

**ORIGINAL**

STATE OF INDIANA

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**INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF PIONEER TRANSMISSION, LLC FOR: )  
(1) A DETERMINATION OF ITS STATUS AS A )  
PUBLIC UTILITY UNDER INDIANA LAW; (2) FOR A )  
DETERMINATION OF ITS CAPABILITY TO )  
OPERATE AS A PUBLIC UTILITY IN INDIANA; (3) )  
FOR AUTHORITY TO OPERATE AS A PUBLIC )  
UTILITY IN INDIANA, INCLUDING AUTHORITY TO )  
EXERCISE ALL RIGHTS AND PRIVILEGES OF AN )  
INDIANA PUBLIC UTILITY; (4) FOR AUTHORITY )  
TO TRANSFER FUNCTIONAL CONTROL OF )  
OPERATIONS OF ITS TRANSMISSION FACILITIES )  
TO ONE OR MORE REGIONAL TRANSMISSION )  
ORGANIZATIONS; (5) FOR AUTHORITY TO KEEP )  
ITS BOOKS AND RECORDS OUTSIDE THE STATE )  
OF INDIANA; AND (6) FOR THE COMMISSION'S )  
CONSENT TO BOARDS OF COUNTY )  
COMMISSIONERS FOR PETITIONER TO OCCUPY )  
PUBLIC RIGHTS-OF-WAY )**

**CAUSE NO. 44135**

**APPROVED: APR 17 2013**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**Kari A. E. Bennett, Commissioner**

**Aaron A. Schmoll, Senior Administrative Law Judge**

On December 16, 2011, Petitioner Pioneer Transmission, LLC (“Pioneer”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) initiating this matter. On December 19, 2011, Pioneer filed its prepared testimony and exhibits constituting Petitioner’s case-in-chief. On February 15, 2012, the Commission issued a Prehearing Conference Order which among other things established a Procedural Schedule for this Cause. On June 28, 2012, Northern Indiana Public Service Company (“NIPSCO”), the IURC Testimonial Staff and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed their direct testimony and exhibits.

On February 7, 2013, Pioneer filed a Stipulation and Settlement Agreement (“Settlement”) that was executed by Pioneer, NIPSCO, IURC Testimonial Staff, and the OUCC (“Settling Parties”).<sup>1</sup> Supplemental testimony in support of the Settlement was filed by all of these parties on February 14, 2013.

<sup>1</sup> Citizens Action Coalition of Indiana, Inc. and the I&M Industrial Group filed Petitions to Intervene, which were granted by the Commission. Neither party filed testimony or exhibits, nor did these parties take any position regarding the Settlement.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, a public hearing was held on March 14, 2013 at 11:30 A.M. in Room 224, 101 West Washington Street, Indianapolis, Indiana. At the hearing Pioneer, NIPSCO, the IURC Testimonial Staff and the OUCC appeared by counsel. The parties' evidence was submitted into the record without objections. No members of the general public appeared. The Commission, based upon the applicable law and evidence of record, now finds as follows:

1. **Notice and Jurisdiction.** Proper notice of the public hearing in this Cause was published as provided by law. Pioneer seeks approval to engage in providing electric transmission service and facilities and to own, operate, manage and control plant and equipment within Indiana for the transmission of electricity at wholesale. These activities fall within the plain language of the term "public utility" under Ind. Code § 8-1-2-1. Accordingly, the Commission has jurisdiction over Pioneer and the subject matter of this proceeding in the manner and to the extent provided by the law of the State of Indiana.

2. **Pioneer's Characteristics.** Pioneer is a joint venture between American Electric Power Company, Inc. ("AEP") and Duke Energy Corporation ("Duke Energy") through AEP Transmission Holding Company, LLC ("AEPTHC") and Duke Energy Transmission Holding Company, LLC ("DET"). AEPTHC is a wholly owned subsidiary of AEP and DET is an indirect wholly owned subsidiary of Duke Energy. Pioneer is a limited liability company organized and existing under the laws of the State of Indiana, formed in 2008, with an office in Plainfield, Indiana. Pioneer has a Board of Managers consisting of six individuals, four of whom are Indiana residents, that function similarly to a Board of Directors of a corporation. Pioneer will not provide retail services to customers within Indiana. Pioneer's transmission service is subject to regulatory oversight by the Federal Energy Regulatory Commission ("FERC"). Pioneer will provide interstate transmission services within the footprints of PJM Interconnection, LLC ("PJM") and Midwest Independent Transmission System Operator, Inc. ("MISO").

