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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:

DEC 28 2011

PHASE I 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. Phase I addresses 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 will 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, and Schahfer Units 17 and 18.

In accordance with the revised procedural schedule, NIPSCO prefiled Phase I supplemental direct testimony and exhibits of its witnesses Michael Hooper and Ronald G. Plantz on July 21, 2011. On July 26, 2011, NIPSCO filed a *Notice of Order Approving Consent Decree*. The OUCC prefiled Phase I direct testimony of its witnesses Ray L. Snyder, Cynthia M. Armstrong and Wes R. Blakley and the Industrial Group prefiled Phase I direct testimony of its witness James R. Dauphinais. NIPSCO prefiled the rebuttal testimony of Messrs. Carmichael, Hooper and Plantz. The Commission issued a Docket Entry on August 26, 2011, directing Petitioner to respond to questions, to which Petitioner responded on August 30, 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 August 31, 2011, at 9:30 a.m., in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the Phase I

prefiled evidence of NIPSCO, OUCC and Industrial Group were admitted into the record without objection. The OUCC and the Presiding Officers questioned NIPSCO's witnesses; no questions were asked of the witnesses for the Industrial Group or the OUCC. 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 Ind. Code § 8-1-2-1(a) and Ind. Code § 8-1-8.7-2, a "utility" as that term is defined in Ind. Code § 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, while meeting strict clean air requirements. 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 requires, *inter alia*, 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") (may also be referred to as Clean Air Interstate Rule ("CAIR") or the Clean Air Transport Rule ("CATR")) 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")) (standards (collectively, the "EPA Regulations"). These rules will require NIPSCO to further reduce its nitrogen oxides ("NOx"), sulfur dioxides ("SO₂") 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 SO₂, 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 the MPCP, pursuant to Ind. Code § 8-1-8.7, and for approval of these projects pursuant to Ind. Code § 8-1-8.8.

In the December 29, 2010 Order in Cause No. 43913 ("43913 Order"), the Commission approved NIPSCO's request for a CPCN for the Schahfer Unit 14 wet FGD and certain common facilities to be shared with an FGD to be installed on Schahfer Unit 15 ("Common Facilities"). In this Cause, NIPSCO is requesting approval of its updated cost estimates for the Schahfer Unit 14 wet FGD and Common Facilities to be shared with the Schahfer Unit 15 FGD.¹

By its Petition, Petitioner requests the following relief with respect to the Phase I Projects:

- (a) the issuance of a CPCN to Petitioner for the Phase I Projects to reduce SO₂ and NOx emissions pursuant to Ind. Code § 8-1-8.7-1, *et seq.*;
- (b) approval of cost estimates for the Phase I Projects;
- (c) ongoing review of the Phase I Projects pursuant to Ind. Code § 8-1-8.7-7;
- (d) a finding that the Phase I Projects constitute "qualified pollution control property" and are eligible for the ratemaking treatment described in Ind. Code § 8-1-2-6.8;
- (e) a finding that the Phase I Projects constitute "clean energy projects" under

¹ NIPSCO provided separate cost estimates for the Unit 14 FGD, Unit 15 FGD and the Common Facilities for Units 14 & 15 in this Cause. *See* Petitioner's Exhibit No. KWS-1.

Ind. Code § 8-1-8.8, and a finding that the Phase I Projects are reasonable and necessary and therefore eligible for the financial incentives set forth in Ind. Code § 8-1-8.8;

(f) authorization to utilize construction work in progress (“CWIP”) ratemaking treatment for clean coal technology (“CCT”), qualified pollution control property (“QPCP”) and clean energy projects consistent with and through Petitioner’s currently-effective Environmental Cost Recovery Mechanism (“ECRM”);

(g) authorization to recover operating and maintenance (“O&M”) expenses relating to the Phase I Projects, including depreciation expense, for CCT, QPCP and clean energy projects consistent with and through Petitioner’s currently-effective Environmental Expense Recovery Mechanism (“EERM”);

(h) authorization to defer for recovery through rates pre-construction costs incurred prior to approval of a Final Order in this proceeding to the extent that such costs are reasonable and prudent and consistent with the scope of the Phase I Projects as further described in Petitioner’s evidence through Petitioner’s currently-effective ECRM and EERM;

(i) a finding that the Phase I Projects are eligible for the depreciation treatment set forth in Ind. Code § 8-1-2-6.7(b);

(j) authorization to accrue allowance for funds used during construction (“AFUDC”) related to QPCP prior to CWIP ratemaking treatment or their reflection of such costs in NIPSCO’s electric rates;

(k) a finding that the Phase I Projects are deemed to be under construction until such time the Commission determines that the Phase I Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner;

(l) authorization to perform dispatch of its generation units in a manner necessary to comply with the requirements of the Consent Decree and declaring such procedures to be in compliance with current and future dispatch parameters relating to the recovery of fuel costs;

(m) approval of the revised cost estimate of the Schahfer Unit 14 wet FGD and Common Facilities previously approved in the 43913 Order; and

(n) such other relief afforded and authorized by the applicable statutes, regulations, orders and tariffs.

In addition, by their Joint Motion filed on July 1, 2011, NIPSCO, the OUCC and the Industrial Group requested authority for Petitioner to (1) accrue AFUDC prior to CWIP ratemaking treatment, (2) include preconstruction costs as part of the recovery of Phase II Projects capital expenditures, and (3) defer for recovery through rates the O&M expenses and depreciation expense associated with its Phase II Projects incurred by NIPSCO prior to the time that the Commission issues a Phase II Order. As to (3), the OUCC and Industrial Group retained

their respective rights to challenge the inclusion of costs at the time that NIPSCO seeks recovery to the extent that either party believes that the cost was not prudently incurred.

4. Evidence Presented.

A. Petitioner's Case-In-Chief. Petitioner filed direct testimony and exhibits and supplemental direct testimony and exhibits that addressed the Multi-Pollutant Compliance Plan, including the Phase I Projects. Petitioner's evidence relating to the Phase I Projects is summarized as follows:

1. 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 CSAPR and the Utility MACT standards. He explained that these regulations will require NIPSCO to further reduce its NO_x, SO₂, 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's regulatory requirements.

2. Direct Testimony of Kurt W. Sangster. NIPSCO Witness Kurt W. Sangster testified in support of NIPSCO's request for a CPCN for the Phase I 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.

3. 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 CWIP ratemaking treatment for CCT, 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 Phase I 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 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.

4. 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 AFUDC prior to CWIP ratemaking treatment, (2) include preconstruction costs as part of the recovery of the Phase II Projects capital expenditures, and (3) defer for recovery through rates the O&M and depreciation expenses associated with the Phase II Projects incurred by NIPSCO

prior to the time that the Commission issues a Phase II Order.

