

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC SERVICE )
COMPANY FOR THE ISSUANCE OF A CERTIFICATE OF )
PUBLIC CONVENIENCE AND NECESSITY FOR THE )
CONSTRUCTION OF CLEAN COAL TECHNOLOGY ("THE )
PROJECTS"), INCLUDING ONGOING REVIEW OF THE )
PROJECTS, PURSUANT TO IND. CODE CH. 8-1-8.7; FOR A )
FINDING THAT (1) SUCH PROPERTY CONSTITUTES )
QUALIFIED POLLUTION CONTROL PROPERTY AND IS )
ELIGIBLE FOR THE RATEMAKING TREATMENT )
PURSUANT TO IND. CODE § 8-1-2-6.8, (2) SUCH PROPERTY )
CONSTITUTES CLEAN COAL AND ENERGY PROJECTS )
AND IS ELIGIBLE FOR THE RATEMAKING AND )
FINANCIAL TREATMENT PURSUANT TO IND. CODE CH. )
8-1-8.8, (3) THE PROJECTS ARE DEEMED TO BE UNDER )
CONSTRUCTION UNTIL SUCH TIME AS THE )
COMMISSION DETERMINES THAT THE PROJECTS ARE )
USED AND USEFUL, AND (4) THAT THE PROJECTS ARE )
ELIGIBLE FOR THE DEPRECIATION TREATMENT SET )
FORTH IN IND. CODE §8-1-2-6.7; FOR AUTHORIZATION )
TO (1) DEFER AND AMORTIZE ASSOCIATED )
DEPRECIATION AND OPERATION AND MAINTENANCE )
EXPENSES, (2) DEFER PRECONSTRUCTION COSTS )
INCURRED PRIOR TO THE ISSUANCE OF A FINAL )
ORDER HEREIN, (3) ACCRUE ALLOWANCE FOR FUNDS )
USED DURING CONSTRUCTION RELATED TO )
QUALIFIED POLLUTION CONTROL PROPERTY PRIOR )
TO CONSTRUCTION WORK IN PROGRESS RATEMAKING )
TREATMENT, (4) PERFORM CERTAIN DISPATCH OF )
PETITIONER'S GENERATION UNITS, AND (5) RECOVER )
THE COST OF CERTAIN RENEWABLE ENERGY CREDITS; )
AND FOR APPROVAL OF A REVISED COST ESTIMATE )
FOR CONSTRUCTION PROJECTS PREVIOUSLY )
APPROVED IN CAUSE NO. 43913. )

CAUSE NO. 44012

APPROVED: FEB 15 2012

PHASE II ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On March 22, 2011, Northern Indiana Public Service Company ("Petitioner" or "NIPSCO")
filed its Verified Petition in this Cause. On April 26, 2011, after conferring with the Indiana Office

of Utility Consumer Counselor (“OUCC”), NIPSCO filed a Motion for Procedural Schedule, which set forth an agreed procedural schedule, granted by docket entry dated May 11, 2011. On April 28, 2011, the NIPSCO Industrial Group (“Industrial Group”) filed its *Petition to Intervene*, which was subsequently granted. On May 2, 2011, NIPSCO prefiled the direct testimony of its witnesses Kelly R. Carmichael, Kurt W. Sangster, Ronald G. Plantz and Curt A. Westerhausen.

On June 27, 2011, the OUCC filed a *Motion for Extension of Time and Request for Attorneys’ Conference* requesting an extension of time for it and the Industrial Group to file their cases-in-chief. The OUCC’s request for an Attorneys’ Conference was granted by Docket Entry on June 29, 2011. In lieu of an Attorneys’ Conference, the parties met informally on June 29, 2011 to discuss the procedural issues in this Cause. On July 1, 2011, NIPSCO, the OUCC and Industrial Group filed a Joint Motion to Modify Procedural Schedule (“Joint Motion”) requesting the procedural schedule be modified and converted to a bifurcated proceeding to allow the OUCC and Industrial Group to address NIPSCO’s request for relief in two phases and for certain accounting treatment for the projects to be addressed in the second phase of this Cause. An Attorneys’ Conference was convened on July 13, 2011 to discuss the parties’ request at which time the parties’ request for a modified procedural schedule and bifurcated proceeding was granted. In accordance with the parties’ request, Phase I addressed the following three projects (“Phase I Projects”):

- (1) Schahfer Unit 14 Flue Gas Desulphurization (“FGD”) Facility Addition;
- (2) Schahfer Unit 14/15 FGD Common; and
- (3) Schahfer Unit 15 FGD Additions.

Phase II was to address the following projects (“Phase II Projects”):

- (1) Michigan City Unit 12 FGD Facility Addition;
- (2) Bailly Unit 7 Selective Catalytic Reduction (“SCR”) Duct Burners;
- (3) Bailly Unit 8 SCR Duct Burners;
- (4) Michigan City Unit 12 SCR Duct Burners;
- (5) Schahfer Unit 14 SCR Duct Burners;
- (6) Schahfer Unit 15 SNCR Installation; and
- (7) Continuous Particulate Monitors Addition for Units 7, 8, 12, 14, 15, 17 and 18.

On August 18, 2011, NIPSCO and the OUCC submitted an agreed procedural schedule for Phase II in this Cause. In accordance with that agreement, NIPSCO prefiled Phase II supplemental direct testimony and exhibits of witnesses Carmichael and Guy H. Ausmus on August 18, 2011.<sup>1</sup> On August 19, 2011, NIPSCO filed a motion for administrative notice of NIPSCO’s redacted version of its Integrated Resource Plan (“IRP”) admitted into the record of Cause No. 43643. On October 20, 2011, the OUCC prefiled Phase II testimony of Ray L. Snyder, Brendon J. Baatz and Duane Jasheway. On October 21, 2011, the Industrial Group prefiled Phase II direct testimony of James R. Dauphinais. On November 9, 2011, NIPSCO, OUCC and Industrial Group (hereafter referred to as the “Settling Parties”), filed a Stipulation and Settlement Agreement (“Settlement”) and Motion for Modification of Procedural Schedule. In their Motion, the joint movants requested the Commission to approve the Settlement with respect to all Phase II Projects other than the Michigan City Unit 12 Projects (the “Stipulated Phase II Projects”) and moved the Commission for

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<sup>1</sup> The supplemental direct testimony of NIPSCO Witness Ausmus relates to Phase III Projects and will not be discussed herein.

entry of an agreed procedural schedule for a new Phase III to be established in this Cause with respect to Michigan City Unit 12. The Stipulated Phase II Projects include the following five projects:

- (1) Unit 7 SCR Duct Burners;
- (2) Unit 8 SCR Duct Burners;
- (3) Unit 14 SCR Duct Burners;
- (4) Unit 15 SNCR Installation; and
- (5) Continuous Particulate Monitors Addition for Units 7, 8, 14, 15, 17 and 18.

Phase III will address and resolve the following Michigan City projects (“Phase III Projects”):

- (1) Unit 12 FGD Facility Addition;
- (2) Unit 12 SCR Duct Burners;
- (3) Continuous Particulate Monitors Addition for Unit 12.

The parties’ request for a modified procedural schedule and further bifurcated proceeding was granted on the record at the evidentiary hearing.

On December 6, 2011, the Commission issued a Docket Entry directing Petitioner to respond to questions, to which Petitioner responded on December 9, 2011.

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 December 14, 2011, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner’s Phase II prefiled Supplemental Direct Testimony of Kelly R. Carmichael, Petitioner’s responses to the Commission’s December 6, 2011 Docket Entry questions, and the Phase II prefiled testimony and exhibits of OUCC and Industrial Group, along with the Settlement, were admitted into the record without objection. No members of the general public appeared or participated at the hearing.

Having considered the evidence and being duly advised, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the hearing in this Cause was given as required by law. Petitioner is a “public utility” as defined in I.C. § 8-1-2-1(a) and I.C. § 8-1-8.7-2, a “utility” as that term is defined in I.C. § 8-1-2-1 and 170 I.A.C. 4-6-1(n). Petitioner is subject to the jurisdiction of this Commission, in the manner and to the extent provided by Indiana law. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner’s Characteristics and Generating System.** Petitioner is a public utility organized and existing under the laws of the State of Indiana and having its principal office at 801 East 86th Avenue, Merrillville, Indiana. Petitioner provides electric utility service in the State of Indiana and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of electric power to the public. The NIPSCO generating facilities have a total capacity of 3,322 megawatts (“MWs”) and consist of numerous separate generation sites, including Petitioner’s R.M. Schahfer Generating Station (“Schahfer”), Michigan City Generating Station (“Michigan City”), Bailly Generating

Station (“Bailly”), Sugar Creek Generating Station (“Sugar Creek”) and two (2) hydroelectric generating sites near Monticello, Indiana. Of the total capacity, 77.5% is from coal-fired units, 22.2% is from natural gas-fired units and 0.3% is from hydroelectric units.

Schahfer is located approximately two miles south of the Kankakee River in Jasper County near Wheatfield, Indiana. Schahfer has four coal-fired units (Units 14, 15, 17 and 18), is the largest of NIPSCO’s generating stations, and provides over 50% of NIPSCO’s electric generation capacity. Michigan City is located on the shore of Lake Michigan in Michigan City, Indiana. Michigan City formerly had the two oldest generating units on NIPSCO’s system, Units 2 and 3, which have been removed from service. Michigan City’s newer Unit 12 remains in service and burns low sulfur coal. Bailly is located on a 100-acre site on the shore of Lake Michigan in Porter County, Indiana. Bailly has a Pure Air FGD facility to allow it to use Midwestern, high sulfur coal. Sugar Creek is located on a 281-acre rural site near the west bank of the Wabash River in Vigo County, Indiana. Two combustion turbine generators, fueled by natural gas, and one steam turbine generator are operated in the combined cycle mode.

