Transportation, Sales Support and Choice filed testimony in this proceeding that detailed steps taken by NIPSCO in the administration of the Choice program and which sponsored a modified contract under NIPSCO's Supplier Aggregation Service tariff (the "SAS Contract" – Exhibit VAV-2). Ms. Vrab provided a brief history of the Choice program, detailing its transition from a pilot program limited to 50,000 residential and 1,500 commercial customers to the current program that, as of December of 2009, has twelve registered marketers serving 93,600 residential and 14,700 commercial customers.

She also explained how both enrollments in the program and marketer participation has increased since January of 2004. Exhibit VAV-1 at 2-3.

Ms. Vrab testified about the process for becoming a registered marketer in the Choice program and detailed the documentary submissions necessary to support such participation. Exhibit VAV-1 at 3-4. She testified that among those requirements is the execution of an SAS Contract that defines the relationship between the marketer and NIPSCO for purposes of the Choice program. Ms. Vrab explained that the SAS Contract had undergone significant revisions in preparation for this proceeding that were needed to improve the transparency of program rules, revise marketing practices rules, and incorporate revised language for the optional purchase of receivables by NIPSCO. Ms. Vrab also sponsored the SAS Contract incorporated into the SAS (Rate 345) tariff. Exhibit VAV-1 at 5. Ms. Vrab testified that marketers pay NIPSCO an administrative charge of \$0.75 per meter per month for residential customers, and \$1.50 per meter per month for commercial customers at a minimum level of \$500 per month, in addition to any imbalance fees. *Id.* She noted that customer enrollment may be made via U.S. mail, internet, fax, door-to-door or telephonically, subject to the rules specified in the Code of Conduct appended to the SAS Contract. Exhibit VAV-1 at 6.

Ms. Vrab also detailed NIPSCO's role in call management, customer complaints and marketer outreach. She testified that NIPSCO acts as a liaison between marketers and the Attorney General and the Commission on complaints, and is administratively involved with marketer enrollments, data send issues, meter read errors and enrollment drops, and also works with NIPSCO's Information Technology resources to provide scrub lists and rate codes to marketers. *Id.* She described the consumer protection provisions built into the revised SAS Contract, including NIPSCO's investigative role in the Choice program under the contract. Finally, Ms. Vrab described the steps taken by NIPSCO in furtherance of the Choice program, including customer outreach, Customer Service Representative training, bill inserts and web presence. Exhibit VAV-1 at 8-10.

NIPSCO's Director of Customer Transactions Ronald J. Uzubell submitted testimony describing the options available for marketers regarding billing and collection of their customer accounts, and the exchange of billing information provided to the marketers on a daily and monthly basis. Mr. Uzubell testified that registered marketers may either bill their customers themselves or have their customers' billed usage included on the monthly NIPSCO bill. He indicated that ten of the twelve registered marketers currently have their charges billed by NIPSCO, while two do not. Exhibit RJU-1 at 2-3. Mr. Uzubell also explained that registered marketers may either elect to have funds paid to NIPSCO by its customers remitted to the marketer, or may execute an addendum to the SAS contract whereby NIPSCO purchases those receivables from the marketer, less a contracted discount of 1%. . Exhibit RJU-1 at 3.

Mr. Uzubell testified about the data exchanged electronically with marketers concerning their accounts, and identified and described each file exchanged. He explained that marketers also receive hard copies monthly of their SAS invoice that provides details about enrollment, volumes and charge allocations, revenues billed, and statistical detail report. Exhibit RJU-1 at 5.

The OUCC submitted testimony from its Director of the Natural Gas Division, Leja D. Courter in support of the Settlement. Mr. Courter testified that the OUCC recommends approval of the Settlement as being in the public interest and a reasonable compromise between NIPSCO, the Marketer Group and the OUCC. He explained that the OUCC was concerned about five issues related to the extension of the NIPSCO Gas ARP, and that all five had been resolved in the Settlement. Public's Exhibit 1 at 2.

Mr. Courter testified that prior to the Settlement, NIPSCO's GCA customers had historically subsidized the Choice customers' interstate pipeline transportation and storage demand costs, and that the subsidization had only been partially eliminated in Cause Nos. 42800 and 42884 when the Choice program was last extended. He testified that Paragraph 11 of the Settlement eliminates GCA customer responsibility for any of the transportation and storage costs that had previously been the subject of subsidization through the assignment of capacity and storage assets. Public's Exhibit 1 at 3. Mr. Courter testified that the OUCC was in favor of the continuation of the GCIM and capacity release sharing mechanisms that benefit customers as cost reductions in capacity and commodity supply are realized. *Id.* He testified that a reduction in the annual minimum capacity release guarantee was reasonable in light of the assignment of capacity to marketers as well as recent experience showing relative reductions in the value of released capacity. He noted that in the event that capacity release revenues return to a higher level, customers will continue to share in those increases. Public's Exhibit 1 at 4.

Mr. Courter testified that it was important that NIPSCO retain its SOLR responsibilities even with more than 100,000 customers served by alternative suppliers, and that it is important for NIPSCO to retain access to capacity and commodity resources necessary to fulfill that function. Mr. Courter described NIPSCO's treatment of customer education in the Settlement through biannual bill inserts and noted that NIPSCO had agreed to use best efforts to coincide the first of those inserts with changes to the Choice program implemented in this proceeding. Public's Exhibit 1 at 4. He also supported the continued funding of GCA and GCIM audit expenses at an annual maximum of \$100,000 per year under the Settlement. Mr. Courter concluded that approval of the Settlement would be consistent with the public interest for the reasons previously stated in this testimony, and because it would allow customers to enjoy alternatives to traditional GCA service when informed customer choices are made based on good customer education. Public's Exhibit 1 at 5.