3. **Relief Sought.** Pioneer requests Commission approval, to the extent necessary, of Pioneer's status as a transmission-only public utility; authority to maintain Pioneer's books and records outside the State of Indiana; and for the Commission's consent to the Board of County Commissioners of all Indiana counties to grant Pioneer such licenses, permits or franchises as may be necessary for Pioneer to use county roads, highways or other property and public right-of-ways for the provision of services and facilities pursuant to Ind. Code § 36-2-2-23. Pioneer also requests approval to transfer functional control and operations of its transmission facilities to PJM and/or MISO and that the Commission find the construction of the transmission line proposed by Pioneer is in the public interest (including the potential transmission of electric energy from outside the United States). Pioneer has also submitted two affiliate agreements to the Commission pursuant to Ind. Code § 8-1-2-49.

4. **Pioneer's Direct Testimony.** Pioneer submitted the direct testimony and exhibits of Robert W. Bradish, President of Pioneer. Mr. Bradish stated that Pioneer proposes to develop a 765 kV transmission corridor west of Indianapolis running between two existing 765 kV substations ("Pioneer Project"). He stated the entirety of the Pioneer Project will consist of

approximately 240 miles of 765 kV transmission line running from the Rockport Substation in Rockport, Indiana to its substation in north central Indiana. He noted that these transmission facilities will traverse the footprint of PJM and MISO and consist of three main segments.<sup>2</sup> He estimated that the total Pioneer Project will cost approximately \$950 million, which is expected to be allocated mutually across the MISO and PJM footprints. According to Mr. Bradish, the Reynolds to Greentown Multi-Value Project (“MVP”) Segment is expected to cost approximately \$245 million.

Mr. Bradish stated there were several factors that support construction of the Pioneer Project. First, there is substantial generation in southern Indiana while the primary load centers are in the central and northern portions of the state. The studies by AEP and Duke Energy indicated the addition of a strong south to north transmission line would enable power to be more effectively and reliably delivered to the load centers. Second, according to Mr. Bradish, there has been a tremendous amount of development of alternative energy projects in the region including a great deal of wind power generation. Mr. Bradish stated that there is approximately 1,100 MW of wind generation currently in service with another 7,710 MW at various stages of development within the PJM footprint. In MISO, there is 531 MW of wind generation in service with another 2,585 MW in development. He said wind generation raises two major areas of concerns that bear on the transmission infrastructure: (1) good locations for wind projects often are remote from load centers; and (2) the intermittent nature of wind creates operational and reliability challenges. Third, Mr. Bradish stated that there are a large number of coal-fired generating station units scheduled to retire, which, when combined with the need to meet growing demand, indicates the Midwest region will need a substantial amount of new generation. He stated that this new generation will be located remotely from the load centers and will have different operating characteristics than traditional fossil-fired generation, thereby causing the needed transmission grid to be more robust.

Mr. Bradish stated the Pioneer Project benefits Indiana with improved economic development, additional construction, and permanent jobs, investments and increased tax base, greater access for Indiana generators to markets, improve reliability, and reduced congestion and line losses on the transmission system. From a regional perspective, Mr. Bradish testified that there will be improved reliability and reduced congestion and line losses on the regional transmission system. He said that the Project will provide a wider choice in competition and wholesale generation markets, will increase wind integration and will reduce air emissions.