**3. Background and Requested Relief.** On January 13, 2011, an agreement between the United States Environmental Protection Agency (“EPA”), Department of Justice, Indiana Department of Environmental Management (“IDEM”) and NIPSCO to settle the NIPSCO EPA New Source Review Notice of Violation was filed with the United States District Court for the Northern District of Indiana Hammond Division (“Northern District”) (the “Consent Decree”). The Consent Decree was placed on public notice in the Federal Register on January 20, 2011. On July 22, 2011, the Northern District issued an Order in Case No. 2:11-CV-16 JVB approving the Consent Decree. The Consent Decree, *inter alia*, requires that NIPSCO operate all existing pollution control equipment and install additional pollution control equipment.

NIPSCO will also need to comply with new federal and state environmental regulations, including EPA’s final Cross State Air Pollution Rule (“CSAPR”) released on July 6, 2011 and the proposed National Emission Standards for Hazardous Air Pollutants for Utility boilers, better known as the Utility Maximum Achievable Control Technology (“Utility MACT”) (may also be referred to as the former Clean Air Mercury Rule (“CAMR”), or Mercury and Air Toxics Standards (“MATS”)) (collectively, the “EPA Regulations”). These rules require NIPSCO to further reduce its nitrogen oxides (“NOx”), sulfur dioxides (“SO<sub>2</sub>”) and other hazardous air pollutant emissions (“HAPs”) over the next several years.

To meet the requirements of the Consent Decree and EPA Regulations, NIPSCO has developed a Multi-Pollutant Compliance Plan (“MPCP”) set forth in Petitioner’s Exhibit No. KWS-1. In order to control emissions of SO<sub>2</sub>, the MPCP includes the installation of FGD systems on Schahfer Units 14 and 15 and Michigan City Unit 12. With respect to emissions of NOx, the MPCP includes the installation of a Selective Non-Catalytic Reduction (“SNCR”) system on Schahfer Unit 15 and Duct Burners on Bailly Unit 7, Bailly Unit 8, Michigan City Unit 12 and Schahfer Unit 14. The MPCP includes the installation of Continuous Particulate Monitors on Units 7, 8, 12, 14, 15, 17 and 18. NIPSCO is requesting certificates of public convenience and necessity (“CPCN”) for each of the projects included in its MPCP, pursuant to I.C. § 8-1-8.7, and for approval of these projects pursuant to I.C. § 8-1-8.8. On December 28, 2011, we issued our Order addressing the Phase I Projects (“Phase I Order”).

4. **Evidence Presented.**

A. **Petitioner's Case-In-Chief.** Petitioner filed direct testimony and exhibits and supplemental direct testimony and exhibits that addressed the MPCP, including the Stipulated Phase II Projects. Petitioner's evidence relating to the Stipulated Phase II Projects is summarized as follows:

i. **Direct Testimony of Kelly R. Carmichael.** NIPSCO Witness Kelly R. Carmichael described and summarized the settlement of the EPA New Source Review Notice of Violation which ultimately resulted in the Consent Decree. He addressed the status of existing and upcoming federal and state environmental requirements that will require NIPSCO to make capital investments to reduce air emissions. He further discussed various federal and state environmental air regulations impacting the continued operation of NIPSCO's electric generating units including the EPA Clean Air Interstate Rule ("CAIR"), the proposed EPA Clean Air Transport Rule ("CATR") and the Utility MACT standards. He explained that these regulations will require NIPSCO to further reduce its NO<sub>x</sub>, SO<sub>2</sub>, and other HAPs over the next several years. His testimony focused on the installation of pollution control systems to meet the requirements of both the Consent Decree and EPA Regulations.

ii. **Direct Testimony of Kurt W. Sangster.** NIPSCO Witness Kurt W. Sangster testified in support of NIPSCO's request for a CPCN for the Stipulated Phase II Projects. He sponsored NIPSCO's MPCP (Petitioner's Exhibit No. KWS-1), described the pollution control technologies included in the Plan, and also provided the estimated project costs and O&M estimates.

iii. **Direct Testimony of Curt A. Westerhausen.** NIPSCO Witness Curt A. Westerhausen testified concerning NIPSCO's requested ratemaking treatment. He explained that NIPSCO proposes to utilize construction work in progress ("CWIP") ratemaking treatment for clean coal technology ("CCT"), qualified pollution control projects ("QPCP") and clean energy projects consistent with and through its existing ECRM. He testified that NIPSCO further proposes to recover O&M expenses related to the Stipulated Phase II Projects, including depreciation expense for CCT, QPCP and clean energy projects consistent with and through NIPSCO's EERM. He further explained that NIPSCO proposes to recover through the ECRM the return on capital expenditures for each approved project beginning six months after the construction start date of the project and that NIPSCO proposes to recover through the EERM Operating and Maintenance ("O&M") and depreciation expenses associated with each approved project beginning when it is placed in service. Mr. Westerhausen also testified regarding NIPSCO's request to submit semi-annual progress reports as part of its ECRM filings.

iv. **Direct Testimony and Supplemental Direct Testimony of Ronald G. Plantz.** NIPSCO Witness Ronald G. Plantz testified in support of NIPSCO's requested accounting treatment for investments in all MPCP QPCP and CCT projects. He also provided supplemental direct testimony with respect to the request for authorization to (1) accrue allowance for funds used during construction ("AFUDC") prior to CWIP ratemaking treatment, (2) include preconstruction costs as part of the recovery of the Stipulated Phase II Projects capital expenditures, and (3) defer for recovery through rates the O&M and depreciation expenses associated with the Stipulated Phase II Projects incurred by NIPSCO prior to the time that the Commission issues a

Phase II Order.

v. **Supplemental Direct Testimony of Michael Hooper.** NIPSCO Witness Michael Hooper provided supplemental direct testimony to provide additional support for NIPSCO's request for a CPCN associated with the Stipulated Phase II Projects and the associated approval of cost estimates. He explained the steps NIPSCO has taken to prevent increases in cost estimates. He provided additional information relating to NIPSCO's enhanced project team, general project planning and cost estimation principles, the relationship between Indiana's CPCN statutes and project planning and cost estimation, NIPSCO's processes to control costs and meet project deadlines, and NIPSCO's recommendation for an ongoing reporting requirement to provide transparent information regarding the costs and progress of the Stipulated Phase II Projects to stakeholders.

vi. **Supplemental Direct Testimony of Kelly R. Carmichael.** NIPSCO Witness Carmichael provided a status update regarding the Consent Decree. He explained that on July 22, 2011, the Northern District issued an Order in Case No. 2:11-CV-16 JVB approving the Consent Decree, which was not changed from the Consent Decree lodged on January 13, 2011.

Mr. Carmichael provided a summary of the CSAPR. He stated the CSAPR replaces CAIR starting January 1, 2012 and applies to power plants across 27 states in the EPA-designated transport region, including power plants in Indiana. He explained that the general goal of CSAPR is to improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particulate pollution in other states. He stated the intent of CSAPR is to cap emissions at the state level and prevent any significant transfer of allowances across state boundaries and across years. Mr. Carmichael testified that while he believes it is likely that CSAPR will be appealed and that the EPA will receive petitions for reconsideration, NIPSCO must proceed under the assumption that it will have to comply with CSAPR beginning January 1, 2012.

Mr. Carmichael stated CSAPR and CAIR are both designed to address the portion of an upwind state's emissions of SO<sub>2</sub> and NO<sub>x</sub> from power plants that "significantly contribute" to nonattainment areas for ozone and fine particulate matter in downwind states. He stated that unlike CAIR, CSAPR does not allow for the carry-over of any other program allowances to satisfy the emission allowance retirement obligations under CSAPR. He stated that while CAIR provided for unlimited trading, CSAPR establishes a more restricted emission trading program. He stated that unlike CAIR, in order to deliver the emission reductions in a timely fashion, CSAPR will be put directly in place by implementation through a Federal Implementation Plan.

Mr. Carmichael testified that while CSAPR and CATR are largely similar, CSAPR established lower emissions budgets and more stringent emission reduction requirements than CATR.

Mr. Carmichael explained that CSAPR emission reductions will be achieved in two phases by setting emission budgets for SO<sub>2</sub> and NO<sub>x</sub> starting in 2012 for the first phase and 2014 for the second phase. He stated the timelines required by the rule will make it extremely difficult to install air pollution control technology to meet the requirements of the rule for utilities that are not already significantly in the planning process for installation of controls.

Mr. Carmichael testified the 2012 Indiana SO<sub>2</sub> and NO<sub>x</sub> allocation budgets are approximately thirty-three percent (33%) and six percent (6%), respectively, below the 2010 actual emission levels. He stated for 2014, the reductions are approximately sixty-two percent (62%) for SO<sub>2</sub> and seven percent (7%) for NO<sub>x</sub> below 2010 actual emission levels. Mr. Carmichael indicated that no further NO<sub>x</sub> reductions are likely needed beyond the current control strategy for NIPSCO to meet the NO<sub>x</sub> 2012 or 2014 allocations.

Mr. Carmichael testified that the surrender of certain emissions allowances required under the Consent Decree do not require NIPSCO to accelerate the installation of any pollution control equipment that NIPSCO had already planned to construct to comply with CSAPR.

**B. OUCC's Case-In-Chief.** The OUCC filed direct testimony and exhibits summarized as follows:

i. **Testimony of Ray L. Snyder.** OUCC Witness Ray L. Snyder testified that the OUCC supports the issuance of a CPCN for the Stipulated Phase II Projects. He stated the OUCC agrees that the Stipulated Phase II Projects will be necessary for NIPSCO to remain compliant with environmental requirements. He recommended that NIPSCO be required to comply with the same reporting and meeting requirements already agreed to by NIPSCO in Phase I for the Stipulated Phase II Projects.

ii. **Testimony of Brendon J. Baatz.** OUCC Witness Brendon Baatz testified regarding various environmental laws and regulations that drive the need for the Stipulated Phase II Projects, including the Consent Decree, CSAPR and the Utility MACT standard. He testified that the OUCC supports the issuance of a CPCN for the Stipulated Phase II Projects.

iii. **Testimony of Duane Jasheway.** OUCC Witness Duane Jasheway recommended that the Commission approve and apply a 20-year accelerated depreciation period to all Stipulated Phase II Projects with life years of 20 years or more.