5. 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 Phase I Projects and the associated approval of cost estimates. He explained how the current cost estimates for the Unit 14 FGD and the Common Facilities could have grown so materially from the time of the 43913 Order and explained the steps NIPSCO has taken to prevent further increases and to avoid surprises with the remaining projects. 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, an update on the Schahfer FGD project execution strategy and engineering and construction status, an explanation of the refined cost estimate for the Unit 14 FGD and the Common Facilities approved in Cause No. 43913, NIPSCO's processes to control costs and meet the project deadlines, and NIPSCO's recommendation for an ongoing reporting requirement to provide transparent information regarding the costs and progress of the Phase I Projects to stakeholders.

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

1. Testimony of Ray L. Snyder. OUCC Witness Ray L. Snyder testified that the OUCC generally supports the issuance of a CPCN for the Phase I Projects. He presented the OUCC's recommendations on NIPSCO's request and discussed the OUCC's concerns with the Phase I Projects. In particular, he expressed concern that NIPSCO's estimates for Cause No. 43913 were based on a "budgetary cost...for a generic wet FGD." Mr. Snyder stated that this estimate did not take into account site-specific issues, which ultimately caused the project's budget to increase by a large percentage. Mr. Snyder also recommended that the Commission adopt estimating standards and pursue increased scrutiny of utility project management "to insure that all utilities, including NIPSCO, present the true range of costs and risks associated with their proposed projects."

Mr. Snyder testified that NIPSCO's current estimate for the Cause No. 43913 projects – the Unit 14 FGD and the common costs for Units 14 and 15 – were 100% higher than originally approved in Cause No. 43913. The 43913 Order granted NIPSCO a right to recover \$153,560,417; Mr. Snyder noted that NIPSCO's new estimate is \$307,000,000, which is \$153,560,110 more than the 43913 Order approved. Mr. Snyder stated that NIPSCO witness Mr. Hooper testified that NIPSCO's range of accuracy for its most recent estimate was +/- 25%. As a consequence, there is the possibility that "the final cost of the project could be as high as \$625,000,000 or as low as \$375,000,000."

Adding the request for a CPCN for Schahfer Unit 15's FGD, Mr. Snyder stated that the Phase I projects' total current estimate was \$500,000,000. Based on his research for the cost of installation of retrofit FGD projects showing a cost of \$445,179,000, Mr. Snyder stated that NIPSCO's current estimate of \$500,000,000 was supportable.

He further recommended that with respect to AFUDC on the Phase I Projects, the Commission should approve the lesser of the actual project costs plus AFUDC or the current

estimated cost of \$500,000,000 plus \$10,000,000 AFUDC. This amount of AFUDC was based on NIPSCO's response to an OUCC data request asking for an estimate of AFUDC for Phase I projects, which NIPSCO stated was \$9.6 million. However, based on Mr. Hooper's testimony that costs were within a +/- 25% range of accuracy, the addition of \$10 million in AFUDC could push the cost to \$634,690,000, which would result in a much higher cost per megawatt than the Sargent & Lundy or Marchetti studies previously supported. Based on the Marchetti study provided by NIPSCO, the calculation of cost per kW was \$493/kW; the Sargent & Lundy study resulted in \$477/kW. By contrast, the "worst case scenario" of a cost for the Phase I projects of \$634,690,000 would result in a cost of \$702/kW. He stated that if the actual costs exceeded this amount, then NIPSCO should be required to justify the increase in a separate filing.

Mr. Snyder expressed concern about the negative impact on ratepayers that would result from continuing increases in project costs and the need for NIPSCO to provide complete project management reports on a monthly basis as it proceeds with detailed engineering, procurement and construction. Mr. Snyder recommended that the Commission order NIPSCO to comply with certain ongoing reporting and meeting requirements regarding the Phase I Projects. Specifically, Mr. Snyder recommended the following:

- a. If the current estimate of \$500,000,000 (plus \$10 million AFUDC) is exceeded in completion of the Phase I projects, the Commission require NIPSCO to demonstrate (1) why the construction costs could not be maintained within budget; (2) what actions NIPSCO took to mitigate cost overruns; and (3) what actions NIPSCO took to shift risk for cost overruns to contractors through contracting processes such as fixed-price contracts. Mr. Snyder testified that the OUCC recommends that all utilities, including NIPSCO, perform more detailed engineering up front in CPCN proceedings for more realistic cost estimating, and provide additional cost scenarios and sensitivity analysis with project cost estimates.
- b. The construction, costs, and date placed into service associated with regard to the Unit 14/15 common equipment should be documented and tracked for cost control and rate treatment purposes. The OUCC recommends that project management reports, including cost breakdown for the Phase I Projects, be submitted to the Commission and to the OUCC monthly as detailed engineering plans move forward.
- c. Wet FGD technology is characterized by high capital and operating costs due to the handling of reagent and waste, and the need for a wastewater treatment system for compliance. The OUCC recommends NIPSCO furnish timely and recurring updates to the Commission and to the OUCC on the disposal process of the waste product being developed.
- d. NIPSCO provided information about internal project planning, reporting, and tracking of key project metrics of manpower, materials, and costs. This included weekly project reports; charts of scheduled activities and man-hours v. baseline; Cost Performance Index ("CPI") and Schedule Performance Index ("SPI"); individual contract metrics/chart of planned v. actual; project "slip" reports; risk

profile procedures; and six-month progress report meetings. NIPSCO agreed to send copies of these reports to the OUCC upon request on an ongoing basis, and to consider attendance of the OUCC at the six-month progress meetings. The OUCC would like to confirm that these reports will be indeed furnished by NIPSCO to the OUCC on an ongoing basis, and that NIPSCO progress report meetings can be attended as requested by the OUCC.

2. Testimony of Cynthia M. Armstrong. OUCC Witness Cynthia M. Armstrong testified regarding various environmental laws and regulations, including the EPA's final CSAPR issued on July 6, 2011. She concluded that the Consent Decree, the CSAPR and the Utility MACT, among others, are driving the need for the Phase I Projects. She testified that based on her research, NIPSCO will need few, if any, SO₂ allowances to meet EPA emission standards in 2012. However, by 2014, NIPSCO will need to cut SO₂ emissions by more than 23,000 tons to remain in compliance with the CSAPR. She testified that the best way to achieve compliance with the CSAPR is to reduce emissions from the units that emit the most SO₂, which in NIPSCO's case is Schahfer Units 14 and 15.