The Marketer Group sponsored testimony from Vincent A. Parisi, General Counsel and Regulatory Affairs Officer for Interstate Gas Supply, Inc. Mr. Parisi testified that the Marketer Group supports the Settlement in this cause and identified several specific provisions of the Settlement essential for the continued success of the Choice program. He explained that the members of the Marketer Group provide customers access to competitive supply and purchasing options unavailable in a traditional regulatory scheme. Mr. Parisi testified that the Choice program had been successful in providing reliable gas supply at competitive prices, as evidenced by the substantial increase in enrollment since 2004. Marketer Group Exhibit 1 at 2-3.

Mr. Parisi testified that the proposed changes in the Choice program embodied in the Settlement support the objective of the elimination of subsidization and implementation of a restructured program whereby cost allocation follows cost causation that is essential to the

continued success of the program. He explained that while the existing program has benefitted customers, the Settlement implements increases in efficiency and eliminates many of the disadvantages for all parties that the current program fosters. Marketer Group Exhibit 1 at 4. He explained that under the current program, Choice customers pay a tiered surcharge without having access to the underlying assets – a disadvantage cured by the Settlement because the costs now follow the assets causing them. He added that from the perspective of the Marketer Group, marketers will be less likely to be charged for under utilized capacity and will be better able to match upstream purchases with their customers’ actual needs. He concluded that all customers would benefit by being charged a more efficient and accurate price. Marketer Group Exhibit 1 at 5.

Mr. Parisi testified that the Marketer Group also supports the additional nomination Option 3 contained in the Settlement because it gives marketers the option to self-nominate volumes based on their own internal analysis rather than on NIPSCO’s system forecast. He indicated that self-nomination provides greater flexibility for those who choose it, and should also provide a mechanism for the more efficient use of capacity allocations under the modified program. *Id.* He also testified that the billing comparability component of the Settlement is important to foster accuracy in pricing for customers. He also agreed with OUCG witness Courter that the customer education provisions of the Settlement are important because they provide for timely information about changes to the program to be communicated to customers. He noted that good quality information is a benefit to all NIPSCO customers and will help them make better choices about how to better manage their costs and improve the efficient use of energy. Marketer Group Exhibit 1 at 6-7.

## **7. Commission Discussion and Findings.**

### **a. Legal Standard.**

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.*, citing *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996). The Commission “may not accept a settlement merely because the private parties are satisfied; rather it must consider whether the public interest will be served by accepting the settlement agreement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

The proposed settlement requests Commission approval to extend NIPSCO’s existing ARP, with certain modifications, pursuant to Ind. Code 8-1-2.5. Petitioner is an “energy utility” under the Alternative Utility Regulatory (“AUR”) Act. Under Section 6(a)(1) of the AUR Act, the Commission may adopt alternative regulatory practices, procedures and mechanisms and establish just and reasonable rates and charges that: (a) are in the public interest as determined by consideration of the factors listed in Ind. Code § 8-1-2.5-5; and (b) enhance or maintain the value of the energy utility’s retail energy services or property, including practices and procedures focusing on price, quality, reliability and efficiency of the service provided by the energy utility. Pursuant to Ind. Code § 8-1-2.5-5(b), the Commission, in determining whether the public interest will be served must consider:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
- (2) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers or the state.
- (3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

b. Existing ARP Programs and Services.

The Settlement proposes approval of a modified ARP, but the majority of the programs and services it contains are already in effect and will remain unchanged. *Verified Petition*, ¶ 14; Settlement, ¶ C.8. Beginning with our approval of the first NIPSCO Gas ARP in the October 8, 1997 Order in Cause No. 40342, and in twice extending and modifying it in Cause Nos. 41338 and consolidated Cause Nos. 42800 and 42884, we have authorized its adoption by NIPSCO under Ind. Code § 8-1-2.5-6 based on findings that its constituent programs and services are consistent with the public interest factors identified in Ind. Code § 8-1-2.5-5. *See In Re NIPSCO*, Cause No. 40342, at 101 (October 8, 1997) and *In Re NIPSCO*, Consolidated Cause Nos. 42800 and 42824, at 21 (January 31, 2006). Each renewal and modification of the NIPSCO Gas ARP has been the result of a negotiated agreement between NIPSCO, the OUCC, and alternative suppliers that participate in its competitive programs. As such, the NIPSCO Gas ARP has evolved over time and this Commission has approved the incorporation of appropriate modifications proposed in light of actual experience with its programs and services by all participants. The evolution of the ARP has resulted in the continued growth in both customer participation and marketer participation. *See Exhibit MJM-1R*, at p. 6, *Exhibit VAV-1*, at 2.

NIPSCO has proposed that certain component programs and services be continued for a two year period. We find that our previous approval of Rate 330, Liquefied Natural Gas ("LNG") Service, Optional Storage Service, Firm Distribution Transportation Service ("FDTS"), Firm No-Notice Backup Supply Service ("FNBS"), Gas Parking Service and Gas Lending Service, Firm Peaking Capacity Service ("FPCS"), Price Protection Service ("PPS"), Fixed Bill Option ("DependaBill Service"), the Gas Cost Incentive Mechanism ("GCIM"), and the Capacity Release Incentive should be extended as proposed in the Settlement for an additional two year term through and including March 31, 2012. To the extent NIPSCO (and other parties) seek to extend the ARP beyond March 31, 2012, NIPSCO shall cause to be filed a new petition seeking such relief on or before October 1, 2011.