**C. Industrial Group's Case-In-Chief.** Industrial Group filed direct testimony and exhibits summarized as follows:

i. **Testimony of James R. Dauphinais.** Industrial Group Witness James R. Dauphinais testified the Industrial Group does not oppose the granting of the requested CPCNs for the Stipulated Phase II Projects provided that all of the stakeholder reporting and meeting requirements imposed on NIPSCO in the Commission's Final Phase I Order in this proceeding apply to each of the Stipulated Phase II Projects as well.

**5. The Settlement.** The Settlement is attached hereto and incorporated herein by reference. The Settling Parties agree that the terms and conditions set forth in the Settlement represent a fair and reasonable resolution of all issues subject to incorporation into a Final Phase II Order without any modification or condition not acceptable to the Settling Parties. The Settlement provides as follows:

a. The Stipulated Phase II Projects constitute "clean coal technology" as defined in I.C. § 8-1-8.7-1, I.C. § 8-1-2-6.7, I.C. § 8-1-2-6.8 and I.C. § 8-1-8.8-3.

b. The public convenience and necessity will be served by Petitioner's construction, implementation, and use of the Stipulated Phase II Projects and a Certificate of Public Convenience and Necessity should be issued for the Stipulated Phase II Projects pursuant to I.C. § 8-1-8.7.

c. The OUCC and Petitioner agree that the estimated costs provided by Petitioner in this Cause for the Stipulated Phase II Projects are reasonable and should be approved. However, the stated accuracy of the estimates is +/- 25% for the Particulate Monitor projects and is +/- 40% for all other Stipulated Phase II Projects.

d. The Industrial Group does not object to Petitioner's estimated costs of the Stipulated Phase II Projects.

e. Petitioner's request for ongoing review of the Stipulated Phase II Projects pursuant to I.C. § 8-1-8.7-7 and to file semi-annual progress reports as part of that ongoing review should be approved.

f. The Stipulated Phase II Projects constitute "qualified pollution control property" and are eligible for the ratemaking treatment described in I.C. § 8-1-2-6.8.

g. The Stipulated Phase II Projects constitute "clean energy projects" under I.C. § 8-1-8.8 that should be approved as reasonable and necessary and therefore eligible for the timely recovery of reasonable and prudently-incurred costs and expenses incurred during construction and operation of the Stipulated Phase II Projects consistent with and through Petitioner's currently-effective Environmental Cost Recovery Mechanism ("ECRM") and Environmental Expense Recovery Mechanism ("EERM") set forth in I.C. § 8-1-8.8-11(a)(1).

h. Petitioner should be authorized to utilize CWIP ratemaking treatment, including preconstruction costs incurred prior to the issuance of this Order, for the Stipulated Phase II Projects consistent with and through Petitioner's currently-effective Environmental Cost Recovery Mechanism and the Stipulated Phase II Projects are deemed to be under construction until such time the Commission determines that the Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner.

i. Petitioner should be authorized to depreciate each of the Stipulated Phase II Projects approved herein over the remaining useful life of the project as set forth in Petitioner's Exhibit No. RGP-1 or over a period of twenty (20) years, whichever is less, pursuant to I.C. § 8-1-2-6.7.

j. Petitioner should be authorized to accrue AFUDC related to the Stipulated Phase II Projects prior to CWIP ratemaking treatment or their reflection of such costs in NIPSCO's electric rates.

k. Petitioner should be authorized to recover reasonable and prudently-incurred O&M expenses and depreciation expenses relating to the Stipulated Phase II Projects consistent with and through Petitioner's currently-effective Environmental Expense Recovery Mechanism. The Industrial Group does not object to the requested recovery.

1. It is reasonable for NIPSCO to change priority of dispatch, short term generation levels, or take an outage to maintain compliance with emission limitations and that NIPSCO's request to perform dispatch of its generation units in an economical and cost-effective manner necessary to comply with the requirements of the Consent Decree or other environmental regulations or requirements is reasonable and compliant with current and future dispatch parameters relating to the recovery of fuel costs.

The Settlement also includes terms and conditions for ongoing reporting and meeting requirements and confidential treatment of information provided by NIPSCO in this Cause.

**6. Commission Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N. E.2d at 406. Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence, *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules also require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d).

**A. CCT, QPCP, Clean Energy Projects.** Petitioner has requested relief under the following Indiana statutes: I.C. § 8-1-8.7, I.C. § 8-1-8.8, I.C. § 8-1-2-6.7, and I.C. § 8-1-2-6.8. We must therefore determine whether the Stipulated Phase II Projects constitute “clean coal technology” under I.C. § 8-1-8.7, I.C. § 8-1-2-6.7, I.C. § 8-1-2-6.8 and I.C. § 8-1-8.8-3, “qualified pollution control technology” under I.C. § 8-1-2-6.8, and “clean energy projects” under I.C. § 8-1-8.8.

**i. CCT under I.C. § 8-1-8.7-1, I.C. § 8-1-2-6.7, I.C. § 8-1-2-6.8, and I.C. § 8-1-8.8-3.** CCT is defined slightly differently by the various statutes, but all are generally consistent. Pursuant to I.C. § 8-1-8.7-1, CCT means:

[A] technology (including precombustion treatment of coal): (1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and (2) that either: (A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or (B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

I.C. § 8-1-8.7-1.<sup>2</sup>

The Settling Parties agree the Stipulated Phase II Projects constitute “clean coal technology” as defined in I.C. § 8-1-8.7-1, I.C. § 8-1-2-6.7, I.C. § 8-1-2-6.8 and I.C. § 8-1-8.8-3. NIPSCO Witness Kurt Sangster testified that the SCR Duct Burners will maximize NOx removal and allow NIPSCO to achieve compliance with the Consent Decree. He testified the Selective Non-Catalytic Reduction SNCR will reduce the emissions of NOx from flue gas created during the combustion of coal. Mr. Sangster testified that none of the MPCP projects were commercially available prior to January 1, 1989 and that the projects will reduce nitrogen and sulfur-based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989.

Based on our review of the record evidence, we find that the Stipulated Phase II Projects constitute “clean coal technology” as defined in I.C. § 8-1-8.7-1, I.C. § 8-1-2-6.7, I.C. § 8-1-2-6.8 and I.C. § 8-1-8.8-3.

**ii. Qualified Pollution Control Property under I.C. § 8-1-2-6.8.**

I.C. § 8-1-2-6.8 defines QPCP as “an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.”

The Settling Parties agree the Stipulated Phase II Projects constitute “qualified pollution control property” and are eligible for the ratemaking treatment described in I.C. § 8-1-2-6.8. Mr. Sangster testified that NIPSCO could not achieve compliance with the Consent Decree or with the various requirements of several federal environmental regulations using conventional technologies in general use on January 1, 1989. NIPSCO Witness Kelly Carmichael testified that to reduce and control emissions of NOx, NIPSCO must install and operate a SNCR system on Schahfer Unit 15 by December 31, 2012. He stated that in order to improve the overall reduction of NOx emissions while maintaining operational flexibility of the generation units, NIPSCO must install and operate duct burners on boilers operating with SCR systems, which are Bailly Units 7 and 8 and Schahfer’s Unit 14. He stated that during certain operating conditions, such as during startup or at low loads, the exhaust gas temperatures entering the SCR may be too low for the catalytic reaction to reduce NOx emissions to take place in the most effective manner. Mr. Carmichael testified the purpose of the duct burners is to increase the temperature of the boiler exhaust gases entering the SCR system during boiler startups and low load operation to help achieve the desired SCR operating temperature. He stated NIPSCO will also install continuous PM Monitors on all of its electric generators to comply with the Consent Decree and the proposed Utility MACT standards. The evidence presented by OUCC Witness Brendon Baatz also supports that conclusion.

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<sup>2</sup> Under I.C. § 8-1-2-6.8, CCT also includes technology that “directly or indirectly reduces airborne emissions of mercury . . . or other regulated air emissions associated with the combustion or use of coal[.]” For the purpose of I.C. § 8-1-8.8, CCT is defined as “a technology (including precombustion treatment of coal): (1) that is used in a new or existing energy production or generating facility and directly or indirectly reduces or avoids airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and (2) that either: (A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or (B) has been selected by the United States Department of Energy for funding or loan guaranty under an Innovative Clean Coal Technology or loan guaranty program under the Energy Policy Act of 2005, or any successor program, and is finally approved for such funding or loan guaranty on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

Based on our review of the record evidence, we find that the Stipulated Phase II Projects are QPCP designed to meet applicable federal and state environmental laws and regulations. We find that the proposed Stipulated Phase II Projects will allow for the continued burning of coal in Petitioner’s generating units by allowing them to comply with applicable state and federal environmental regulations. Accordingly, we find that the Stipulated Phase II Projects constitute “qualified pollution control property” as defined in I.C. § 8-1-2-6.8.

**iii. Clean Energy Projects under I.C. § 8-1-8.8.** The term “clean energy projects” includes “[p]rojects to provide advanced technologies that reduce regulated air emissions from existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin . . . .” I.C. § 8-1-8.8-2(1)(B).<sup>3</sup>

We have already concluded that the Stipulated Phase II Projects constitute CCT as defined by I.C. § 8-1-8.8-3. The Settling parties agree the Stipulated Phase II Projects constitute “clean energy projects” under I.C. § 8-1-8.8 that should be approved as reasonable and necessary and therefore eligible for the timely recovery of reasonable and necessary costs and expenses incurred during construction and operation of the Stipulated Phase II Projects consistent with and through Petitioner’s currently-effective ECRM and EERM set forth in I.C. § 8-1-8.8-11(a)(1). Mr. Sangster testified that the Stipulated Phase II Projects will reduce NOx emissions created during the combustion of coal. He testified that the Stipulated Phase II Projects will reduce sulfur and nitrogen based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989. We find that the Stipulated Phase II Projects constitute advanced technologies that reduce regulated air emissions from existing energy generating plants and therefore find the Stipulated Phase II Projects constitute “Clean Energy Projects” as defined in I.C. § 8-1-8.8-2.