Ms. Armstrong also discussed the Utility MACT, which the EPA plans to finalize no later than November 11, 2011. "[Utility MACT] dictates emission standards for mercury, non-mercury metallics and acid gas emissions...from coal- and oil-fired [electric generating units]." She stated that Utility MACT for reduction of acid gas emissions is FGD. As a consequence, Schahfer Units 14 and 15 will need to be retrofitted with FGD to remain in compliance with MATS as currently proposed. As a consequence, Ms. Armstrong concluded that the Phase I Projects as proposed by NIPSCO are necessary, and ended by referring to Mr. Snyder's testimony regarding cost control.

3. Testimony of Wes R. Blakley. OUCC Witness Wes R. Blakley testified regarding NIPSCO's requested accounting treatment. Specifically, he recommended that (1) the Commission approve CWIP treatment for QPCP projects in Phase I and II as well as permit NIPSCO to record AFUDC on these projects until such costs receive ratemaking treatment or are included in NIPSCO's base electric rates; (2) that the Commission approve and apply a 20-year accelerated depreciation period to all Phase II projects, including the Unit 15 FGD as well as all equipment listed on Exhibit RGP-1, that have life years over 20 years; and (3) that the Commission review the accounting request by NIPSCO for special post-in-service accounting treatment for depreciation, O&M and accrual of AFUDC for both Phase I and Phase II projects.

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

1. Testimony of James R. Dauphinais. Industrial Group Witness James R. Dauphinais testified that the projects in this proceeding are the largest capital projects NIPSCO has engaged in since it completed construction of Schahfer Unit 18 nearly 25 years ago. He stated that when the economics of a project are borderline, estimation errors that greatly underestimate the true cost of a project can lead to the granting of a CPCN when one should not have been granted, leading to higher costs of service. Noting NIPSCO's significantly increased estimate for the Schahfer Unit 14 FGD and certain common facilities for Units 14 and 15, Mr.

Dauphinais recommended three conditions for the issuance of a CPCN for the Phase I Projects in order to monitor the status of these projects, and to help incentivize NIPSCO to complete those projects in a timely, cost effective and transparent manner. Those conditions included (1) implementation of reforms described by NIPSCO Witness Michael Hooper on page 21 of Mr. Hooper's testimony (as will be further described herein), and any other reasonable and available means to minimize large budgetary estimate increases; (2) NIPSCO agreeing to a reporting requirement whereby it will provide copies of weekly, monthly and senior executive reports no less frequently than monthly, and (3) NIPSCO agreeing to conduct quarterly and ad hoc meetings with the OUCC and interested stakeholders. Mr. Dauphinais further testified that NIPSCO had not identified the cost, if any, to accelerate the Schahfer Unit 15 FGD installation, or any alternatives to that acceleration.

D. Petitioner's Rebuttal Evidence. Petitioner filed rebuttal testimony and exhibits summarized as follows:

1. Rebuttal Testimony of Kelly R. Carmichael. Mr. Carmichael testified on rebuttal to respond to Industrial Group and OUCC testimony relating to the Consent Decree and various state and environmental air regulations impacting the continued operation of NIPSCO's electric generating units. He generally agreed with the testimony of Ms. Armstrong and Mr. Dauphinais on those topics.

2. Rebuttal Testimony of Michael Hooper. Mr. Hooper testified on rebuttal to address issues raised by the OUCC and Industrial Group relating to communication, reporting requirements, project planning and cost estimation principles, the relationship between Indiana's CPCN statutes and project planning and cost estimation, and the refined cost estimates for the Schahfer Unit 14 FGD and the Common Facilities approved in Cause No. 43913. With certain clarifications and subject to confidentiality issues, he agreed with their meeting and reporting requests. He also responded to the specific recommendations offered by the parties related to NIPSCO's request for relief in Phase I. He disagreed with the OUCC's request that all utilities should complete detailed engineering up front prior to filing for a CPCN. He also disagreed with the OUCC's proposed cap on AFUDC for the Phase I Projects. He agreed that as a part of ongoing review, NIPSCO would be required to justify any future costs increases above the amount approved by the Commission in this Cause.

3. Rebuttal Testimony of Ronald G. Plantz. Mr. Plantz testified on rebuttal related to NIPSCO's requested accounting treatment for the Phase I Projects. He accepted Mr. Blakley's proposed change in depreciation life for the Unit 15 FGD.

5. Commission Discussion and Findings.

A. Clean Coal Technology, Qualified Pollution Control Technology, Clean Energy Projects. Petitioner has requested relief under the following Indiana statutes: Ind. Code Chapter 8-1-8.7, Ind. Code Chapter 8-1-8.8, Ind. Code § 8-1-2-6.7, and Ind. Code § 8-1-2-6.8. As an initial matter, we must determine whether the Phase I Projects constitute "clean coal technology" under Ind. Code Chapter 8-1-8.7, Ind. Code § 8-1-2-6.7, Ind. Code § 8-1-2-6.8 and Ind. Code § 8-1-8.8-3, "qualified pollution control technology" under Ind. Code § 8-1-2-6.8, and "clean energy project"s under Ind. Code Chapter 8-1-8.8.

1. Clean Coal Technology under 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. The term “clean coal technology” or CCT is defined slightly differently by the various statutes, but all are generally consistent. Pursuant to Ind. Code § 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.

Ind. Code § 8-1-8.7-1.²

NIPSCO Witness Kurt Sangster testified that the Phase I Projects (i.e. the Unit 14 FGD, Unit 15 FGD and the Common Facilities) will be installed at NIPSCO’s Schahfer generating facility and will reduce the emissions of SO₂ from flue gas created during the combustion of coal. Mr. Sangster testified that none of the Multi-Pollutant Compliance Plan projects were commercially available prior to January 1, 1989 and that the projects will reduce sulfur-based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989. No party disputed this testimony.

Based on our review of the record evidence, we find that the Phase I 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.

2. Qualified Pollution Control Property under Ind. Code § 8-1-2-6.8. Ind. Code § 8-1-2-6.8 defines “qualified pollution control property” or 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.”

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

² Under Ind. Code § 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,” whereas, for the purpose of Ind. Code Chapter 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).

Carmichael testified that NIPSCO must install FGD technology on Units 14 and 15 to comply with the requirements of CSAPR. The evidence presented by OUCC Witness Cynthia Armstrong also supports that conclusion. No party disputed this testimony.

Based on our review of the record evidence, we find that the Phase I Projects are QPCP designed to meet applicable federal and state environmental laws and regulations. We find that the proposed Phase I 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 Phase I Projects constitute "qualified pollution control property" as defined in Ind. Code § 8-1-2-6.8.

