

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PROGRESS REPORT AND PETITION FOR)
APPROVAL OF MODIFICATIONS OF, AND)
REVISED COST ESTIMATES RESPECTING)
CLEAN COAL TECHNOLOGY OF NORTHERN)
INDIANA PUBLIC SERVICE COMPANY,)
UNDER THE ONGOING REVIEW PROCESS)
APPROVED IN CAUSE NOS. 42150 AND 43188)
PURSUANT TO IND. CODE § 8-1-8.7)

CAUSE NO. 43840

APPROVED:

JUL 07 2010

BY THE COMMISSION:

David E. Ziegner, Commissioner

Loraine L. Seyfried, Administrative Law Judge

On December 14, 2009, Northern Indiana Public Service Company (“NIPSCO” or “Petitioner”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Progress Report and Request for Approval of Revised Cost Estimates for Clean Coal Technology and Request for Certificate of Public Convenience and Necessity (“Petition”). The Petition reported on the progress of NIPSCO’s construction program utilizing clean coal technology (“CCT”) approved by the Commission in Cause No. 42150 (November 26, 2002), Cause No. 42515 (February 4, 2004), Cause No. 42737 (January 19, 2005), Cause No. 42935 (December 21, 2005), Cause No. 43144 (December 13, 2006), Cause No. 43188 (July 3, 2007), Cause No. 43371 (December 19, 2007) and Cause No. 43593 (January 14, 2009) and submitted revised cost estimates for the installation of that technology for Commission approval. On December 16, 2009, NIPSCO filed its case-in-chief, consisting of Verified Direct Testimony from its witnesses Kelly R. Carmichael and Philip W. Pack.

On March 12, 2010, NIPSCO filed a Motion for Leave to Amend Petition. In that motion, NIPSCO sought leave to withdraw its request for a certificate of public convenience and necessity, and to amend the caption in this proceeding accordingly. That motion was granted in a docket entry issued on March 17, 2010. On March 30, 2010, NIPSCO filed its Revised Progress Report and Request for Approval of Revised Cost Estimates for Clean Coal Technology (“Amended Petition”) along with revised testimony from its witnesses.

On April 6, 2010 the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its case-in-chief consisting of prefiled direct testimony from its witness Cynthia M. Armstrong. On April 7, 2010, the OUCC filed a motion requesting leave to file an exhibit inadvertently omitted from its case-in-chief along with a copy of the exhibit. On April 13, 2010, a docket entry was issued granting that motion.

On April 30, 2010, NIPSCO filed its Rebuttal Testimony, consisting of testimony from Mr. Pack.

Pursuant to notice given as provided by law, proof of which was incorporated into the record, an evidentiary hearing was held in this matter on May 25, 2010, at 9:30 A.M., in Room 224 of the

National City Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, NIPSCO presented the revised Direct Testimony of Mr. Carmichael and Mr. Pack along with the Amended Petition and exhibits appended thereto, and Mr. Pack's Rebuttal Testimony. The OUCC presented the testimony of Ms. Armstrong. No members of the ratepaying public were in attendance at the evidentiary hearing.

Based upon the applicable law and the evidence herein and being duly advised, the Commission now finds that:

1. **Notice and Jurisdiction.** Proper legal notice of the hearing in this Cause was given and published by the Commission as required by law. NIPSCO is a public utility within the meaning of the Public Service Commission Act, as amended, Ind. Code § 8-1-2, and is subject to the jurisdiction of the Commission, in the manner and to the extent provided by Indiana law. The Commission has jurisdiction over Petitioner and subject matter of this Cause.

2. **Petitioner's Characteristics.** NIPSCO is a public utility organized and existing under Indiana law, with its principal office at 801 E. 86th Street, Merrillville, Indiana 46410. NIPSCO owns and operates property and equipment used for the production, transmission, delivery and furnishing of electric utility service to the public in northern Indiana.

3. **Background and Relief Requested.** On November 26, 2002, the Commission approved NIPSCO's NOx Compliance Plan ("NOx Plan") and proposed Environmental Cost Recovery Mechanism, as set forth in its Rule 47, which provided for ratemaking treatment of NIPSCO's qualified pollution control property, pursuant to Ind. Code §§ 8-1-2-6.6 and 6.8 and Ind. Code § 8-1-8.7. On February 4, 2004, January 19, 2005, December 21, 2005, and December 13, 2006, the Commission approved revisions of NIPSCO's NOx Plan, by its orders entered in Cause Nos. 42515, 42737, 42935 and 43144, respectively. On July 3, 2007, the Commission approved NIPSCO's plans to comply with the U.S. Environmental Protection Agency's ("EPA") Clean Air Interstate Rule ("CAIR") and Clean Air Mercury Rule ("CAMR") that require additional emission reductions of SO₂, NOx and mercury, which together with NIPSCO's NOx Plan is hereinafter referred to as NIPSCO's "Compliance Plan." On December 19, 2007 and January 14, 2009, the Commission approved revisions to the estimated cost of NIPSCO's Compliance Plan in Cause No. 43371 and Cause No. 43593, respectively.