**B. CPCN for use of CCT under I.C. § 8-1-8.7.** Petitioner requests the issuance of a CPCN for each of the Stipulated Phase II Projects pursuant to I.C. ch. 8-1-8.7. Indiana Code § 8-1-8.7-3(b) states: “The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing sulfur or nitrogen based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989.” The Settling Parties agree that the public convenience and necessity will be served by Petitioner’s construction, implementation, and use of the Stipulated Phase II Projects and a Certificate of Public Convenience and Necessity should be issued for the Stipulated Phase II Projects pursuant to I.C. § 8-1-8.7. In order to grant Petitioner’s request for a CPCN, we must make a finding on each of the factors described in I.C. § 8-1-8.7-3(b), including the dispatching priority of the facility to the utility. I.C. § 8-1-8.7-4(b).

**i. CPCN Factors.**

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<sup>3</sup> The provisions of the state environmental statutes providing favorable regulatory treatment to projects using Indiana coal have been held to be an unconstitutional interference with interstate commerce, but severable from the rest of the statutes which remain valid. *General Motors Corp. v. Indianapolis Power & Light Co.*, 654 N.E.2d 752, 763 (Ind. App. 1995); *Alliance For Clean Coal v. Bayh*, 72 F.3d 556 (7th Cir. 1995), *See also S. Ind Gas and Electric Co.*, Cause No. 41864, at 7 (Aug. 29, 2001); *N. Ind. Pub. Serv. Co.*, Cause No. 42150, at 5 n. 3 (Jan. 26, 2002); *Indianapolis Power and Light Co.*, Cause No. 42170, at 5 n. 1 (Jan. 14, 2002). We will accordingly not rely upon such statutory provisions as a prerequisite for approval of a certificate of clean coal technology, to obtain QPCP status or to receive any other authority.

**(1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.**

The OUCC and Petitioner agree that the estimated costs provided by Petitioner in this Cause for the Stipulated Phase II Projects are reasonable and should be approved. However, the stated accuracy of the estimates is +/- 25% for the Particulate Monitor projects and is +/- 40% for all other Stipulated Phase II Projects<sup>4</sup>. The Industrial Group does not object to Petitioner's estimated costs. Mr. Sangster testified that the CCT included in the MPCP will reduce sulfur and nitrogen based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989 and that NIPSCO could not achieve compliance with the Consent Decree or with the various requirements of CAIR, CATR and Utility MACT using conventional technologies in general use on January 1, 1989. We find that conventional emission reduction facilities are not an option for NIPSCO to achieve the emissions reductions required by the EPA Regulations. As a result, we find that NIPSCO's choice to construct, install, and use the Stipulated Phase II Projects over conventional emission reduction technology is reasonable.

**(2) Whether a clean coal technology project will also extend the useful life of an existing electric generating facility and the value of that extension.** Mr. Sangster testified that the projects included in the MPCP will extend the useful life of NIPSCO's existing generating facilities because without these technologies, NIPSCO could not operate the facilities and achieve compliance with the Consent Decree or with the various requirements of CAIR, CATR and Utility MACT. No party offered evidence disputing that the Stipulated Phase II Projects will allow NIPSCO to continue operating in compliance with EPA's regulations and the Consent Decree. Therefore, we find that the Stipulated Phase II Projects will extend the useful economic life of NIPSCO's generating facilities.

**(3) The potential reduction of sulfur and nitrogen based pollutants achieved by the proposed clean coal technology system.**

**(4) The reduction of sulfur and nitrogen based pollutants that can be achieved by conventional pollution control equipment.**

**(5) Federal sulfur and nitrogen based pollutant emission standards.**

Mr. Sangster testified the duct burner projects are necessary for NIPSCO to be able to continuously operate the NOx control technology at each unit in the NIPSCO System and achieve and continuously maintain the 30-day and 365-day rolling emission rates for NOx required by the Consent Decree. Mr. Sangster also testified that the SNCR to be installed on Unit 15 will reduce and control emissions of NOx in order to meet the requirements of the Consent Decree. Mr. Carmichael testified NIPSCO anticipates the Continuous Particulate Monitors will be required by the Utility MACT rule. Mr. Sangster testified the QPCP and CCT projects included in the MPCP will reduce airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the use of coal at NIPSCO's generation stations. No evidence was offered in rebuttal to NIPSCO's evidence that the Stipulated Phase II Projects are necessary to allow

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<sup>4</sup> The Commission notes that in response to its December 6, 2011 docket entry, NIPSCO stated it is greater than 90% confident that the cumulative Phase II projects can be completed within these ranges of accuracy.

NIPSCO to reduce its air emissions sufficiently to comply with the EPA Regulations and that NIPSCO could not achieve compliance without the Stipulated Phase II Projects. Accordingly, we find the Stipulated Phase II Projects will provide significant reduction in NO<sub>x</sub> emissions.

Based on the extensive evidence presented by NIPSCO and the OUCC regarding the applicable federal nitrogen-based pollutant emissions standards (including EPA's final CSAPR), we find that the Stipulated Phase II Projects are a reasonable and necessary means to enable NIPSCO to comply with federal nitrogen-based pollutant emission standards.

**(6) The likelihood of success of the proposed project.** Mr. Sangster testified that without the Stipulated Phase II Projects, NIPSCO could not operate the facilities and achieve compliance with the Consent Decree or with the various requirements of CAIR, CATR and Utility MACT. NIPSCO witness Hooper provided extensive testimony regarding the measures NIPSCO has taken to ensure that the Stipulated Phase II Projects are managed prudently. Mr. Hooper provided testimony regarding what NIPSCO is doing and will do to control costs, remain on time and on budget and hold its contractors accountable as the Stipulated Phase II Projects progress. Based on the record evidence, we find the Stipulated Phase II Projects will allow NIPSCO to achieve compliance with the Consent Decree and the EPA Regulations and the likelihood of success in the implementation and utilization of the Stipulated Phase II Projects is high.

**(7) The cost and feasibility of the retirement of an existing electric generating facility.** No party offered evidence disputing that the Stipulated Phase II Projects are less expensive than the alternative of retiring coal-fired generation and adding additional generating capacity. Based on the evidence presented, we find that the cost and feasibility of retiring existing units and constructing equivalent installed capacity is not a suitable alternative to installation of the proposed Stipulated Phase II Projects.

**(8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.** By its Verified Petition, NIPSCO requested authority to perform dispatch of its generation units in a manner necessary to comply with the requirements of the Consent Decree or other environmental regulations or requirements and that the Commission declare such procedures to be in compliance with current and future dispatch parameters relating to the recovery of fuel costs.

The Settling Parties agreed it is reasonable for NIPSCO to change priority of dispatch, short term generation levels, or take an outage to maintain compliance with emission limitations and that NIPSCO's request to perform dispatch of its generation units in an economical and cost-effective manner necessary to comply with the requirements of the Consent Decree or other environmental regulations or requirements is reasonable and compliant with current and future dispatch parameters relating to the recovery of fuel costs. Mr. Carmichael testified that the projects included in NIPSCO's MPCP are designed to achieve the emission limitations set forth in the Consent Decree. In addition, the Stipulated Phase II Projects will provide for a base level of additional emission reductions that will be required under existing phased in and projected future EPA regulations and requirements. NIPSCO indicated that during certain situations it may be necessary for its units to

change priority of dispatch, short term generation levels, or take an outage to maintain compliance with emission limitations. Mr. Carmichael testified that if a piece of pollution control equipment malfunctions, an outage may be needed to repair the malfunction. Mr. Sangster testified that at times it may be necessary for NIPSCO to re-dispatch unit operations in order to achieve compliance with environmental requirements and that if necessary, NIPSCO will dispatch accordingly. There was no evidence offered that the Stipulated Phase II Projects will significantly alter the normal dispatching priority for the units.

NIPSCO's recognition and presentation of its environmental considerations in its unit dispatch is consistent with the Commission's prior recognition that Indiana utilities may sometimes need to change their priority of dispatch or short term generation levels for environmental purposes such as environmental derates. Based on the record evidence, we find it is possible that the dispatch order of NIPSCO's generation units may change as a result of installation of the Stipulated Phase II Projects due to potential changes in operating expenses, and find that NIPSCO's request to perform dispatch of its generation units in a manner necessary to comply with the requirements of the Consent Decree or other environmental regulations or requirements is reasonable.

**(9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of clean coal technology is in the public's interest.** No party submitted evidence that any other factors need to be considered in this Cause.

ii. **CPCN Findings.** Having considered the factors described in I.C. § 8-1-8.7-3(b), we must now proceed to address the three required findings set forth in I.C. § 8-1-8.7-4(b).

**(1) A finding that the public convenience and necessity will be served by the construction, implementation, and use of clean coal technology.** As we discussed above, we find that the Stipulated Phase II Projects are necessary to allow NIPSCO to reduce its air emissions sufficiently to comply with EPA Regulations and that NIPSCO could not achieve compliance without the Stipulated Phase II Projects. In addition, we find the Stipulated Phase II Projects will provide significant reductions in NOx emissions. Based on the record evidence and our analysis of the factors set forth in I.C. § 8-1-8.7-3(b), we find that the public convenience and necessity will be served by NIPSCO's construction, implementation and use of the Stipulated Phase II Projects.

**(2) Approval of the estimated costs.** The OUCC and Petitioner agree that the estimated costs provided by Petitioner in this Cause for the Stipulated Phase II Projects (U7 SCR Duct Burners - \$11,000,000, U8 SCR Duct Burners- \$16,000,000, U14 SCR Duct Burners - \$16,000,000, U15 SNCR Installation - \$6,000,000, U15 Continuous Particulate Monitors Addition - \$375,000, U14 Continuous Particulate Monitors Addition - \$375,000, U17 Continuous Particulate Monitors Addition - \$375,000, U18 Continuous Particulate Monitors Addition - \$375,000, U7/8 Continuous Particulate Monitors Addition common stack - \$375,000, U7/8 Continuous Particulate Monitors Addition bypass stack - \$375,000) are reasonable and should be approved. However, the stated accuracy of the estimates is +/- 25% for the Particulate Monitor projects and is +/- 40% for all other Stipulated Phase II Projects.