3. Clean Energy Projects under Ind. Code ch. 8-1-8.8. The term "clean energy projects" include, among others, "[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 Basis" Ind. Code § 8-1-8.8-2(1)(B).³

We have already concluded that the Phase I Projects constitute CCT as defined by Ind. Code § 8-1-8.8-3. Mr. Sangster testified that the Phase I Projects will be installed on NIPSCO's Schahfer electric generating facility and will reduce SO₂ emissions created during the combustion of coal. He testified that the Multi-Pollutant Compliance Plan projects will reduce sulfur and nitrogen based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989. Further, Mr. Sangster testified that the Phase I Projects will increase fuel flexibility for both Units 14 and 15. No party disputed this evidence. We find that the Phase I Projects constitute advanced technologies that reduce regulated air emissions from existing energy generating plants and therefore find the Phase I Projects constitute "Clean Energy Projects" as defined in Ind. Code § 8-1-8.8-2.

B. CPCN for use of CCT under Ind. Code ch. 8-1-8.7. Petitioner requests the issuance of a CPCN for each of the Phase I Projects pursuant to Ind. Code 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." In order to grant Petitioner's request for a CPCN, we must make a finding on each of the factors described in Ind. Code § 8-1-8.7-3(b), including the dispatching priority of the facility to the utility. Ind. Code § 8-1-8.7-4(b).

1. CPCN Factors.

³ 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. Ct. 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.

a. The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.

Mr. Sangster provided evidence that the CCT included in the Multi-Pollutant Compliance Plan 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 CSAPR and Utility MACT using conventional technologies in general use on January 1, 1989. Moreover, Mr. Carmichael and the OUCC presented evidence that the Phase I Projects are necessary to allow NIPSCO to comply with the final CSAPR. While there was considerable testimony from all parties about the increase in cost estimates for the Unit 14 FGD from the 43913 Order, no party disputed or questioned the reasonableness of the current estimates or suggested that the higher cost estimates render the Phase I Projects to be unreasonable. 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 Phase I Projects over conventional emission reduction technology is reasonable.

b. 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 Multi-Pollutant Compliance Plan 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 CSAPR and Utility MACT. No party disputed NIPSCO's evidence that the Phase I Projects will allow NIPSCO to continue operating in compliance with EPA's final CSAPR and the Consent Decree. Therefore, we find that the Phase I Projects will extend the useful economic life of NIPSCO's generating facilities.

c. The potential reduction of sulfur and nitrogen based pollutants achieved by the proposed clean coal technology system.

i. The reduction of sulfur nitrogen based pollutants that can be achieved by conventional pollution control equipment. Mr. Sangster testified that the installation of wet FGD on Units 14 and 15 will remove SO₂ from flue gas created during the combustion of coal that is formed when the sulfur that is a minor constituent of coal is oxidized during the combustion of coal with air. Mr. Sangster also testified that these FGD systems will be required to achieve the SO₂ removal efficiency of 97%. No party disputed NIPSCO's evidence that the Phase I Projects are necessary to allow NIPSCO to reduce its air emissions sufficiently to comply with the EPA Regulations, including EPA's final CSAPR, and that NIPSCO could not achieve compliance without the Phase I Projects. Accordingly, we find the Phase I Projects will provide significant reduction in SO₂ emissions.

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

d. The likelihood of success of the proposed project. Mr. Sangster testified that without the Multi-Pollutant Compliance Plan projects, NIPSCO could not operate the facilities and achieve compliance with the Consent Decree or with the various requirements of CSAPR and Utility MACT. NIPSCO witnesses Sangster and Hooper provided testimony regarding the status of the Phase I Projects and Mr. Hooper provided extensive testimony regarding the measures NIPSCO has taken to ensure that the Phase I Projects are managed prudently. Further 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 Phase I and Phase II Projects progress. Again, while there was considerable evidence discussing the increase in cost estimates for the Unit 14 FGD from the 43913 Order, no party disputed that the measures described by Mr. Hooper should work to manage properly the Phase I Projects to successful completion. Based on the record evidence, we find the Phase I 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 Phase I Projects is high.

e. The cost and feasibility of the retirement of an existing electric generating facility. In response to the Commission's August 26 Docket Entry, NIPSCO provided evidence that the cost to replace the capacity of Schahfer Units 14 and 15 with 903 MW of combined cycle gas turbine ("CCGT") capacity on a brownfield site would exceed the costs proposed to construct the wet FGD system on Units 14 and 15 (and associated Common Facilities) by more than a factor of 1.5, without the inclusion of incremental costs associated with retiring the units. NIPSCO also provided evidence that even if the cost of the Phase I Projects increased by 25%, the replacement cost for CCGT capacity still exceeds the Phase I Project costs by more than a factor of 1.2. Further, NIPSCO indicated that because a "template brownfield site" is not available, it would likely have to add costs for decommissioning and demolition along with transmission upgrade costs, costs to ensure adequate water and gas on the property, and costs to prepare any potential CCGT site which would add significantly to the estimate to construct 903 MW of CCGT capacity. No party disputed that the Phase I Projects are less expensive than the alternative of adding CCGT capacity. Based on this evidence, we find that the cost and feasibility of retiring Units 14 and 15 and constructing equivalent installed capacity is not a suitable alternative to installation of the proposed Phase I Projects.

f. 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.

Mr. Carmichael testified that the projects included in NIPSCO's Multi-Pollutant Compliance Plan are designed to achieve the emission limitations set forth in the Consent Decree as well as provide for a base level of additional reductions that will be required under existing phased in and projected future EPA regulations and requirements but that during certain situations it may be necessary for the NIPSCO 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. However, there is no evidence to suggest that the Phase I Projects will significantly alter the normal dispatching priority for the Schahfer Units 14 and 15.

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. *See* April 23, 2008 Order in Cause No. 43414 (Joint Petition of Indianapolis Power & Light Company, Southern Indiana Gas and Electric Co. d/b/a/ Vectren Energy Delivery of Indiana, Inc., and the Indiana Office of Utility Consumer Counselor for Approval of Settlement Establishing a Mechanism for the Recovery of Purchased Power Costs); March 23, 2005 Order in Cause No. 42770 (Joint Petition of Indianapolis Power & Light Company, Southern Indiana Gas and Electric Co. d/b/a/ Vectren Energy Delivery of Indiana, Inc., and the Indiana Office of Utility Consumer Counselor for Approval of Settlement Establishing a Mechanism for the Recovery of Purchased Power Costs); May 26, 2004 Order in Cause No. 42616 (Joint Petition of Indianapolis Power & Light Company and the Indiana Office of Utility Consumer Counselor for Approval of Settlement Establishing a Mechanism for the Recovery of Purchased Power Costs); and May 26, 2004 Order in Cause No. 42605 (Joint Petition of Southern Indiana Gas and Electric Co. d/b/a/ Vectren Energy Delivery of Indiana, Inc., and the Indiana Office of Utility Consumer Counselor for Approval of Settlement Establishing a Mechanism for the Recovery of Purchased Power Costs).