Pursuant to Ind. Code § 8-1-8.7-7, NIPSCO requests that the Commission approve additional revisions of its Compliance Plan. A copy of the revised plan as approved by the Commission in Cause No. 43593 was attached as Exhibit A to NIPSCO's Amended Petition in this Cause. The Compliance Plan as proposed to be further revised and updated for changes in estimated costs, construction start, and in-service dates and a scope addition was attached as Exhibit B Revised to the Amended Petition. Exhibit C Revised to the Amended Petition described the changes in greater detail.

4. **Petitioner's Direct Evidence.** Director of Environmental Permitting and Regulatory Services, Kelly R. Carmichael, summarized the federal and state environmental requirements that require further reductions in NOx, SO₂, and other pollutants from NIPSCO's generating stations. He testified that the CAIR regulations were finalized by the EPA in March of 2005, and required phased reductions in NOx and SO₂, with an additional NOx cap during ozone control season. He explained that these standards were accomplished by increasing the stringency

of the existing NO_x SIP Call emissions trading program, establishing new annual emissions reductions for NO_x, and increasing the stringency of the existing SO₂ Acid Rain emissions trading program. He testified that the State of Indiana adopted final rules implementing CAIR in February of 2007.

Mr. Carmichael testified that the federal CAIR rules were vacated by the D.C. Circuit Court of Appeals in July of 2008, and ultimately remanded to the EPA for promulgation of a revised rule to cure the deficiencies in December of 2008, but that the vacated rules remain in effect in Indiana pending completion of a replacement. Mr. Carmichael explained that the EPA also promulgated the CAMR which established “standards of performance” limiting mercury emissions from new and existing coal-fired power plants and created a market-based cap and trade program that was designed to reduce nationwide utility emissions of mercury in two phases. On October 3, 2007, the State of Indiana adopted a rule to implement the EPA’s CAMR, which became effective on February 3, 2008. However, on February 8, 2008, the D.C. Circuit Court of Appeals vacated the CAMR. In response to the vacatur, the EPA is pursuing a new rulemaking to establish maximum achievable control technology standards for emissions of hazardous air pollutants from electric utilities.

Mr. Carmichael testified that the EPA provided a notification and opportunity for comment in July of 2009 on a new information request to obtain industry data that will be used to develop the emissions standards for coal- and oil-fired electric steam generating units. He noted that the data request will likely require NIPSCO to perform significant data collection and emission testing of hazardous air pollutant emissions from the generating units in 2010. In addition, he stated, the aggregated data collected by the utility industry and EPA’s response will affect the implementation and timing of the installation of controls to address potential reduction obligations for mercury and other pollutants. He testified that the CAMR required installation of emissions monitoring equipment a year prior to the CAMR regulations, and that NIPSCO committed to the purchase of that equipment prior to the vacatur by the D.C. Circuit.

Finally, Mr. Carmichael testified that significant input had been received by EPA from a variety of stakeholders concerning the formulation and requirements of replacement rules for CAIR and CAMR. Based on the input submitted, including input from the industry and from state regulatory agencies, Mr. Carmichael concluded that the electric generating control strategy under the revised rules will require the installation of Flue Gas Desulfurization (“FGD”) technology on all generating units bigger than 100 MW, including the three NIPSCO Units that remain unscrubbed (*i.e.*, Michigan City Unit 12, and Schahfer Units 14 and 15) by 2017. He explained that installation of FGD units for control of NO_x would also provide co-benefits in the form of reduction in mercury emissions.

Director of Generation Support Services and Major Projects, Philip W. Pack, provided background information about NIPSCO’s generating fleet, and testified about the Compliance Plan and its revisions, the current construction schedule for implementation, as well as a current estimate of the costs projected to be incurred by NIPSCO. His testimony described NIPSCO’s plan to use FGD and Low NO_x Burner/Separated Overfired Air technology as a means to reduce SO₂ and NO_x emissions. He also discussed the uncertainty surrounding implementation of CAIR and CAMR rules because of the vacatur of those rules by the federal courts. He explained that NIPSCO intends to move forward with implementation of technology to comply with the CAIR and CAMR

standards because the federal and state CAIR rules remain in effect and the purchase and installation commitments NIPSCO has made to comply with the CAMR monitoring requirements.