Indiana Code § 8-1-8.7-4(a) states: “As a condition for receiving the certificate required under section 3 of this chapter, an applicant must file an estimate of the cost of constructing, implementing, and using clean coal technology and supportive technical information in as much detail as the commission requires.” In addition, before we may grant Petitioner a CPCN for the Stipulated Phase II Projects, we must approve the estimated costs. I.C. § 8-1-8.7-4(b).

Petitioner’s Exhibit No. KWS-1 provides the current estimate for the installation of the control technologies included in the MPCP. Mr. Sangster testified that the installed cost of each Continuous Particulate Monitor is approximately \$375,000. Petitioner’s Exhibit No. KWS-5 provides the details of the cost estimate for the Unit 8 Duct Burner. NIPSCO also provided evidence regarding the anticipated O&M expenditures to support the QPCP and CCT projects included in the MPCP once they are in service on Petitioner’s Exhibit No. KWS-2.

It is generally anticipated that a utility will have performed enough engineering up front to provide a cost estimate with a reasonable range of accuracy by the time a petition for a CPCN is filed. As we have previously stated, “the initial granting of a CPCN depends in large part upon the economic efficacy of a proposed project, and as such, the initial cost estimates are a significant factor in the Commission’s decision making process.” *Indianapolis Power & Light*, Cause No. 42170 ECR 16 S1 at 7 (IURC July 7, 2011). NIPSCO has provided evidence to demonstrate that the amount of engineering performed prior to filing a petition for a CPCN for its Phase II Projects is reasonable and appropriate in light of the unique project drivers, the timeline for satisfying the environmental requirements of the Consent Decree, and the anticipated implementation of applicable EPA Regulations. However, in light of the lack of more detailed up-front engineering and its relatively broad range of accuracy, NIPSCO has an on-going duty to keep this Commission and its stakeholders informed of the progress in engineering and moving to the budgetary cost estimate phase as well as to demonstrate that any changes to the estimate are reasonable.

We believe that the reforms presented on page 21 of the Supplemental Direct Testimony of NIPSCO Witness Michael Hooper are appropriate to help NIPSCO develop more accurate cost estimates and minimize the likelihood of a large increase to the initial cost estimate used to support its environmental CPCN filings.

Based on the record evidence, we find that Petitioner’s cost estimates for the Stipulated Phase II Projects are reasonable and should be approved. We also find that going forward, NIPSCO should continue to implement the reforms presented on page 21 of the Supplemental Direct Testimony of NIPSCO Witness Michael Hooper to the extent they are cost effective under the circumstances, including conducting more benchmarking, collecting more market intelligence, obtaining second opinion cost estimates when such second opinion cost estimates are warranted, and amassing an appropriate level of experienced internal project management expertise to develop more accurate cost estimates and minimize the likelihood of a large increase to the initial cost estimate used to support its environmental CPCN filings.

**(3) A finding that the facility where the clean coal technology is employed: (A) utilizes and will continue to utilize Indiana coal as its primary fuel source; or (B) is justified, because of economic considerations or governmental requirements, in**

utilizing non-Indiana coal; after the technology is in place.<sup>5</sup> Based on our review of the record evidence, we find that the Stipulated Phase II Projects offer substantial potential of reducing sulfur or nitrogen based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989. We have also considered the other enumerated factors set forth in I.C. § 8-1-8.7-3 and made the required findings under I.C. § 8-1-8.7-4(b). Accordingly, we find that Petitioner’s request for a CPCN for the Stipulated Phase II Projects should be granted.

**C. Approval of Clean Energy Projects under I.C. § 8-1-8.8.** Indiana Code § 8-1-8.8-11 provides that “[a]n eligible business must file an application to the commission for approval of a clean energy project” and that “[t]he commission shall encourage clean energy projects by creating [certain] financial incentives for clean energy projects, if the projects are found to be reasonable and necessary.”

Mr. Sangster testified that installation and use of the Stipulated Phase II Projects will allow NIPSCO to continue to meet demands made upon it for electric power, while doing so in an environmentally compliant and cost effective manner.

As we discussed above, the Stipulated Phase II Projects constitute “clean energy projects” under I.C. § 8-1-8.8-2. Based on our review of the evidence, we find that the Stipulated Phase II Projects are reasonable and necessary to reduce NIPSCO’s NOx emissions. We therefore approve of the Stipulated Phase II Projects and find that they are eligible for the financial incentives set forth in I.C. § 8-1-8.8.

As a result of being eligible for the financial incentives under I.C. § 8-1-8.8, Petitioner requests authorization to utilize CWIP ratemaking treatment for clean energy projects (and CCT and QPCP) and to recover O&M expenses relating to the Stipulated Phase II Projects, including depreciation expense, for clean energy projects (and its CCT and QPCP) consistent with and through Petitioner’s currently-effective ECRM and EERM. Indiana Code 8-1-8.8-11(a)(1) provides:

(a) The commission shall encourage clean energy projects by creating the following financial incentives for clean energy projects, if the projects are found to be reasonable and necessary:

1. The timely recovery of costs and expenses incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter.

The Settling Parties agree Petitioner should be authorized to recover reasonable and prudently-incurred O&M expenses and depreciation expenses relating to the Stipulated Phase II Projects consistent with and through Petitioner’s currently-effective Environmental Expense Recovery Mechanism. Having found that the Stipulated Phase II Projects constitute clean energy projects that are reasonable and necessary and therefore eligible for the financial incentives set forth in I.C. § 8-1-8.8(a)(1), we therefore approve NIPSCO’s request for the timely recovery of costs and expenses incurred during construction and operation of the Stipulated Phase II Projects consistent

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<sup>5</sup> As discussed above in footnote 4, we will not use the Indiana coal requirement as a prerequisite for determination of NIPSCO’s eligibility for the depreciation treatment under I.C. § 8-1-2-6.7.

with and through Petitioner's currently effective ECRM and EERM pursuant to I.C. § 8-1-8.8-11(a)(1).

**D. Ratemaking Treatment and Depreciation.**

**i. Ratemaking Treatment - I.C. § 8-1-2-6.8 and 170 IAC 4-6.**

Petitioner requests a finding that the Stipulated Phase II Projects constitute "qualified pollution control property" and are eligible for the ratemaking treatment described in I.C. § 8-1-2-6.8. Specifically Petitioner requests authorization to utilize CWIP ratemaking treatment for CCT and QPCP (and clean energy projects) consistent with and through Petitioner's currently-effective ECRM. Petitioner also requests authorization to accrue AFUDC related to QPCP prior to CWIP ratemaking treatment or their reflection of such costs in NIPSCO's electric rates and a finding that the Projects are deemed to be under construction until such time the Commission determines that the Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner. Petitioner also requests authorization to recover through rates pre-construction costs incurred prior to approval of a Final Order in this proceeding through Petitioner's currently-effective ECRM.

Indiana Code § 8-1-2-6.8(e) provides: "Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction." The Commission's regulations relating to the ratemaking treatment of QPCP under construction further define the ratemaking treatment the Commission may grant for QPCP. *See* 170 IAC 4-6.

The Settling Parties agree that Petitioner should be authorized to utilize CWIP ratemaking treatment, including preconstruction costs incurred prior to the issuance of this Order, for the Stipulated Phase II Projects consistent with and through Petitioner's currently-effective ECRM and the Stipulated Phase II Projects are deemed to be under construction until such time the Commission determines that the Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner. The Settling Parties also agree that Petitioner should be authorized to accrue AFUDC related to the Stipulated Phase II Projects prior to CWIP ratemaking treatment or their reflection of such costs in NIPSCO's electric rates.

Mr. Westerhausen testified that NIPSCO's proposed ratemaking treatment is consistent with that previously approved for NIPSCO's existing NOx Compliance Plan (approved and modified by the Commission in Cause Nos. 42150, 42515, 42737, 42935, 43144, 43371, 43593, 43840, and 42150 ECR 17) and CAIR/CAMR Compliance Plan (approved and modified by the Commission in Cause Nos. 43188, 43371, 43593, 43840 and 42150 ECR17), both of which consisted of CCT and QPCP. Mr. Westerhausen provided evidence that the proposed ratemaking treatment can be readily incorporated into the existing ECRM and EERM filings made periodically with the Commission. Mr. Plantz testified that NIPSCO proposes to commence CWIP ratemaking treatment for the costs of each project once the project has been under construction for at least six months and that this is consistent with past practice using the ECRM. Mr. Plantz testified that NIPSCO proposes to continue recording AFUDC until such costs are given CWIP ratemaking treatment or are otherwise reflected in base electric rates or the Projects are placed in service, whichever occurs first.

We have already determined that the Stipulated Phase II Projects constitute “qualified pollution control property” as defined in I.C. § 8-1-2-6.8. As a result, we find the Stipulated Phase II Projects are eligible for the ratemaking treatment described in I.C. § 8-1-2-6.8. We find that Petitioner’s requests with respect to the ratemaking treatment of its QPCP are consistent with 170 IAC 4-6. We therefore authorize NIPSCO to utilize CWIP ratemaking treatment (including preconstruction costs) and AFUDC treatment for the Stipulated Phase II Projects consistent with and through Petitioner’s currently-effective ECRM, and we hereby deem the Stipulated Phase II Projects to be under construction until such time the Commission determines that the Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner.