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 Multi-Pollutant Compliance Plan projects due to potential changes in operating expenses. The evidence shows that NIPSCO must comply with the Consent Decree and other environmental regulations. Therefore, we 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.

g. 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.

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

a. 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 Phase I Projects are necessary to allow NIPSCO to reduce its air emissions sufficiently to comply with the EPA Regulations including EPA's final CSAPR and that NIPSCO could not achieve compliance without the Phase I Projects. In addition, we

find the Phase I Projects will provide significant reduction in SO₂ emissions. Based on the record evidence and our analysis of the factors set forth in Ind. Code § 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 Phase I Projects.

b. Approval of the estimated costs. Petitioner requests approval of the cost estimates for the Phase I Projects set forth in Petitioner's Exhibit Nos. KWS-1 and KWS-4 (\$203 million for the Unit 14 FGD, \$104 million for the Common Facilities for Units 14 and 15, and \$193 million for the Unit 15 FGD). These cost estimates do not include AFUDC. Petitioner specifically requests approval to revise the cost estimate of \$153,560,417 previously approved in the 43913 Order for the Schahfer Unit 14 wet FGD and the Common Facilities to the cost estimates provided in this Cause of \$203 million for the Unit 14 FGD and \$104 million for the Common Facilities.

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 Phase I Projects, we must approve the estimated costs. Ind. Code § 8-1-8.7-4(b).

Petitioner's Exhibit No. KWS-4 provides the details of the cost estimate for the Unit 14 FGD, Common Facilities for Units 14 & 15, and the Unit 15 FGD (\$203 million for the Unit 14 FGD, \$104 million for the Common Facilities for Units 14 and 15, and \$193 million for the Unit 15 FGD). NIPSCO also provided evidence regarding the anticipated O&M expenditures to support the QPCP and CCT projects included in the Multi-Pollutant Compliance Plan once they are in service on Petitioner's Exhibit No. KWS-2. Mr. Sangster testified that the estimates were developed after completion of the preliminary engineering by Sargent & Lundy and are based on the defined scope determined by preliminary engineering and numerous actual project costs for similar scope. Mr. Sangster further testified that some major contracts for the Unit 14 FGD have been awarded and that some contracts were greater than the preliminary engineering estimate while other projects were less than the preliminary engineering estimate.

As noted previously, there was considerable evidence addressing how the current cost estimates for the Unit 14 FGD have increased from the 43913 Order. Mr. Hooper testified that the original \$153 million cost estimate for the Unit 14 FGD and the Common Facilities provided by NIPSCO in support of its request for a CPCN in Cause No. 43913 was based on preliminary engineering and a benchmarking study performed by Burns & McDonnell that could be considered an "order of magnitude" study at best. Mr. Hooper testified that generally an "order of magnitude" cost estimate has an accuracy range of -50% to +100%.

Mr. Hooper testified that the cost estimates for the Phase I Projects presented in this Cause are based on a refinement of the original \$153 million order of magnitude cost estimate that is synonymous with a "budgetary cost estimate" with a range of +/- 25% of the controllable costs of the project. Mr. Hooper testified that based on the current level of engineering and project management enhancements instituted, he is confident that NIPSCO is on-track to complete the projects within the +/- 25% range of the current cost estimates provided in Petitioner's Exhibit No. KWS-4. Mr. Sangster and Mr. Carmichael provided evidence that

NIPSCO generally expects costs for similar FGD projects to increase in the future due to new EPA regulations and increased demand for FGD facilities.

Although the OUCC and Industrial Group raised concerns about the disparity between the \$153 million cost estimate for the Unit 14 FGD and the Common Facilities provided by NIPSCO in support of its request for a CPCN in Cause No. 43913 and the cost estimates for the Phase I Projects that NIPSCO is providing in this Cause, neither the OUCC nor the Industrial Group disputed the reasonableness of the current cost estimates provided in Petitioner's Exhibit No. KWS-4 or the anticipated O&M expenditures provided in Petitioner's Exhibit No. KWS-2. Industrial Group Witness James Dauphinais did invite NIPSCO on rebuttal to explain whether a potential acceleration of the Unit 15 FGD installation schedule will cause costs to increase for that project. On rebuttal, Mr. Hooper responded that NIPSCO has not revised the cost estimate for the Unit 15 project beyond the +/- 25% range already established as a result of this schedule acceleration because NIPSCO has not established on-site productivity baselines for many of the crafts associated with the future mechanical and electrical work. He testified that once on-site productivity baseline data is established for these crafts, NIPSCO will monitor project productivity and will adjust cost forecasts accordingly, primarily in accordance with its overall project and particular area cost price index. He testified that the \$193 million budgetary cost estimate (which has an accuracy range of +/- 25%) provided in Petitioner's Exhibit No. KWS-1 is still an appropriate cost estimate for the Unit 15 FGD.

We note that while NIPSCO has communicated that its cost estimates for the Phase I Projects have a range of accuracy of +/- 25%, Mr. Hooper clarified that NIPSCO is not requesting approval at this time of anything other than \$500 million for the Phase I Projects plus appropriate AFUDC. We find that record evidence demonstrates that NIPSCO's cost estimates for the Phase I Projects of \$203 million for the Unit 14 FGD, \$104 million for the Common Facilities for Units 14 and 15, and \$193 million for the Unit 15 FGD (which have an accuracy range of +/- 25% and which do not include AFUDC) are reasonable and should be approved.

Even though the OUCC and Industrial Group did not dispute the \$500 million total cost estimate for the Phase I Projects provided by NIPSCO in this Cause, they did emphasize the need for NIPSCO to provide more accurate cost estimates in future CPCN proceedings and recommended the Commission require NIPSCO to take certain steps to that end. Mr. Dauphinais testified the Industrial Group recommends that going forward, NIPSCO implement the CPCN pollution control project cost estimate reforms presented on page 21 of the Supplemental Direct Testimony of NIPSCO Witness Michael Hooper and any other reasonable means available to NIPSCO to minimize the likelihood of a very large budgetary estimate increase. These reforms included: conducting more benchmarking, collecting more market intelligence, obtaining "second opinion" cost estimates, amassing more experienced internal project management expertise, and better communicating the range and confidence associated with the cost estimate provided in CPCN requests. On rebuttal, Mr. Hooper testified that NIPSCO has already begun to and will continue to endeavor to implement these reforms. Mr. Hooper also testified that these reforms increase the cost to develop the initial cost estimate.

Mr. Snyder testified the OUCC is concerned that ratepayers will be negatively impacted by continuing increases in project costs. Mr. Snyder recommended the Commission adopt estimating standards and mandate increased scrutiny of project reporting to insure that all

utilities, including NIPSCO, present the true range of costs and risks associated with their proposed projects. Mr. Snyder testified the OUCC also recommends that all utilities, including NIPSCO, perform more detailed engineering up front in CPCN proceedings for more realistic cost estimating, and provide additional cost scenarios and sensitivity analysis with project cost estimates.