Mr. Pack testified that the Compliance Plan, originally approved in Cause No. 42150, has continued to evolve as a result of studies of various alternatives. Mr. Pack stated since completion of the studies giving rise to the plan as approved by the Commission, internal NIPSCO working groups have continued to evaluate new information and review assumptions and make improvements to the plan where possible. He explained that the revised Compliance Plan as approved in Cause No. 43593, a copy of which was attached as Exhibit A to the Amended Petition, is the latest compliance optimization variation in NIPSCO's planning process, and provided additional detail about the status of implementation for each of NIPSCO's generating units.

NIPSCO's Exhibit B Revised, attached to the Amended Petition, documented the proposed revisions to NIPSCO's Compliance Plan, including construction beginning and completion dates for facilities that have been or will be installed. It also showed NIPSCO's current cost estimates for its revised plan, which Mr. Pack testified are predicated upon the best and most current information available to NIPSCO and the utility industry, and represent NIPSCO's best estimates for the cost of implementing the current plan. He said the plan is updated at least every 12 months. Exhibit C Revised to the Amended Petition summarized the revisions to NIPSCO's plan since its approval in Cause No. 43593.

Mr. Pack said that none of the clean coal technology ("CCT") NIPSCO is proposing to use in its revised Compliance Plan was in general commercial use on January 1, 1989, and that all of the CCT that NIPSCO is proposing to use is more efficient than conventional technologies in general use as of January 1, 1989. He said that the CCT NIPSCO is proposing will extend the useful life of NIPSCO's existing generating facilities and achieve the required NO_x, SO₂ and mercury reductions. He said that the use of CCT will change the priority in the dispatching of NIPSCO's generating units if a re-dispatch is necessary to achieve compliance with the law. He knew of no adverse environmental factors associated with by-products resulting from utilization of the proposed CCT. He also opined that use of the proposed CCT in NIPSCO's plan is in the public interest, because it will allow NIPSCO to continue to meet demands made upon it for electric power, while doing so in an environmentally compliant manner, and at the lowest reasonably achievable cost. Mr. Pack testified that NIPSCO's current estimate of the cost of constructing and implementing the proposed CCT is \$360,743,411, as shown in NIPSCO's Exhibit B Revised, which is a decrease over NIPSCO's earlier revised estimate of \$368,418,519.

5. OUC's Direct Evidence. The OUC's witness, Cynthia M. Armstrong, recommended that the Commission approve NIPSCO's Compliance Plan as revised. She observed that project construction cost budgets reflect an overall decrease of just over \$2.6 Million, which helped to offset the impact of the installation of additional catalyst layers on three of NIPSCO's SCR units. She requested that NIPSCO submit information on its catalyst replacement schedule in future annual progress reports, but agreed that the projected costs in this Cause were reasonable. Ms. Armstrong agreed with NIPSCO witness Mr. Carmichael that the current environmental regulatory environment was in a state of flux pending the effectiveness of revised rules, but expressed a willingness to continue a dialog with NIPSCO about its environmental compliance options. She also recommended that should NIPSCO decide to pursue any new clean coal technology projects, it should provide details regarding the desired depreciation treatment and the estimated rate impact of such projects. Ms. Armstrong also expressed concern with the estimated

cost of the Michigan City Unit 12 winterization project, but recommended approval of the amended progress report provided NIPSCO explain the estimated cost. Finally, she noted that largely as a result of reductions in the cost of its FGD upgrades for Schahfer Units 17 and 18, NIPSCO's CAIR/CAMR Compliance Plan had decreased by 21.4%, and the overall cost of its CCT projects by 2.1%.

6. Petitioner's Rebuttal Evidence. Mr. Pack provided an explanation of the cost differential between the winterization project for the Michigan City SCR and similar projects at its other facilities. He explained that the scope of the large urea solutionizing area component of the Michigan City Unit 12 winterization required structural steel, grating, floor plates, and stair work as well as upgraded electrical facilities that were not necessary to the other units. He testified that these differences made up more than 85% of the cost differential between Michigan City Unit 12 and the other winterization projects.

7. Commission Discussion and Findings. Based on the evidence presented, the Commission finds that the revised construction cost estimates, scope additions and updated construction start and in-service dates provided by NIPSCO in this Cause are reasonable, and the Compliance Plan as revised is in the public interest. Therefore, NIPSCO's revised Compliance Plan as described in NIPSCO's Exhibit B Revised attached to the Amended Petition should be approved.

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

1. Pursuant to Ind. Code § 8-1-8.7-7, NIPSCO's revised Compliance Plan as described in NIPSCO's Exhibit B Revised attached to the Amended Petition is hereby approved.
2. This Order shall be effective on and after the date of its approval.

HARDY, ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED:

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



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