We find that NIPSCO should be and hereby is authorized to accrue AFUDC on Phase II Projects costs up to the approved amount, which we have determined to be as follows: Unit 7 SCR Duct Burners - \$11,000,000, Unit 8 SCR Duct Burners- \$16,000,000, Unit 14 SCR Duct Burners - \$16,000,000, Unit 15 SNCR Installation - \$6,000,000, Unit 15 Continuous Particulate Monitors Addition - \$375,000, Unit 14 Continuous Particulate Monitors Addition - \$375,000, U17 Continuous Particulate Monitors Addition - \$375,000, Unit 18 Continuous Particulate Monitors Addition - \$375,000, Unit 7/8 Continuous Particulate Monitors Addition common stack - \$375,000, Unit 7/8 Continuous Particulate Monitors Addition bypass stack - \$375,000.

ii. **Depreciation Treatment - I.C. § 8-1-2-6.7.** Petitioner requests a finding that the Stipulated Phase II Projects are eligible for the depreciation treatment set forth in I.C. § 8-1-2-6.7. Indiana Code 8-1-2-6.7(b) provides:

The commission shall allow a public or municipally owned electric utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed: (1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or (2) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

We have already found that the Stipulated Phase II Projects constitute “clean coal technology” as defined in I.C. § 8-1-2-6.7. The Settling Parties agree that Petitioner should be authorized to depreciate each of the Stipulated Phase II Projects approved herein over the remaining useful life of the generating station as set forth in Petitioner’s Exhibit No. RGP-1 or over a period of twenty (20) years, whichever is less, pursuant to I.C. § 8-1-2-6.7. Therefore, we find that NIPSCO should be permitted to depreciate each of the Stipulated Phase II Projects over the lesser of the remaining useful life the generating stations or over a period of twenty (20) years.

E. **Ongoing Review, Semi-Annual Progress Reports and Reporting and Meeting Requirements.** As noted previously, Petitioner requests ongoing review of the Stipulated Phase II Projects pursuant to I.C. § 8-1-8.7-7. Petitioner also requests authority to file a semi-annual progress report (as compared to its current practice of filing an annual progress report) on the status of QPCP in the ECRM as part of every ECRM filing (Cause No. 42150 ECR-X).

In accordance with I.C. §8-1-8.7-7, the utility is to submit each year during construction, or at other times as the Commission and the public utility mutually agree, a progress report detailing any revisions in the cost estimates or the planned construction. The Commission must hold a hearing before it may approve or deny a proposed increase in the cost estimate for the implementation, construction or use of the clean coal technology. If the Commission approves the construction and the costs, that approval forecloses subsequent challenges to the inclusion of those costs in the utility's rate base on the basis of excessive cost, inadequate quality control, or inability to employ the technology.

The Settling Parties agree that Petitioner's request for ongoing review of the Stipulated Phase II Projects pursuant to I.C. § 8-1-8.7-7 and to file semi-annual progress reports as part of that ongoing review should be approved. NIPSCO Witness Curt Westerhausen testified that NIPSCO will continue to inform the Commission and other parties about the status of and changes to its previously approved CCT, QPCP, and clean energy projects and the proposed MPCP Projects (which include the Stipulated Phase II Projects) through its progress report filed as part of its ECRM filing. Furthermore, Mr. Westerhausen testified that NIPSCO proposes to increase the frequency of its progress reporting to semi-annual reports to provide better and more timely information to the Commission, other parties and ratepayers regarding the status of NIPSCO's projects.

In addition to the statutory ongoing review requirements and the semi-annual progress reporting, the Settling Parties agree, and we so find, that NIPSCO should comply with the following ongoing reporting and meeting requirements:

- (1) With respect to the Unit 7 and 14 Duct Burners and Unit 15 SNCR, NIPSCO agrees to:
  - Provide to the OUCC, Industrial Group and other interested stakeholders subject to a fully executed non-disclosure agreement or protective order on a monthly basis:
    - Weekly project status report (similar to Petitioner's Exhibit Nos. MH-S10 (Confidential));
    - Periodic senior management project status report prepared every 2 to 3 months (similar to Petitioner's Exhibit Nos. MH-S11 (Confidential));
    - Senior executive project report (similar to Petitioner's Exhibit Nos. MH-S12 (Confidential)); and
    - Reports of the cost breakdown as detailed engineering plans progress on a quarterly basis.
  - Meet with the OUCC, Industrial Group and other interested stakeholders that have executed a non-disclosure agreement as mutually agreed on an ad hoc basis to discuss the MPCP projects until the last of the Stipulated Phase II Projects goes into service subject to the understanding that some NIPSCO personnel may need to conduct some of the meetings via conference call, video conference, or

other remote means to reduce travel time and accommodate project management staff schedules; and

- Permit the OUCC, Industrial Group and other interested stakeholders that have executed a non-disclosure agreement to attend periodic senior management Phase II Project review meetings subject to attendees providing NIPSCO with advanced notice so that NIPSCO may make the proper security and safety arrangements.
- (2) With respect to the Continuous Particulate Monitor Projects, NIPSCO agrees to provide a report that tracks and reports costs (forecasted, committed, and paid) associated with the continuous particulate monitors projects for which a work order has been issued to the OUCC, Industrial Group and other interested stakeholders subject to a fully executed non-disclosure agreement or protective order on a monthly basis.
- (3) With respect to the Unit 8 Duct Burner project, NIPSCO will furnish a summary final report to the OUCC, Industrial Group and other interested stakeholders subject to a fully executed non-disclosure agreement or protective order in the format of the senior executive project report (similar to Petitioner's Exhibit Nos. MH-S12 (Confidential)) upon completion of the project.

We note that NIPSCO has regularly reported to the Commission on the progress of its approved CCT, QPCP, and clean energy projects by its annual progress reports in Cause Nos. 42515, 42737, 42935, 43144, 43371, 43593, 43840, and most recently as part of Cause No. 42150-ECR-17. In addition, the ECRM semi-annual proceedings are filed with the Commission, and the Commission must hold a hearing before it may approve or deny a proposed increase in the cost estimates for the implementation, construction or use of the CCT projects. Accordingly, based on the evidence presented in this Cause, we hereby find that the Petitioner's request for ongoing review of the construction of its CCT projects under I.C. §8-1-8.7-7 should be granted and that Petitioner's proposal to file semi-annual progress reports as part of that ongoing review is reasonable and should be approved. Consistent with our August 25, 2010 Order in Cause No. 43526, NIPSCO should continue to file the progress reports as part of its ECRM filings (Cause No. 42150-ECR-X). We also find that NIPSCO should comply with the ongoing reporting and meeting requirements enumerated in this section.

F. **Conclusion.** Based upon the discussion and findings set forth above, we find the Settlement resolves all matters pending before the Commission with respect to the Stipulated Phase II Projects and that the Settlement is supported by substantial evidence of record. Therefore, we further find that the Settlement is in the public interest and should be approved.

7. **Precedential Effect of Settlement Agreement.** With regard to future use, citation, or precedent of the Settlement Agreement, we find that our approval of the terms of the Settlement Agreement should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC, March 19, 1997).

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

1. The Stipulation and Settlement Agreement between Petitioner, the OUCC and Industrial Group filed in this Cause on November 9, 2011, shall be and hereby is accepted, approved and adopted by the Commission in its entirety without modification or change.

2. The Stipulated Phase II Projects shall be and hereby are determined to constitute “clean coal technology” as defined in I.C. § 8-1-8.7-1, I.C. § 8-1-2-6.7, I.C. § 8-1-2-6.8 and I.C. § 8-1-8.8-3.

3. Petitioner shall be and is hereby issued a Certificate of Public Convenience and Necessity for the Stipulated Phase II Projects pursuant to I.C. § 8-1-8.7. This Order constitutes the Certificate.

4. The cost estimates provided by Petitioner in this Cause for the Stipulated Phase II Projects shall be and are hereby approved.

5. Petitioner’s request for ongoing review of the Stipulated Phase II Projects pursuant to I.C. § 8-1-8.7-7 and to file semi-annual progress reports as part of that ongoing review shall be and is hereby approved.

6. The Stipulated Phase II Projects shall be and are hereby determined to constitute “qualified pollution control property” and are eligible for the ratemaking treatment described in I.C. § 8-1-2-6.8.

7. The Stipulated Phase II Projects shall be and are hereby determined to constitute “clean energy projects” under I.C. § 8-1-8.8 that are hereby approved as reasonable and necessary and therefore eligible for the timely recovery of costs and expenses incurred during construction and operation of the Stipulated Phase II Projects consistent with and through Petitioner’s currently-effective ECRM and EERM set forth in I.C. § 8-1-8.8-11(a)(1).

8. Petitioner shall be and is hereby authorized to utilize CWIP ratemaking treatment, including preconstruction costs incurred prior to the issuance of this Order, for the Stipulated Phase II Projects consistent with and through Petitioner’s currently-effective ECRM and the Stipulated Phase II Projects are deemed to be under construction until such time the Commission determines that the Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner.

9. Petitioner shall be and is hereby authorized to depreciate each of the Stipulated Phase II Projects approved herein over the remaining useful life of the project as set forth in Petitioner’s Exhibit No. RGP-1 or over a period of twenty (20) years, whichever is less, pursuant to I.C. § 8-1-2-6.7.

10. Petitioner shall be and is hereby authorized to accrue AFUDC related to the Stipulated Phase II Projects prior to CWIP ratemaking treatment or their reflection of such costs in NIPSCO’s electric rates.

11. Petitioner shall be and is hereby authorized to recover O&M expenses and depreciation expenses relating to the Stipulated Phase II Projects consistent with and through Petitioner’s currently-effective EERM.

12. Petitioner shall be and is hereby authorized to perform dispatch of its generation units in a manner necessary to comply with the requirements of the Consent Decree or other environmental regulations..

13. Petitioner shall comply with the ongoing reporting and meeting requirements enumerated in Finding Paragraph 6, Section E and as set forth in the Stipulation and Settlement Agreement.

14. The Confidential Information submitted by Petitioner in this Cause pursuant to its Motion for Protective Order is deemed confidential pursuant to I.C. § 5-14-3-4 and I.C. § 24-2-3-2 and shall continue to be held confidential and exempt from public access and disclosure by the Commission.