However, despite the increased participation by NIPSCO customers and gas marketers, and almost 13 years of experience with this program, no witness was able to speak to the impact

on the Choice program. Indeed, when asked at the hearing, NIPSCO witnesses admitted that no studies or analyses were conducted on customer satisfaction or whether customers had saved money by participating in the Choice program. The Commission realizes that savings may not be the only impetus for customers to enroll in the Choice program; as part of its next petition seeking extension of the program, NIPSCO should provide evidence concerning customer satisfaction and results of participating in Choice so that the Commission has an adequate basis to determine whether Choice should continue beyond 2012 (or, conversely, whether similar programs would be valuable to other LDCs).

c. Proposed Modifications to ARP Programs and Services.

We note at the outset that the changes to the NIPSCO Gas ARP proposed in the Settlement are intended as improvements to existing programs – primarily the Choice program -- not as new program or service offerings. The evidentiary record shows that customer enrollment and marketer participation has increased from the inception of the Choice program. We have previously found that the Choice program provides innovative competitive alternatives to the benefit of customers in a manner consistent with Ind. Code § 8-1-2.5.

The changes proposed to the Choice program proposed in this proceeding are targeted to improving the economic efficiency of the program by eliminating the subsidy currently paid by NIPSCO, Choice customers, and GCA customers. NIPSCO asserts that in order to continue as an effective program, Choice must be self-supporting. The Parties have reached an agreement that eliminates the existing subsidy while streamlining the provision of services to customers by marketers. The Commission has long indicated its support for cost-based ratemaking in the context of the traditional ratemaking, and that premise is also appropriate in this Cause. We are mindful of and support the maintenance of the SOLR obligation by NIPSCO, and find the recallable release of upstream assets to be a reasonable and efficient way to avoid the need for duplicative capacity while preserving the ability to ensure system integrity and reliability if the need arises. We also find the provisions of the Settlement governing the on-system bank and inter-Zone capacity to be a reasonable approach to the utilization of critical supply resources without jeopardizing their availability during times of critical system need.

Further, the Commission finds the addition of a third nominating option for marketers to be a reasonable next step in the evolution of the NIPSCO Gas ARP. Mr. Parisi's testimony supports the economic efficiency and flexibility fostered by a self-nominating option. The Commission finds it reasonable and appropriate that the SAS Contract be standardized and incorporated into the tariff in a manner consistent with the Settlement to ensure operational transparency and non-discrimination between NIPSCO and registered marketers.

d. Other Settlement Provisions.

The Settlement continues audit funding for the OUC for purposes of auditing NIPSCO's GCA filings and GCIM filings. Such funding will not jeopardize the independence of such audits and adequate safeguards exist to ensure that NIPSCO pays only actual auditing costs.

The Agreement also contains provisions whereby NIPSCO agrees to work collaboratively with all Parties and with Commission staff to effectuate billing comparability between services to the extent such comparability is economically reasonable and technically feasible. The Commission finds that it is NIPSCO's responsibility, as the public utility providing natural gas service to its service area, that participating customers have the means to compare various options available. Accordingly, through the participation of the workgroup, NIPSCO shall develop a viable tool to be hosted on NIPSCO's website to allow customers to "shop and compare" each marketer's standard contract price as well as NIPSCO's gas cost adjustment in an effort to promote competitive pricing and customer education. Comparability is essential for customers to comprehend the costs in a concise "apples-to-apples" layout. This comparability will assist the Commission in addressing some of our concerns regarding the results customers achieve through participation in the Choice program.

The Commission also finds that this collaborative process shall include the development of standardized contract language and form contract to be adopted by all approved marketers. The creation of a standardized language does not preclude marketers from offering a variety of supply options or contract terms. However, the Commission finds that the creation of a uniform contract language is an important step in minimizing confusion potential Choice customers may have when faced with a number of supplier options. Further, within ten days from the date of this Order, NIPSCO shall file, under this Cause, the registration list of all currently approved marketers. Going forward, NIPSCO shall file, under this Cause, updated information reflecting any changes or modifications to registration information on that list within ten days of the change or modification. NIPSCO shall also continue to maintain the registration information on its website.

We note that discussion on these topics had been initiated prior to and during the technical conference in this proceeding. By October 1, 2010, NIPSCO shall file a final report, under this Cause, addressing the results of the workgroup.

e. Conclusion.

In approving the NIPSCO Gas ARP for the first time in Cause No. 40342, we observed that:

The ARP is a platform for NIPSCO to provide new competitive services to its customers, coupled with an unbundling proposal that will give all classes of customers access to a choice of suppliers. The ARP attempts to balance the interests of NIPSCO in providing new and different competitive gas supply services against any advantages it may have as the sole provider of bundled service to most of the customers behind its city gate. An ARP represents a unique proposal in that, while it is designed to transition the company for a deregulated gas supply market, the Commission's jurisdiction will continue and, in some instances its regulatory oversight will be enhanced. Thus, the ARP is a balanced proposal through which NIPSCO will unbundle its services and open its market area to increased competition in exchange for the ability to provide new services and price mechanisms better suited to the transitioning market.

*In Re Northern Indiana Public Service Company*, Cause No. 40342 (October 8, 1997), at pp. 77-78. Our finding in Cause 40342 continues to be applicable to the current proposal of the NIPSCO Gas ARP. As detailed by Ms. Vrab and Mr. Martin, the changes made over time to the NIPSCO Gas ARP, including those proposed in the Settlement in this proceeding, have enhanced the Choice Program from both a marketer and customer standpoint. The revised SAS Agreement has been clarified and strengthened to provide a more complete contractual foundation for the consistent oversight of the Choice program. In short, the modified ARP promotes competitive forces within NIPSCO's service territory by continuing and refining NIPSCO's Choice Program with significant input from all stakeholders.