Mr. Hooper testified in rebuttal that utilities must meet project installation deadlines imposed by federal environmental statutes and rules, so utilities request authority to construct those projects as early in the process as possible to ensure they can comply with state regulatory statutes and rules. Mr. Hooper testified that the amount of engineering conducted by a utility prior to filing a petition for a CPCN is a case-by-case situation. He explained that NIPSCO agrees that it must provide the most thorough information available regarding its cost estimates for QPCP and CCT projects but that NIPSCO does not believe it is appropriate to dictate that a certain amount of engineering be conducted prior to the filing of all CPCN petitions. He testified that in order to move from an order of magnitude cost estimate with -50% to +100% range of accuracy to a budgetary cost estimate with a range of accuracy of +/- 25%, a utility would generally need to complete a significant portion of preliminary engineering—up through such steps as conceptual design including general arrangements and process and instrumentation diagrams along with mass flow balances, heat balances, and water balances (all design documents that help verify that the design meets the performance criteria). Mr. Hooper acknowledged that performing all of this engineering would result in cost estimates with narrower ranges of accuracy, but without approval from the state regulators regarding a certificate for construction and associated treatment of the costs to perform the engineering, he testified that utilities would continue to be reluctant to perform such significant engineering prior to filing a petition for a CPCN. Mr. Hooper testified that there will be many cases in which the project drivers dictate that an order-of-magnitude cost estimate with a wider range of accuracy is the best available information at the time the utility needs to file its petition.

We acknowledge that it would be ideal for a utility to perform more detailed engineering up front and provide a budgetary cost estimate with a range of accuracy of +/- 25% at the time the 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 7/7/2011). However, we recognize that NIPSCO and all other regulated utilities must operate within a variety of regulatory and statutory parameters that sometimes create tension between one another. We recognize this presents a challenge for a utility that wishes to satisfy environmental requirements while also attempting to provide timely and thorough information to state regulators and its stakeholders when it requests authority to construct the project. We believe that a one-size-fits-all approach to a standardized cost estimate accuracy and/or a standardized level of engineering to be done before filing to support a request for a CPCN is not a reasonable or appropriate expectation because the circumstances surrounding the utility’s need for the project may dictate differently. NIPSCO has provided evidence to demonstrate that the amount of engineering performed prior to filing a petition for a CPCN can be different in every case because there can be different and reasonable project drivers that impair the utility from completing all of those ideal engineering items prior to the point in time the utility would need to file its petition for a CPCN. We believe that NIPSCO, and other utilities, must balance these factors for each project

or filing and determine the appropriate amount of engineering to be performed up front. However, NIPSCO then has the responsibility to keep this Commission and its stakeholders informed of the expected possible range associated with its cost estimates, the confidence it has in its cost estimates, progress in engineering and moving to the budgetary cost estimate phase as well as explain why any changes to the estimate are reasonable. We find that NIPSCO has demonstrated its commitment to meet these obligations through the level of detail it has provided as evidence herein, and find that on a going forward basis this level of detail should be the minimum maintained.

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. In addition, we find there are several other ways NIPSCO and all other regulated utilities can help resolve some of the tension created by the variety of regulatory and statutory parameters that affect cost estimates provided by utilities in CPCN proceedings.

First, we find that better communication on the part of NIPSCO regarding its cost estimates is critical. We also find that improving the manner in which NIPSCO communicates to stakeholders the nature of the cost estimate, the degree of confidence it has in the estimate, and the accuracy associated therewith is essential and will help resolve much of the tension created by the variety of regulatory and statutory parameters relating to CPCN proceedings.

Second, we find that a reporting and ongoing update process whereby NIPSCO will provide timely information to the Commission and stakeholders regarding the costs and status of the projects after they are approved will help to avoid surprises about any future increases in cost. To that end, the parties have proposed, and we find, that NIPSCO should comply with the various reporting and meeting requirements described in Finding Paragraph 5, Section E below.

Third, as requested by NIPSCO, we find that the statutory provision for ongoing review will help us address modifications to initial cost estimates. At the time of CPCN issuance, the only cost estimate we approve is the initial cost estimate. If that estimate should increase over time, we must hold a public hearing and either approve or deny the proposed increase.

Finally, we 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.

While we find that NIPSCO should have flexibility on when a CPCN request is made, it is important to note that such flexibility creates additional risks for a utility with respect to the ultimate approval of project costs. When considering approval of CPCN requests, the Commission will take into account if the cost estimate presented is a preliminary estimate with

lower confidence levels and/or has a high associated range of actual possible costs, when it considers the CPCN request. It is the duty of the utility to provide evidence sufficient to warrant the issuance of a CPCN; if the cost estimate provided has a high degree of possible variance the Commission would expect the utility to take that into account in its supporting testimony. The Commission also notes that if actual costs exceed the estimates, additional evidence for supporting the cost increases is required. It is important that a utility provide the Commission and all stakeholders the information necessary to understand the magnitude of a project from the outset. It is also important that a utility provide the Commission and all stakeholders the information necessary to understand the degree of confidence it has in the proposed cost estimate, and any expected accuracy range associated with the estimate. This Commission must balance the interests of the utility and the ratepayer, and to do so, must be able to consider the range of scenarios to fulfill its statutory obligations.

c. 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. As discussed in footnote 3 above, we will not use the Indiana coal requirement as a prerequisite for approval of a certificate of CCT, to obtain QPCP status, or to receive any other authority.

Based on our review of the record evidence, we find that the Phase I 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 Ind. Code § 8-1-8.7-3 and made the required findings under Ind. Code § 8-1-8.7-4(b). Accordingly, we find that Petitioner's request for a CPCN for the Phase I Projects should be granted.

C. Approval of Clean Energy Projects under Ind. Code Ch. 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 projects proposed in the Multi-Pollutant Compliance Plan 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. Mr. Sangster and Mr. Carmichael testified that the Phase I Projects are necessary to allow NIPSCO to operate Schahfer Units 14 and 15 in compliance with the Consent Decree, EPA's final CSAPR, and other proposed federal environmental regulations. OUCC Witness Cynthia Armstrong's testimony is consistent with the evidence provided by NIPSCO. We recognize that this increases the respective operating lives of these units because failure to implement the Phase I Projects could force these units to cease operations for noncompliance with environmental regulations. The record evidence also shows that the cost and feasibility of retiring Schahfer Units 14 and 15 and constructing equivalent installed capacity is not a suitable, least-cost option. *See* Petitioner's Responses to the Indiana Utility Regulatory Commission's August 26, 2011 Docket Entry filed August 30, 2011.