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

**LANDIS, MAYS AND ZIEGNER CONCUR; ATTERHOLT & BENNETT ABSENT:**

**APPROVED: FEB 15 2012**

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



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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC SERVICE )  
COMPANY FOR THE ISSUANCE OF A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY FOR THE )  
CONSTRUCTION OF CLEAN COAL TECHNOLOGY (“THE )  
PROJECTS”), INCLUDING ONGOING REVIEW OF THE )  
PROJECTS, PURSUANT TO IND. CODE CH. 8-1-8.7; FOR A )  
FINDING THAT (1) SUCH PROPERTY CONSTITUTES )  
QUALIFIED POLLUTION CONTROL PROPERTY AND IS )  
ELIGIBLE FOR THE RATEMAKING TREATMENT )  
PURSUANT TO IND. CODE § 8-1-2-6.8, (2) SUCH PROPERTY )  
CONSTITUTES CLEAN COAL AND ENERGY PROJECTS )  
AND IS ELIGIBLE FOR THE RATEMAKING AND )  
FINANCIAL TREATMENT PURSUANT TO IND. CODE CH. )  
8-1-8.8, (3) THE PROJECTS ARE DEEMED TO BE UNDER )  
CONSTRUCTION UNTIL SUCH TIME AS THE )  
COMMISSION DETERMINES THAT THE PROJECTS ARE )  
USED AND USEFUL, AND (4) THAT THE PROJECTS ARE )  
ELIGIBLE FOR THE DEPRECIATION TREATMENT SET )  
FORTH IN IND. CODE §8-1-2-6.7; FOR AUTHORIZATION )  
TO (1) DEFER AND AMORTIZE ASSOCIATED )  
DEPRECIATION AND OPERATION AND MAINTENANCE )  
EXPENSES, (2) DEFER PRECONSTRUCTION COSTS )  
INCURRED PRIOR TO THE ISSUANCE OF A FINAL )  
ORDER HEREIN, (3) ACCRUE ALLOWANCE FOR FUNDS )  
USED DURING CONSTRUCTION RELATED TO )  
QUALIFIED POLLUTION CONTROL PROPERTY PRIOR )  
TO CONSTRUCTION WORK IN PROGRESS RATEMAKING )  
TREATMENT, (4) PERFORM CERTAIN DISPATCH OF )  
PETITIONER’S GENERATION UNITS, AND (5) RECOVER )  
THE COST OF CERTAIN RENEWABLE ENERGY CREDITS; )  
AND FOR APPROVAL OF A REVISED COST ESTIMATE )  
FOR CONSTRUCTION PROJECTS PREVIOUSLY )  
APPROVED IN CAUSE NO. 43913. )

CAUSE NO. 44012

OFFICIAL  
EXHIBITS

STIPULATION AND SETTLEMENT AGREEMENT AND  
MOTION FOR MODIFICATION OF PROCEDURAL SCHEDULE

Northern Indiana Public Service Company (“NIPSCO”), the Indiana Office of Utility  
Consumer Counselor (“OUCC”) and NIPSCO Industrial Group (“Industrial Group”)

IURC  
JOINT

EXHIBIT No. 1  
72-14-11  
DATE REPORTER

(collectively, “Joint Movants”), by their respective counsel, respectfully request the Commission to approve the Stipulation and Settlement Agreement set forth herein with respect to all Phase II Projects other than the Michigan City Unit 12 Projects (the “Stipulated Phase II Projects”), and move the Commission for entry of an agreed procedural schedule for a new Phase III to be established in this Cause with respect to Michigan City Unit 12. The Joint Movants, in support thereof, show the Commission as follows:

1. Petitioner filed its Verified Petition initiating this Cause on March 22, 2011.
2. Petitioner filed a Motion for Procedural Schedule on April 26, 2011, which was granted by Docket Entry dated May 11, 2011. The May 11, 2011 Docket Entry set forth the agreed-to procedural schedule for this Cause.
3. Petitioner prefiled its prepared testimony and exhibits constituting its case-in-chief on May 2, 2011.
4. The OUCC filed a Motion for Extension of Time and Request for Attorneys’ Conference on June 27, 2011 requesting an extension of time for it and Industrial Group to file their cases-in-chief.
5. The Commission granted the OUCC’s request for Attorneys’ Conference by Docket Entry dated June 29, 2011.
6. In lieu of an Attorneys’ Conference, the parties met informally on June 29, 2011 to discuss the procedural issues in this Cause.

7. On July 1, 2011, the Parties requested that the procedural schedule be modified and converted to a bifurcated proceeding to allow the OUCC and Industrial Group to address NIPSCO's request for relief in two phases. Phase I would address and resolve all issues raised by NIPSCO in its Verified Petition with respect to the following three projects ("Phase I Projects"), as shown on Petitioner's Exhibit No. KWS-1 in the Direct Testimony of Kurt W. Sangster:

- (1) U14 FGD Facility Addition;
- (2) U14/15 FGD Common; and
- (3) U15 FGD Additions.

Phase II would address and resolve all issues raised by NIPSCO in its Verified Petition with respect to all other projects ("Phase II Projects"), as shown on Petitioner's Exhibit No. KWS-1 in the Direct Testimony of Kurt W. Sangster:

- (1) U12 FGD Facility Addition;
- (2) U7 SCR Duct Burners;
- (3) U8 SCR Duct Burners;
- (4) U12 SCR Duct Burners;
- (5) U14 SCR Duct Burners;
- (6) U15 SNCR Installation; and
- (7) Continuous Particulate Monitors Addition for Units 7, 8, 12, 14, 15, 17 and 18.

8. The following procedural schedule was established to address the Phase I Projects:

August 12, 2011	OUCC's and Intervenors' Phase I Prefiling Date
August 22, 2011	Petitioner's Phase I Rebuttal Prefiling Date
August 31, 2011	Evidentiary Hearing on the Parties' Phase I Cases-In-Chief
September 19, 2011	Petitioner's submission of its proposed order and post-hearing brief in Phase I

- October 11, 2011           OUCC's and Intervenors' submission of proposed orders, exceptions to Petitioner's proposed order and post-hearing briefs in Phase I, if any
- October 24, 2011           Petitioner's submission of exceptions to proposed orders and replies to exceptions and briefs of OUCC and Intervenor in Phase I

9.     The following procedural schedule was established to address the Phase II Projects:

- August 18, 2011            Petitioner's Phase II Supplemental Direct Prefiling Date
- October 20, 2011           OUCC's and Intervenors' Phase II Prefiling Date
- November 10, 2011         Petitioner's Phase II Rebuttal Prefiling Date
- December 14-15, 2011     Evidentiary Hearing on the Parties' Phase II Cases-In-Chief
- December 22, 2011         Petitioner's submission of its proposed order and post-hearing brief in Phase II
- January 13, 2012           OUCC's and Intervenors' submission of proposed orders, exceptions to Petitioner's proposed order and post-hearing briefs in Phase II, if any
- January 20, 2012           Petitioner's submission of exceptions to proposed orders and replies to exceptions and briefs of OUCC and Intervenor in Phase II

10.    Phase I is fully briefed and awaiting the issuance of an Order. Petitioner prefiled its Phase II Supplemental Direct Testimony on August 18, 2011 and the OUCC and Intervenors prefiled their respective cases-in-chief on October 20 and 21, 2011, respectively.

11.    In order to facilitate the timely resolution of the non-contested Phase II issues, Joint Movants request that the procedural schedule be modified so that the resolution of issues arising from NIPSCO's request for relief for all projects relating to Michigan City Unit 12 be moved to a newly-established Phase III of this proceeding.

12. Joint Movants propose that Phase II address and resolve all issues raised by NIPSCO in its Verified Petition with respect to the following projects (“Stipulated Phase II Projects”).

- (1) U7 SCR Duct Burners;
- (2) U8 SCR Duct Burners;
- (3) U14 SCR Duct Burners;
- (4) U15 SNCR Installation; and
- (5) Continuous Particulate Monitors Addition for Units 7, 8, 14, 15, 17 and 18.

13. For purposes of settling the issues raised with respect to the Stipulated Phase II Projects, the Joint Movants agree that the terms and conditions set forth below represent a fair and reasonable resolution of all issues subject to incorporation into a Final Phase II Order of the Indiana Utility Regulatory Commission (“Commission”) without any modification or condition that is not acceptable to the Joint Movants:

- a. The Joint Movants stipulate that the Stipulated Phase II Projects constitute “clean coal technology” as defined in Ind. Code § 8-1-8.7-1, Ind. Code § 8-1-2-6.7, Ind. Code § 8-1-2-6.8 and Ind. Code § 8-1-8.8-3.
- b. The Joint Movants stipulate that that the public convenience and necessity will be served by Petitioner’s construction, implementation, and use of the Stipulated Phase II Projects and that a Certificate of Public Convenience and Necessity should be issued for the Stipulated Phase II Projects pursuant to Ind. Code Ch. 8-1-8.7.
- c. The OUCC and Petitioner agree that the estimated costs provided by Petitioner in this Cause for the Stipulated Phase II Projects (U7 SCR Duct Burners - \$11,000,000, U8 SCR Duct Burners- \$16,000,000, U14 SCR Duct Burners - \$16,000,000, U15 SNCR Installation - \$6,000,000, U15 Continuous Particulate Monitors Addition - \$375,000, U14 Continuous Particulate Monitors Addition - \$375,000, U17 Continuous Particulate Monitors Addition - \$375,000, U18 Continuous Particulate Monitors Addition - \$375,000, U7/8 Continuous Particulate Monitors Addition common stack - \$375,000, U7/8 Continuous Particulate Monitors Addition bypass stack - \$375,000) are reasonable and should be approved. However, the stated accuracy of the estimates is +/-25% for the Particulate Monitor projects and is +/-40% for all other Stipulated Phase II Projects.
- d. The Industrial Group does not object to Petitioner’s estimated costs.