We also note that the modifications to the NIPSCO Gas ARP contained in the Settlement provide tangible financial benefit to non-Choice customers receiving NIPSCO's traditional GCA-based gas service by eliminating the subsidy of the Choice program begun in consolidated Cause Nos. 42800 and 42884. The Choice program must be able to succeed on its own merits without the financial supports that have previously been in place. The fact that the Marketer Group has endorsed the Settlement is an indication of the viability of the program going forward. Moreover, elimination of the Demand Cost Reduction Program and tiered Surcharges and the allocation of upstream capacity directly to marketers results in a more straightforward approach to effectuating service to Choice customers, while still maintaining the advantage of NIPSCO's historic SOLR responsibility. As a result, the Parties anticipate that GCA customers would see a reduction in their cost responsibility, as Choice customers pay the cost of receiving distribution service through NIPSCO.

The reduced minimum guaranteed capacity release revenue is reasonable in light of the assignment of a significant portion of capacity to the marketers and in recognition of the reduced market value of released capacity discussed by Mr. Stanley. GCA customers still stand to receive the same benefit if capacity values return to previous levels, but the reduced guarantee reflects a better balance of interests between NIPSCO and its customers in light of current market conditions.

The evidence of record supports a finding that the NIPSCO Gas ARP as modified in the Settlement will continue to provide benefits to NIPSCO, its customers, and its competitors and should be approved. Customers will benefit by having a choice of service suppliers and competitive rate options, while retaining the ability to receive traditional regulated GCA service. NIPSCO's competitors will benefit because they will have enhanced access to markets through the direct assignment of upstream pipeline and storage capacity as well as enhanced operational flexibility through enhanced access to on-system storage as well as a self nominating option under the revised SAS Contract. NIPSCO will continue to benefit from an expanded service portfolio which will enable it to more efficiently compete with unregulated service providers and more fully utilize its resources. The modified NIPSCO Gas ARP will continue to provide NIPSCO with market-based pricing provisions in a number of its tariffs as well as incentive mechanisms for its gas purchase activities, both of which are consistent with the competitive market.

After considering each of the factors listed in Ind. Code § 8-1-2.5-5(b), the Commission finds that evidence establishes that approval of the NIPSCO Gas ARP as modified is in the

public interest. The evidence of record establishes that approval of the NIPSCO Gas ARP as modified herein will benefit the Company, its customers and competitors and ultimately the State of Indiana, and will improve efficiency and result in a regulatory framework which will promote competition between NIPSCO and other providers of similar services. Finally, the NIPSCO Gas ARP as modified is a continuation of an approach that allows for adjustments as the plan proceeds. For all these reasons, the Commission concludes that extension of our approval of the NIPSCO Gas ARP as modified is consistent with the public interest considerations set forth in Ind. Code § 8-1-2.5-5. In conclusion, we find that approval of the NIPSCO Gas ARP as modified by the Settlement will enhance or maintain the value of NIPSCO's services or property consistent with Ind. Code § 8-1-2.5-6(a)(1)(B) and promote efficiency in rendering retail energy services consistent with Ind. Code § 8-1-2.5-6(a)(2)(B).

Finally, we find our approval herein should be construed in a manner consistent with our finding in *In Re Richmond Power & Light*, Cause No. 40434 (March 19, 1997).

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

1. The *Stipulation and Settlement Agreement*, as modified herein, is hereby approved in all respects, and the terms and conditions thereof shall be and hereby are incorporated herein as part of this Order.

2. The NIPSCO Gas ARP, as modified in the Settlement and by this Order, is approved in all respects and is extended through and including March 31, 2012. Any petition to continue the ARP shall be filed on or before October 1, 2011.

3. NIPSCO, on or before May 1, 2010, shall file, with the Commission's Natural Gas Division, tariff sheets consistent with this Order, and those tariffs shall become effective upon approval by the Division. Until the new tariff sheets are filed, the existing tariff sheets shall remain in effect until April 30, 2010 pursuant to the Commission's Orders in consolidated Cause Nos. 42800 and 42884.

4. This Order shall be effective on and after the date of its approval.

**HARDY, ATTERHOLT, LANDIS, MAYS AND ZEIGNER CONCUR:**

APPROVED: MAR 31 2010

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

  
Brenda A. Howe  
Secretary to the Commission

ORIGINAL

AS

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

FILED

FEB 12 2010

INDIANA UTILITY  
REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY FOR APPROVAL OF )  
MODIFICATION TO AND EXTENSION OF ITS )  
ALTERNATIVE REGULATORY PLAN )  
APPLICABLE TO NATURAL GAS UTILITY )  
SERVICE PURSUANT TO IND. CODE § 8-1-2.5 )  
AS APPROVED BY THE INDIANA UTILITY )  
REGULATORY COMMISSION IN CAUSE )  
NOS. 42800 AND 42884. )

CAUSE NO. 43837

SUBMISSION OF STIPULATION AND SETTLEMENT AGREEMENT

Northern Indiana Public Service Company, the Indiana Office of Utility Consumer Counselor, and the NIPSCO Choice Marketer Group submit Joint Exhibit 1 appended hereto. Joint Exhibit 1 is a *Stipulation and Settlement Agreement* by and between all Parties to this proceeding submitted for the consideration of and approval by the Indiana Utility Regulatory Commission.