As we discussed above, the Phase I Projects constitute “clean energy projects” under Ind. Code § 8-1-8.8-2. Based on our review of the evidence, we find that the Phase I Projects are reasonable and necessary to reduce SO₂ emissions from NIPSCO’s Schahfer Units 14 and 15. We therefore approve of the Phase I Projects and find that they are eligible for the financial incentives set forth in Ind. Code Ch. 8-1-8.8.

As a result of being eligible for the financial incentives under Ind. Code Ch. 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 Phase I 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) 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.

Having found that the Phase I Projects constitute clean energy projects that are reasonable and necessary and therefore eligible for the financial incentives set forth in Ind. Code Ch. 8-1-8.8, we therefore approve NIPSCO’s request for the timely recovery of costs and expenses incurred during construction and operation of the Phase I Projects consistent with and through Petitioner’s currently-effective ECRM and EERM pursuant to Ind. Code § 8-1-8.8-11(a)(1).

D. Ratemaking Treatment and Depreciation.

1. **Ratemaking Treatment - Ind. Code § 8-1-2-6.8 and 170 IAC 4-6.** Petitioner requests a finding that the Phase I Projects constitute “qualified pollution control property” and are eligible for the ratemaking treatment described in Ind. Code § 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.

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 ECR 17), 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 Phase I Projects constitute "qualified pollution control property" as defined in Ind. Code § 8-1-2-6.8. As a result, we find the Phase I Projects are eligible for the ratemaking treatment described in Ind. Code § 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 Phase I Projects consistent with and through Petitioner's currently-effective ECRM, and we hereby deem the Phase I 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.

With respect to AFUDC, OUCC Witness Ray Snyder recommended that the Commission approve the lesser of actual costs plus AFUDC or the \$500,000,000 "base" estimate plus \$10,000,000 AFUDC for a total of \$510,000,000 as a reasonable cost to be approved in this Cause. Mr. Plantz and Mr. Hooper provided rebuttal testimony that the approved level of AFUDC should not be limited to \$10,000,000 for the Phase I Projects. Mr. Plantz testified that NIPSCO has requested approval to record AFUDC on the approved QPCP Projects' construction costs until the costs receive either CWIP ratemaking treatment or are otherwise reflected in base electric rates or are placed in service and that NIPSCO does not believe the level of AFUDC should be limited to a specific dollar value. During the evidentiary hearing, Mr. Plantz testified that actual AFUDC depends on a number of variables that can change and that NIPSCO calculates AFUDC in accordance with Generally Accepted Accounting Principles ("GAAP").

In NIPSCO's prior environmental CPCN proceedings we have not limited the approved level of AFUDC to a specific dollar amount and we decline to do so here. We find that the actual amount of AFUDC is a function of a number of variables including the level and timing of capital expenditures and the rate used to calculate AFUDC. We also find that AFUDC is computed pursuant to GAAP and therefore, it would be inappropriate to limit the approved

amount of AFUDC to a particular dollar amount. We find that NIPSCO should be and hereby is authorized to accrue AFUDC on Phase I Projects costs up to the approved amount, which we have determined to be \$203 million for the Unit 14 FGD, \$104 million for the Common Facilities, and \$193 million for the Unit 15 FGD. We do share, however, the concern of all parties with respect to future cost increases. We specifically note that to the extent the Phase I Projects costs exceed the approved amounts, these increased costs and incremental AFUDC associated with project costs above the approved amounts are not approved at this time and would need to be addressed following a public hearing as a part of our ongoing review pursuant to Ind. Code § 8-1-8.7-7.

2. Depreciation Treatment - Ind. Code § 8-1-2-6.7.

Petitioner requests a finding that the Phase I Projects are eligible for the depreciation treatment set forth in Ind. Code § 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.⁴

We have already found that the Phase I Projects constitute “clean coal technology” as defined in Ind. Code § 8-1-2-6.7. In Cause No. 43913, the Commission approved a depreciation life of twenty (20) years for the Unit 14 FGD and for the Common Facilities. In its case-in-chief in this Cause, NIPSCO presented evidence proposing to depreciate the Unit 15 FGD utilizing a schedule of eighteen (18) years. The OUCC recommended that the Commission not treat the Unit 15 FGD differently than Unit 14 for purposes of depreciation and that all of the Phase I Projects (including Unit 15 FGD) be depreciated over a period of twenty (20) years. Although NIPSCO did not accept the OUCC’s position as being correct, NIPSCO testified that it would accept the proposed change related to the depreciable life of Unit 15 FGD. Therefore, we find that NIPSCO should be permitted to depreciate each of the Phase I Projects over a period twenty (20) years.

E. Ongoing Review, Semi-Annual Progress Reports and Reporting and Meeting Requirements. As noted previously, Petitioner requests ongoing review of the Phase I Projects pursuant to Ind. Code § 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 Ind. Code § 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

⁴ As discussed above in footnote 3, we will not use the Indiana coal requirement as a prerequisite for determination of NIPSCO’s eligibility for the depreciation treatment under Ind. Code § 8-1-2-6.7.

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.

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 Multi-Pollutant Compliance Plan Projects (which include the Phase I 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 OUCC and Industrial Group provided evidence to support various other reporting and meeting requirements. Mr. Hooper testified that NIPSCO agreed with most of the recommendations of the OUCC and Industrial Group subject to clarifications and subject to the understanding that NIPSCO considers certain of the requested information to be confidential and will provide the information subject to a fully executed non-disclosure agreement or protective order.

We find that NIPSCO should comply with the following ongoing reporting and meeting requirements with respect to the Phase I Projects:

(a) 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:

(i) Weekly project status report (Petitioner's Exhibit Nos. MH-S10 (Confidential)),

(ii) Monthly project report (Petitioner's Exhibit Nos. MH-S11 (Confidential)), and

(iii) Senior executive project report (Petitioner's Exhibit Nos. MH-S12 (Confidential));

(b) Provide to the OUCC, Industrial Group and other interested stakeholders subject to a fully executed non-disclosure agreement or protective order on a semi-annual basis a document referred to as the risk register and risk assessment;

(c) Provide as part of its semi-annual progress report filed in Cause No. 42150-ECR-X timely and recurring updates to the Commission and to the OUCC on the disposal process of the waste product being developed [by the Wet FGDs];

(d) Provide as part of its semi-annual progress report filed in Cause No. 42150-ECR-X reports of the cost breakdown as detailed engineering plans progress;

(e) Meet with the OUCC, Industrial Group and other interested stakeholders that have executed a non-disclosure agreement on a quarterly basis or as otherwise needed or 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

(f) Permit the OUCC, Industrial Group and other interested stakeholders that have executed a non-disclosure agreement to attend monthly on-site executive Phase I Project review meetings or six-month Phase I Project risk review meetings subject to attendees providing NIPSCO with advanced notice so that NIPSCO may make the proper security and safety arrangements.