- e. The Joint Movants stipulate that Petitioner's request for ongoing review of the Stipulated Phase II Projects pursuant to Ind. Code § 8-1-8.7-7 and to file semi-annual progress reports as part of that ongoing review should be approved.
- f. The Joint Movants stipulate that the Stipulated Phase II Projects constitute "qualified pollution control property" and are eligible for the ratemaking treatment described in Ind. Code § 8-1-2-6.8.
- g. The Joint Movants stipulate that the Stipulated Phase II Projects constitute "clean energy projects" under Ind. Code Ch. 8-1-8.8 that should be approved as reasonable and necessary and therefore eligible for the timely recovery of reasonable and prudently-incurred costs and expenses incurred during construction and operation of the Stipulated Phase II Projects consistent with and through Petitioner's currently-effective Environmental Cost Recovery Mechanism ("ECRM") and Environmental Expense Recovery Mechanism ("EERM") set forth in Ind. Code Ch. 8-1-8.8-11(a)(1).
- h. The Joint Movants stipulate that Petitioner should be authorized to utilize construction work in progress ("CWIP") ratemaking treatment, including preconstruction costs incurred prior to the issuance of this Order, for the Stipulated Phase II Projects consistent with and through Petitioner's currently-effective Environmental Cost Recovery Mechanism and the Stipulated Phase II Projects are deemed to be under construction until such time the Commission determines that the Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner.
- i. The Joint Movants stipulate that Petitioner should be authorized to depreciate each of the Stipulated Phase II Projects approved herein over the remaining useful life of the project as set forth in Petitioner's Exhibit No. RGP-1 or over a period of twenty (20) years, whichever is less, pursuant to Ind. Code § 8-1-2-6.7.
- j. The Joint Movants stipulate that Petitioner should be authorized to accrue allowance for funds used during construction ("AFUDC") related to the Stipulated Phase II Projects prior to CWIP ratemaking treatment or their reflection of such costs in NIPSCO's electric rates.
- k. The OUCC and Petitioner stipulate that Petitioner should be authorized to recover reasonable and prudently-incurred Operating and Maintenance ("O&M") expenses and depreciation expenses relating to the Stipulated Phase II Projects consistent with and through Petitioner's currently-effective Environmental Expense Recovery Mechanism. The Industrial Group does not object to the requested recovery.
- l. The Joint Movants stipulate that it is reasonable for NIPSCO to change priority of dispatch, short term generation levels, or take an outage to maintain compliance with emission limitations and that NIPSCO's request to perform dispatch of its generation units in an economical and cost-effective manner necessary to comply with the requirements of the Consent Decree or other environmental regulations or requirements is reasonable and compliant with current and future dispatch parameters relating to the

recovery of fuel costs.

- m. The Joint Movants stipulate that NIPSCO should comply with the following ongoing reporting and meeting requirements:

With respect to the Unit 7 and 14 Duct Burners and Unit 15 SNCR, NIPSCO agrees to:

- Provide to the OUCC, Industrial Group and other interested stakeholders subject to a fully executed non-disclosure agreement or protective order on a monthly basis:
  - Weekly project status report (similar to Petitioner's Exhibit Nos. MH-S10 (Confidential));
  - Periodic senior management project status report prepared every 2 to 3 months (similar to Petitioner's Exhibit Nos. MH-S11 (Confidential));
  - Senior executive project report (similar to Petitioner's Exhibit Nos. MH-S12 (Confidential)); and
  - Reports of the cost breakdown as detailed engineering plans progress on a quarterly basis.
- Meet with the OUCC, Industrial Group and other interested stakeholders that have executed a non-disclosure agreement as mutually agreed on an ad hoc basis to discuss the Multi-Pollutant Compliance Plan projects until the last of the projects goes into service subject to the understanding that some NIPSCO personnel may need to conduct some of the meetings via conference call, video conference, or other remote means to reduce travel time and accommodate project management staff schedules; and
- Permit the OUCC, Industrial Group and other interested stakeholders that have executed a non-disclosure agreement to attend periodic senior management Phase II Project review meetings subject to attendees providing NIPSCO with advanced notice so that NIPSCO may make the proper security and safety arrangements.

With respect to the Continuous Particulate Monitor Projects, NIPSCO agrees to provide a report that tracks and reports costs (forecasted, committed, and paid) associated with the continuous particulate monitors projects for which a work order has been issued to the OUCC, Industrial Group and other interested stakeholders subject to a fully executed non-disclosure agreement or protective order on a monthly basis.

With respect to the Unit 8 Duct Burner project, NIPSCO will furnish a summary final report to the OUCC, Industrial Group and other interested stakeholders subject to a fully executed non-disclosure agreement or protective order in the format of the

senior executive project report (similar to Petitioner's Exhibit Nos. MH-S12 (Confidential)) upon completion of the project.

- n. The Joint Movants stipulate that the information filed by Petitioner in this Cause pursuant to its Motions for Protective Order should be deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law, and should be held confidential and protected from public access and disclosure by the Commission.
- o. The Joint Movants stipulate that all evidence which has been prefiled in this Cause with respect to Phase II is admissible in evidence. Further, the Joint Movants stipulate that such evidence constitutes a sufficient evidentiary basis for a Commission Order approving this Stipulation. The Joint Movants hereby waive cross examination of each other's respective witnesses as to Phase II Stipulated Projects.
- p. If this Stipulation is not approved in its entirety by the Commission, or if the Commission does not approve the Joint Movants' request for the establishment of a Phase III of the proceedings, then the Joint Movants stipulate that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding. Moreover, the concurrence of the Joint Movants with, or withholding of any objection to, the terms of this Stipulation is expressly predicated upon the Commission's approval of the Stipulation in its entirety without any material modification or any material condition deemed unacceptable by any Party. If the Commission does not approve the Stipulation in its entirety, or if the Commission does not approve the Joint Movants' request for the establishment of a Phase III of the proceedings, then the Stipulation shall be null and void and be deemed withdrawn, upon notice in writing by any Joint Movant within fifteen (15) days after the date of the Final Order that any modifications made by the Commission are unacceptable to it. In the event the Stipulation is withdrawn, the Joint Movants will request that an Attorneys' Conference be convened to establish a procedural schedule for the continued litigation of Phase II of this proceeding.
- q. The Joint Movants stipulate that this Stipulation reflects a fair, just, and reasonable resolution and compromise for the purpose of settlement, and is agreed upon without prejudice to the ability of any party to propose a different term in future proceedings. As set forth in the Order in *Re Petition of Richmond Power & Light*, Cause No. 40434, p. 10, the Joint Movants stipulate and request Commission to incorporate as part of its Final Order in Phase II that this Stipulation, or the Order approving it, not be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues. This Stipulation is solely the result of compromise in the settlement process. Each of the Joint Movants hereto has entered this Stipulation solely to avoid further disputes and litigation with the attendant inconvenience, risks and expenses.
- r. The Joint Movants represent and stipulate that they are fully authorized to execute this

Stipulation on behalf of their designated clients who will be bound thereby.

14. The Joint Movants request the Commission, to the extent an earlier hearing date which is agreeable to all Joint Movants is available, to vacate the hearing scheduled for December 14 and 15, 2011, so as to establish said earlier hearing date. Regardless of whether the evidentiary hearing date is advanced, the Joint Movants inform the Commission that (assuming no questions from the Commission) the evidentiary hearing can be concluded in approximately 30 minutes time. Joint Movants will submit a Joint Proposed Order within ten (10) days of the evidentiary hearing.

15. Joint Movants propose that Phase III address and resolve all issues raised by NIPSCO in its Verified Petition with respect to the following other projects (“Phase III Projects”):

- (1) U12 FGD Facility Addition;
- (2) U12 SCR Duct Burners; and
- (3) Continuous Particulate Monitors Addition for Unit 12

16. Joint Movants propose the following procedural schedule to address the Phase III Projects:

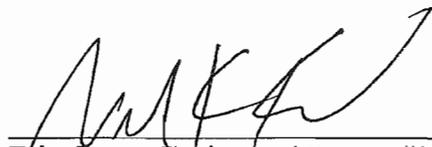
Feb. 9, 2012	Joint Movants’ Submission of Settlement Agreement and Testimony in Support of Settlement Agreement or Petitioner’s Phase III Supplemental Direct Prefiling Date
Week of Feb. 27, 2012	Settlement Hearing
March 22, 2012	Joint Movants’ Submission of Joint Proposed Order in support of Settlement
Mar. 29, 2012	OUCC’s and Intervenors’ Phase III Prefiling Date
Apr. 20, 2012	Petitioner’s Phase III Rebuttal Prefiling Date

May 7 or May 10, 2012	Evidentiary Hearing on the Parties' Phase III Cases-In-Chief
June 1, 2012	Petitioner's submission of its proposed order and post-hearing brief in Phase III
June 26, 2012	OUCC's and Intervenors' submission of proposed orders, exceptions to Petitioner's proposed order and post-hearing briefs in Phase III, if any
July 9, 2012	Petitioner's submission of exceptions to proposed orders and replies to exceptions and briefs of OUCC and Intervenors in Phase III

WHEREFORE, NIPSCO, the OUCC, and the Industrial Group respectfully request the Commission:

1. To the extent possible, advance the evidentiary hearing date for the Stipulated Phase II Projects as proposed in Paragraph 14 herein;
2. Establish a procedural schedule for the Phase III Projects as proposed in Paragraph 16 herein; and
3. Approve the Joint Movants' Stipulation set forth in Paragraph 13 herein.
4. Grant the Parties all other just and proper relief.

Respectfully submitted,

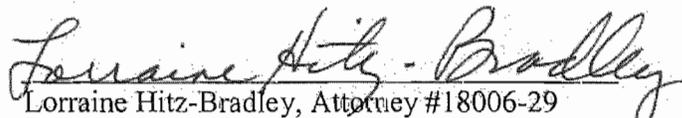



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Attorney for NIPSCO Industrial Group

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing has been served via email transmission, this

9<sup>th</sup> day of November, 2011 upon the following:

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Erin Casper-Borisov      Nicholas Kilg