Respectfully Submitted,



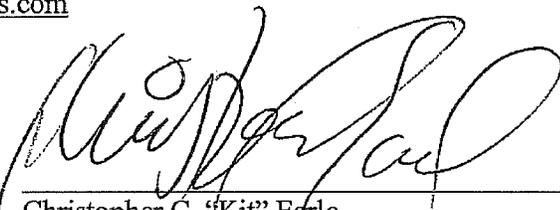
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 12<sup>th</sup> day of February, 2010, the foregoing document was served electronically to the following:

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B. Leja Courter  
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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY FOR APPROVAL OF )  
MODIFICATION TO AND EXTENSION OF ITS )  
ALTERNATIVE REGULATORY PLAN )  
APPLICABLE TO NATURAL GAS UTILITY ) CAUSE NO. 43837  
SERVICE PURSUANT TO IND. CODE § 8-1-2.5 )  
AS APPROVED BY THE INDIANA UTILITY )  
REGULATORY COMMISSION IN CAUSE )  
NOS. 42800 AND 42884. )

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Agreement") is entered into by and between Northern Indiana Public Service Company ("NIPSCO"), the Indiana Office of Utility Consumer Counselor ("OUCC"), The NIPSCO Choice Marketer Group (Border Energy, CenterPoint Energy Services, Inc., Interstate Gas Supply, Inc., Just Energy Indiana Corp., MX Energy, Nordic Energy Services, LLC, Realgy LLC d/b/a Realgy Energy Services, Spark Energy Gas, LP, Stand Energy Corporation, US Gas & Electric, Inc., and Vectren Retail, LLC)("Marketers") (collectively, the "Parties") who stipulate and agree for purposes of settling the issues in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of the issues subject to incorporation into a Final Order of the Indiana Utility Regulatory Commission ("Commission") without any modification or condition that is not acceptable to the Parties. The Parties respectfully request that, to the extent necessary, the Commission decline jurisdiction under Ind. Code § 8-1-2.5 in order to approve, without modification, the terms and conditions of this Agreement.

A. Background.

1. Cause No. 40342. The Commission approved a Final Order on October 8, 1997 in Cause No. 40342 accepting the terms of an Amended Stipulation and Settlement Agreement and the implementation of an alternative regulatory plan (“ARP”) pursuant to the terms of Ind. Code § 8-1-2.5. The ARP approved in that proceeding approved a variety of programs on a pilot basis, and also approved a series of affiliate guidelines applicable to NIPSCO and its affiliated companies. The ARP approved has remained in effect, subject to modification as discussed below, since that time.

2. Cause No. 41338. The Commission approved a Final Order on August 11, 1999 in Cause No. 41338 accepting the terms of a Stipulation and Agreement and the implementation of an ARP that provided for a redesigned gas cost adjustment (“GCA”) mechanism whereby NIPSCO was authorized to adjust the commodity cost of gas charged to its retail sales customers on a monthly basis, with a single comprehensive proceeding conducted annually to reconcile estimated costs with actual costs, and to evaluate NIPSCO’s capacity and storage portfolio.

3. Cause No. 42097. The Commission approved a Final Order on July 3, 2002 authorizing the implementation of an ARP consisting of NIPSCO’s Fixed Gas Bill Rider. On December 31, 2006, the Commission approved an Amended Order in the same proceeding.

4. Cause Nos. 42800 and 42884. The Commission approved a Final Order on December 31, 2006 accepting the terms of a *Stipulation and Agreement* calling for the continuation of the components of the programs approved in Cause Nos. 40342, 41338, and 42097, and the consolidation of those programs under a single ARP. *The Stipulation and Agreement* provided for, *inter alia*, a term for the consolidated ARP that extended through April 30, 2010, and that ARP remains in effect at this time.

5. Cause No. 43837. On December 9, 2009, NIPSCO filed its Verified Petition initiating this proceeding.

**B. ARP Programs.**

6. The alternative regulatory mechanisms currently in effect are:

a. NIPSCO Choice – a supplier choice program for NIPSCO residential, commercial and small industrial customers under tariff Rider SCDS to tariff Rates 311, 315, 317, 321, and 325. The Choice program was originally approved by the Commission in Cause No. 40342.

b. Rate 330 – a negotiated sales rate for large volume sales customers originally approved by the Commission in Cause No. 40342.

c. Liquefied Natural Gas (“LNG”) Service – A negotiated rate interruptible service under tariff Rate 340 provided from NIPSCO’s LNG facilities when available. This service was originally approved in Cause No. 40342.

d. Optional Storage Service – a negotiated rate offered by NIPSCO to transportation customers under tariff rates 342 and 342-A for long-term storage using on-system storage assets originally approved by the Commission in Cause No. 40342.

e. Firm Distribution Transportation Service (“FDTS”) – a firm delivery service available to customers requiring a minimum of 50 Dth per day under tariff Rate 343. FDTS was originally approved by the Commission in Cause No. 40342.

f. Supplier Aggregation Service (“SAS”) – SAS service under tariff rate 345 allows for the aggregation of customer load by qualifying third-party gas suppliers (“Marketers”) to Choice customers receiving service under Rider SCDS. SAS was originally approved by the Commission in Cause No. 40342.

g. Firm No-Notice Backup Supply Service (“FNBS”) – a negotiated rate firm no-notice backup service under tariff Rate 346 available to transportation customers and Marketers. FNBS was originally approved by the Commission in Cause No. 40342.

h. Gas Parking Service and Gas Lending Service – negotiated rates offered by NIPSCO to transportation customers under tariff rates 347 and 348 for short term storage using on-system storage assets originally approved by the Commission in Cause No. 40342.