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 Ind. Code § 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. Accounting Treatment for Phase II Projects. By their Joint Motion, the parties requested the Commission to bifurcate this Cause into Phase I and Phase II and requested authority for Petitioner to (1) accrue AFUDC prior to CWIP ratemaking treatment, (2) include preconstruction costs as part of the recovery of Phase II Projects capital expenditures, and (3) defer for recovery through rates the O&M expenses and depreciation expense, associated with its Phase II Projects incurred by NIPSCO prior to the time that the Commission issues a Phase II Order.

The accounting treatment requested by the parties for the Phase II Projects is consistent with the accounting treatment sought by Petitioner for the Phase I Projects under various Indiana statutes and rules, including Ind. Code ch. 8-1-8.7, Ind. Code ch. 8-1-8.8, Ind. Code § 8-1-2-6.7, Ind. Code § 8-1-2-6.8, and 170 IAC 4-6. The difference is that the Commission is not simultaneously addressing Petitioner's other requests for relief with respect to the Phase II Projects in this Phase I Order due to the bifurcation of this case.

NIPSCO Witness Ronald Plantz testified that it is highly unlikely the Commission could conduct an evidentiary hearing on the Phase II Projects soon enough to allow the Commission to issue an order that addresses the Phase II Projects prior to the end of the calendar year 2011. Mr. Plantz also testified that NIPSCO has incurred, and will continue to incur, costs associated with

Phase II Projects prior to receiving a final Phase II Order and that one or more Phase II Projects are expected to be placed into service and incur O&M expenses and depreciation expense prior to receiving a final Phase II Order. NIPSCO provided evidence of those estimated expenses in its responses to the Commission's August 26, 2011 docket entry in this Cause. Mr. Plantz testified that NIPSCO seeks an order approving deferral of O&M and depreciation expense prior to commencing such accounting treatment because under GAAP, rate actions of a regulator can provide reasonable assurance of the existence of an asset and an order from the Commission approving deferral of prudently incurred O&M and depreciation expenses would provide further indication that NIPSCO has a basis to defer costs prior to receiving a final Phase II Order. Finally, Mr. Plantz testified that approval from the Commission provides third party documentation for management's assertion to defer these costs and provides support to NIPSCO's external auditors. OUCC Witness Wes Blakley testified that as part of the agreement to bifurcate this case, the OUCC joined in the motion which included this request for deferral of certain expenses relating to the Phase II Projects. Both NIPSCO and the OUCC presented testimony acknowledging that this request for accounting treatment for Phase II Projects is subject to the Commission's approval of the Phase II Projects and costs and that the OUCC will have the opportunity to review the costs and related books and records prior to those costs being reflected in rates.

We find that the parties' request for the accounting treatment for the Phase II Projects described above is appropriate. Petitioner filed its Petition in this Cause requesting approval of all of the Multi-Pollutant Compliance Plan Projects, including certain projects that were scheduled to go into service by the end this year. Subsequently the parties agreed to bifurcate this case and address Petitioner's request for relief for the Phase II Projects separately from the Phase I Projects. Based on the evidence, we find that the requested accounting treatment for the Phase II Projects should be approved, but Petitioner's ability to recover any deferred costs and expenses associated with Phase II Projects is subject to the Commission's approval of the Phase II Projects and costs.

G. Confidentiality. Petitioner filed two motions for protective order, both of which were supported by affidavit showing documents to be submitted to the Commission were trade secret information within the scope of Ind. Code §§ 5-14-3-4(a)(4) and (9) and Ind. Code § 24-2-3-2. The Presiding Officers issued a Docket Entry on July 29, 2011 and August 30, 2011, respectively, finding such information to be preliminarily confidential, after which such information was submitted under seal. We find all such information is 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 shall be held confidential and protected from public access and disclosure by the Commission.

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

1. The Phase I Projects shall be and hereby are determined to 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.

2. Petitioner shall be and is hereby issued a Certificate of Public Convenience and

Necessity for the Phase I Projects pursuant to Ind. Code Ch. 8-1-8.7. This Order constitutes the Certificate.

3. The cost estimates provided by Petitioner in this Cause for the Phase I Projects (\$203 million for the Unit 14 FGD, \$104 million for the Common Facilities, and \$193 million for the Unit 15 FGD) shall be and are hereby approved and Petitioner's request to revise the cost estimate of \$153,560,417 for the Schahfer Unit 14 wet FGD and the Common Facilities previously approved in the 43913 Order to the cost estimates provided herein shall be and is hereby approved.

4. Petitioner's request for ongoing review of the Phase I Projects pursuant to Ind. Code § 8-1-8.7-7 and to file semi-annual progress reports as part of that ongoing review shall be and is hereby approved.

5. The Phase I Projects shall be and are hereby determined to constitute "qualified pollution control property" and are eligible for the ratemaking treatment described in Ind. Code § 8-1-2-6.8.

6. The Phase I Projects shall be and are hereby determined to constitute "clean energy projects" under Ind. Code Ch. 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 Phase I Projects consistent with and through Petitioner's currently-effective ECRM and EERM set forth in Ind. Code ch. 8-1-8.8-11(a)(1).

7. 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 Phase I Projects consistent with and through Petitioner's currently-effective Environmental Cost Recovery Mechanism and the Phase I 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.

8. Petitioner shall be and is hereby authorized to depreciate each of the Phase I Projects approved herein over a period of twenty (20) years pursuant to Ind. Code § 8-1-2-6.7.

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

10. Petitioner shall be and is hereby authorized to recover O&M expenses and depreciation expenses relating to the Phase I Projects consistent with and through Petitioner's currently-effective Environmental Expense Recovery Mechanism.

11. 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.

12. Petitioner is hereby authorized to (1) accrue AFUDC prior to CWIP ratemaking treatment, (2) include preconstruction costs as part of the recovery of Phase II Projects capital

expenditures, and (3) defer for recovery through rates the O&M expenses and depreciation expense, associated with its Phase II Projects incurred by NIPSCO prior to the time that the Commission issues a Phase II Order and such accounting treatment should commence as of the date such costs were or are incurred and continue until such costs are timely recovered by the Petitioner through a periodic rate adjustment mechanism, or as otherwise ordered in Phase II.

13. Petitioner shall comply with the ongoing reporting and meeting requirements enumerated in Finding Paragraph 5, Section E.

14. The information filed by Petitioner in this Cause pursuant to its Motions for Protective Order is 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 shall be held confidential and protected from public access and disclosure by the Commission.

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

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

APPROVED: DEC 28 2011

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



Sandra K. Gearlds
Acting Secretary to the Commission