i. Firm Peaking Capacity Service (“FPCS”) – a negotiated firm capacity service available to transportation customers and aggregators under tariff Rate 349. FPCS was originally approved by the Commission in Cause No. 40342.

j. Price Protection Service (“PPS”) – a fixed price program offered by NIPSCO under Rider PPS to residential, commercial, and small industrial customers receiving service under tariff Rates 311, 315, 316, 317, 321, and 325. PPS was originally approved by the Commission in Cause No. 40342.

k. Fixed Bill Option (“DependaBill Service”) – a fixed bill program offered by NIPSCO under its Fixed Bill Rider to residential, commercial, and small industrial customers receiving service under tariff Rates 311, 315, 316, 317, 321, and 325. This service was originally approved by the Commission in Cause No. 42097.

l. Gas Cost Incentive Mechanism (“GCIM”) – a sharing mechanism providing an incentive for NIPSCO to optimize its gas supply purchases so as to produce shared benefits for NIPSCO and its jurisdictional customers subject to the GCA. The GCIM was originally approved by the Commission in Cause No. 40342. The sharing

mechanism was modified in consolidated Cause Nos. 42800 and 42884 to a uniform 50% / 50% sharing of benefits with GCA customers.

m. Capacity Release Incentive – a sharing mechanism providing an incentive for NIPSCO to optimize its release of under-utilized pipeline capacity so as to produce shared benefits for NIPSCO and its jurisdictional customers subject to the GCA. The Capacity Release Incentive was originally approved by the Commission as an amendment to the ARP approved in Cause No. 40342.

n. Pipeline Demand Cost Reduction – a mechanism whereby upstream pipeline capacity costs associated with NIPSCO’s SOLR obligation are shared between, NIPSCO, and NIPSCO’s remaining jurisdictional sales customers through the GCA. The Pipeline Demand Cost Reduction was originally approved by the Commission in Cause Nos. 42800 and 42884.

**C. Terms and Conditions of Settlement.**

7. Extended Term of ARP. The Parties agree that the term of the NIPSCO’s ARP, as modified herein, should be extended through and including March 31, 2012 consistent with paragraph 15 of this Agreement.

8. Changes to NIPSCO's ARP. Except as specifically stated in this Agreement, the terms and conditions of NIPSCO's ARP as approved by the Commission in Cause Nos. 40342, 41338, 42097, 42800, and 42884 and in effect prior to this Agreement shall remain in full force and effect through and including the expiration of the term identified in paragraph 17 of this Agreement.

9. NIPSCO’s Function. (a) NIPSCO will continue to be a Supplier of Last Resort absent an Indiana statutory change or an order by the Commission to the contrary; (b) NIPSCO

will continue to provide choices to its customers through its Commission-approved Price Protection Service (“PPS”) and Fixed Gas Bill Program (“DependaBill”). NIPSCO agrees not to seek changes to the tariffs for those services during the term of this Stipulation and, absent Commission order, no such changes will be made during that period; and; (c) NIPSCO will continue to provide a merchant function through its balanced portfolio based GCA with incentives.

10. Program Objectives. The Parties agree that certain principles underly this ARP; (a) the ARP will proceed with the goal of eliminating any cross-subsidization between NIPSCO, GCA ratepayers and Choice customers and to ensure that cost allocation follows cost causation; (b) revisions are designed to better align assets with each group, provide access to on-system assets and allow for elimination of Pipeline Demand Cost Reduction Program and Choice surcharge; (c) program rules are intended to be more transparent to stakeholders; and (d) gas cost optimization will continue as modified with the intent that any sharing of funds with customers will be based on cost causation principles and designed to ensure that affected groups share on an equitable basis.

11. Elimination of Costs Allocated to non-Choice customers. The Parties have agreed upon a methodology to eliminate the responsibility for the Choice Program related interstate pipeline transportation and storage demand costs that have in prior years been recovered from non-Choice customers in NIPSCO's GCA. The operational parameters governing Marketer participation in the Choice Program are contained in Exhibit A attached to this Agreement. Each marketer participating as a supplier to end-use customers on the NIPSCO distribution system via participation in the Choice program will be allocated a proportionate share of the upstream pipeline and storage capacity portfolio representative of the capacity necessary to

provide firm service to the end use customers they serve. The components of the allocation of such capacity are as follows:

- a. Capacity Assignment. Choice Marketers will be assigned upstream pipeline capacity and storage assets on a recallable basis based upon the ratio of the demand of customers utilizing Choice Marketers as their commodity supplier (“Choice Marketer Demand”) divided by the sum of NIPSCO System Sales (GCA sales + PPS sales + DependaBill sales) demand and Choice Marketer Demand on the most recent peak day (collectively for all marketers known as “Choice Percentage” and individually as the “Marketer Percentage”).
  - i. Such assignment shall be made for all NIPSCO upstream capacity and supply assets other than those specifically identified in paragraph 10.b. of this Agreement, but such marketer may elect to mitigate such capacity through the use of other delivery assets.
  - ii. In such case, the marketer shall provide notification to NIPSCO of that election, and such assets may be released by NIPSCO according to the terms of paragraph 10.c.1. of this Agreement.
  - iii. Regardless of the election of any marketer to mitigate upstream assets assigned by NIPSCO pursuant to this paragraph, all proportionate costs of assets assigned pursuant to this paragraph shall be borne by the marketer to which such assignment is made.
  - iv. The Choice Marketers will be notified which NIPSCO storage and transportation contracts are approaching their expiration dates and they

will be updated as to what changes NIPSCO will make. Changes of system gas supply assets subject to assignment initiated by NIPSCO as part of its SOLR responsibility shall be reported to the Commission and are subject to Commission review within quarterly GCA proceedings. NIPSCO will provide Marketers a copy of such quarterly filings simultaneous with their filings at the IURC upon request. Marketers can intervene or seek discovery within the context of the Gas Cost Adjustment filings, but will continue to be responsible for their allocated share of system assets.

b. Non Assigned Assets. The following assets will not be physically allocated to Choice Marketers pursuant to paragraph 10.a. of this Agreement because they are integral to the asset base required by NIPSCO for the balancing of its system for both NIPSCO Choice and non-Choice loads:

- i. 30,000 dekatherms (“Dth”) per day of ANR No Notice Service (and associated transportation);
- ii. 16,937 Dth per day of ANR transportation and storage withdrawal rights for the “island system” on NIPSCO’s system supported only by ANR and with limited connections to the balance of the system.
- iii. On-system storage assets, both Royal Center storage and LNG.

c. Capacity Release Incentive. NIPSCO will continue to utilize its best efforts to release upstream pipeline capacity in an effort to maximize revenues for such releases. Revenues for such releases shall be shared as follows:

- i. Revenues generated by releasing interstate pipeline capacity not assigned to Marketers pursuant to paragraph 10.a. of this Agreement on a recallable or non-recallable basis in the interstate market on a monthly basis shall be shared with 85% of such revenues credited to customers through the GCA mechanism and 15% retained by NIPSCO. NIPSCO agrees that for the first twelve month period of the term of this Agreement, revenues from such releases shall not be lower than \$1 Million. The Parties agree that for the second year of the term of this Agreement, minimum revenues from such releases shall be the lower of \$1 Million or the actual total revenues from the first year of the term of this Agreement.
- ii. Revenues generated by releasing upstream capacity assigned to Marketers pursuant to paragraph 10.a. of this Agreement, but mitigated by Marketers, shall be shared with 85% of revenues generated by such releases being donated to an agreed upon low-income assistance program and 15% retained by NIPSCO.

The previously guaranteed minimum of \$2,000,000 in capacity release revenues for each twelve-month period as approved by the Commission in Cause Nos. 42800 and 42884 shall be eliminated and replaced by the terms set forth in Section 11.c.i. of this Agreement.

d. On-system Bank. Each Choice Marketer will be assigned a bank of on-system capacity at zero cost in Zone A and Zone B. The bank will be assigned by multiplying each Marketer Percentage as that term is defined in paragraph 10.a. of this Agreement times the total on-system storage quantity as that calculation is reflected in

Exhibit A to this Agreement. Choice Marketers shall have the right to nominate gas into and out of the bank on a day ahead basis consistent with the operational parameters set forth in Exhibit A to this Agreement.

e. ANR No Notice Service. In addition to the on-system capacity bank, each Marketer will be allocated a share of the cost associated with NIPSCO's 30,000 Dth per day of ANR No Notice Service (and associated transportation) by multiplying the Marketer Percentage as that term is defined in paragraph 10.a. of this Agreement times the total capacity, to reflect each Marketer's proportionate share of the system load balanced, in part, with this service.

f. Zone A/Zone B Transfer. Marketers will also be allocated State Rd 114 capacity that allows Marketers to move supply between Zone A and Zone B. The allocation will be determined by multiplying the total State Rd 114 capacity of 40,000 Dth per day by the Marketer Percentage as that term is defined in paragraph 10.a. of this Agreement.

g. Tiered Surcharge to Choice Customers. The Tiered Surcharges approved by the Commission in consolidated Cause Nos. 42800 and 42884 and previously applicable to Choice customers to reduce interstate pipeline transportation demand costs during each annual period shall be eliminated.

12. SAS Tariff and Contract. The Parties agree to the terms of and the approval by the Commission of the modified Rate 345 Supplier Aggregation Service Tariff and its accompanying form SAS Contract, along with the modified Supplier Choice Deliver Service ("SCDS") Rider, all of which are attached hereto as Exhibit B to this Agreement.

13. Billing Comparability. The Parties acknowledge the benefit of providing to Choice-eligible consumers pricing information that reflects comparability between regulated and

non-regulated commodity-related cost components. To that end, the Parties desire, to the extent feasible, to display charges on customer bills in such a way as to provide comparability of charges on the NIPSCO bill when similar service is provided, irrespective of whether that service is provided by NIPSCO or competitive suppliers (the "Project"). The Parties agree to convene a working group comprised of interested parties, including NIPSCO, Marketers, Commission Staff, and the OUCC as soon as is practical, but in no event later than February 25, 2010 for the purpose of defining a work plan to effectuate the Project in as expeditious a manner as is reasonably feasible. The intent of the Parties is to implement the Project absent a compelling business reason to the contrary.

14. PPS and Fixed Gas Bill Option. The cost allocation and operation of the PPS and Depend-a-Bill programs by NIPSCO shall be conducted in a manner designed to ensure that they are not subsidized by GCA customers or the Choice program. No changes to the NIPSCO tariffs governing those programs have been made in this proceeding.

15. Accounting and Regulatory Treatment of ARP Revenues. NIPSCO will accept all potential regulatory risk prior to the March 31, 2012 expiration of the ARP program, as extended by this Agreement. It is understood and agreed that no Party shall oppose NIPSCO's right to advance any accounting or regulatory treatment for ARP revenues or any portion thereof in NIPSCO's planned gas rate case, and that all Parties to this Agreement are free to advocate any position on accounting or regulatory treatment for ARP revenues at that time.

16. Customer Education. NIPSCO agrees to take into account suggested content from the Marketers and the OUCC to develop and provide information resources for customer education about available suppliers through its website or otherwise, provided that NIPSCO shall make a final determination with respect to any content it distributes or communicates to

customers. NIPSCO agrees to continue biannual bill inserts updating marketer contact information, and agrees that for calendar year 2010, it will use its best efforts to ensure that the first such insert be made in May bills for April consumption and will include a description of changes made to the Choice program in this Agreement.

17. Effectiveness and Term of Agreement. The Commission's December 31, 2006 Order in Cause Nos. 42800 and 42884 extended the terms of NIPSCO's gas ARP until April 30, 2010. Assuming Commission approval of this Agreement as written without modification, and unless indicated otherwise herein this Agreement shall become effective on April 1, 2010 and shall remain effective for a two year term through and including until March 31, 2012. The implementation and operation of the ARP shall be subject to review and discussion among the parties at the conclusion of the first year and every 12 months thereafter, after it is approved by the Commission. Such discussion may be initiated at the request of any signatory to the settlement and all signatories shall be entitled to participate. The purpose of the review and discussion will be to consider any necessary and appropriate amendments as may be proposed by any signatory in order to effectuate the provisions of the ARP in accordance with its intended objectives and effect as provided by the Commissions. In the event the parties reach a consensus on one or more agreed amendments, they will jointly propose such revisions to the ARP for Commission approval. In the event one or more parties propose an amendment as to which there is not full agreement, the party or parties making such proposal may seek Commission review, in which case the party seeking the revision shall bear the burden of proof in showing the proposed amendment would better effectuate the provisions of the ARP in accordance with its intended objectives and effect as approved by the Commission.

18. GCA and GCIM Audit Funding. NIPSCO agrees to pay the OUCC actual audit expenses up to an annual maximum of \$100,000 per year for the time period that begins April 1, 2010 through March 31, 2012 for the sole purpose of conducting a gas cost audit and/or an audit of NIPSCO's GCA/GCIM filings, in a manner and on a schedule as agreed to between NIPSCO and the OUCC. NIPSCO agrees to make the first annual \$100,000 payment to the OUCC by April 1, 2010, and the second annual \$100,000 payment by April 1, 2011. The OUCC agrees (a) to provide an itemized accounting of disbursements of that maximum amount as requested by NIPSCO including, at a minimum, for each annual twelve month period, and (b) that any portion of the annual maximum amount not used during each annual twelve month period will be an offset to the next \$100,000 annual payment that is due. The retention of an auditor under the provisions of this paragraph shall be at the sole discretion of the OUCC. The Parties further agree that any findings and documentation by the auditor will be provided only to the OUCC, and such findings or documentation shall be the property of the OUCC, protected by all of the OUCC's applicable privileges and rights to confidentiality. However, the Parties agree that the previous sentence shall not in any way limit NIPSCO's right to discovery under the Commission's General Rules of Practice and Procedure and the Indiana Rules of Trial Procedure.

19. External Communications. The Parties agree all public announcements regarding the Agreement will be issued jointly by the OUCC, a representative of the Marketer Group and NIPSCO. All jointly issued public announcements should include a brief description of NIPSCO and the OUCC, their roles and contact information as well as provide a link to the Parties' web pages. The Parties may respond individually to questions from the public or media, provided that such responses are consistent with the Agreement.

20. Miscellaneous.

a. This Agreement is not to be 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. This Agreement is solely the result of compromise in the settlement process and, except as expressly provided herein, is without prejudice to and shall not constitute a waiver of any position that either of the parties may take with respect to any or all of the issues resolved herein in any other future regulatory or other proceedings.

b. 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 modification or 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.

c. The Agreement represents all of the terms and conditions agreed to by the parties. It shall be construed in accordance with its plain meaning. Its terms may not be expanded, varied or interpreted based on supporting testimony, the order approving the Agreement or any other documents. The Agreement shall be binding upon the parties, successors and assigns.

d. NIPSCO will submit prefiled written testimony into the record at the public hearing related to approval of the Agreement sufficient to support the Commission's finding that the Agreement is in the public's interest.

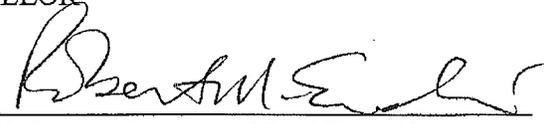
e. The communications and discussions during the negotiations and conferences which have produced this Agreement shall be conducted on the explicit understanding that they are, or relate to offers of settlement and shall be privileged and confidential, shall be without prejudice to the position of any party, and are not to be used in any manner in connection with any other proceeding or otherwise.

f. Each of the undersigned represents and agrees that she/he is fully authorized to execute the Agreement on behalf of the party identified above her/his respective signature.

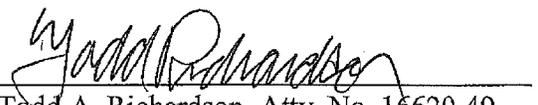
g. The Parties agree that the execution of duplicate signature page(s) hereto shall be binding upon each Party as if each had executed the same original document.

ACCEPTED AND AGREED this \_\_\_\_ day of February, 2010

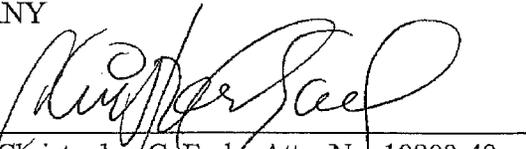
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