Rajagopalan Sundararajan, Vice President, Transmission Asset Strategy and Policy, described the corporate structure of Pioneer as a limited liability company organized in Indiana whose members are wholly owned subsidiaries of AEP and Duke Energy. Each member holds a 50% membership interest in Pioneer. Mr. Sundararajan stated that Pioneer was formed to provide wholesale transmission service and does not intend to provide retail service to retail

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<sup>2</sup> The Settlement, for purposes of this proceeding, defines the Pioneer Project as three distinct segments: (1) Pioneer’s portion of a 765 kV line running from Duke Energy’s Greentown substation to NIPSCO’s Reynolds substation (the “Reynolds to Greentown MVP Segment”) jointly developed by Pioneer and NIPSCO, (2) a 765 kV line running from Reynolds to the Indiana Michigan Power Company’s Sullivan substation, with the portion within the Reynolds substation being owned by NIPSCO, and (3) a 765 kV line running from Sullivan to Indiana Michigan Power Company’s Rockport generating plant. For the purposes of this Order, we will utilize the Pioneer Project definitions developed by the Settling Parties.

customers in Indiana or elsewhere. He stated that the formation of Pioneer provided a means for AEP and Duke Energy to derive an initially acceptable division of the investment in and economic benefit of the Pioneer Project. He also stated that the immense geographic and financial scale of the total Pioneer Projects creates a landscape in which multiple partners are better able to absorb and accommodate the risk associated with that scale. He testified that Pioneer will also facilitate debt financing and other respective elements of the investments at the project level. Mr. Sundararajan testified that the structure separates Pioneer's investments from other investments that are currently owned or being developed by AEP and Duke Energy. Mr. Sundararajan stated that AEP and Duke Energy have appointed a Board of Managers for Pioneer that functions similarly to the Board of Directors of a corporation. The Board of Managers consists of six individuals, four of whom will be residents of Indiana.

Mr. Sundararajan said that Pioneer will rely on three main sources of funding: (1) equity/capital contributions from Duke Energy and AEP; (2) internal debt financing; and (3) revenues from Pioneer's PJM and MISO Open Access Transmission Tariffs ("OATT"). He stated that while the target capital structure of Pioneer will be 50% debt and 50% equity, prior to the construction phase of the Project, it is likely that Pioneer will be funded largely with equity. According to Mr. Sundararajan, Pioneer intends to provide wholesale transmission service and recover its costs through the PJM and MISO's OATTs. He said that the total Project's annual revenue requirements will be calculated using the appropriate FERC-appointed formula rates. He also stated that he expected that the cost of the Pioneer Project will be regionally allocated in both the PJM and MISO RTOs which means that even though the entire Project will be located in the State of Indiana, Indiana customers will only be responsible for a fraction of the Project's total revenue requirements. Mr. Sundararajan sponsored an exhibit in which he estimated that the Reynolds to Greentown MVP Segment's estimated cost of \$245 million would cost the average MISO retail customer 8 cents per month. He also said that Pioneer expects PJM will allocate any Pioneer costs regionally across the PJM footprint and that Indiana represents 3 percent of PJM's load. He testified that Pioneer will have the necessary and appropriate managerial, technical, engineering, financial, and transmission system expertise to insure seamless operation of the transmission services of Pioneer.

Mr. George C. Dawe, Jr., Managing Director of Business Development for Duke Energy Corporation's Commercial Transmission Group, sponsored the two service agreements between Pioneer, AEP Service Corporation ("AEPSC") and Duke Energy Business Services, LLC ("DEBS"). These agreements identify the responsibilities of those two parties to Pioneer. Mr. Dawe said that the service agreements are necessary because they delineate the contractual obligations of AEPSC and DEBS in each service agreement, such that project responsibilities and the responsible parties have been identified to perform and oversee specific work. He stated that there are twelve schedules attached to each service agreement identifying the party responsible for the work described in each schedule. Mr. Dawe then went on to describe in detail each of the twelve schedules and the responsible party.

5. **NIPSCO Direct Testimony and Exhibits.** Timothy A. Dehring, Senior Vice President, Transmission and Engineering of NIPSCO, stated he was submitting testimony for two purposes: first to respond to certain statements made by Mr. Bradish, and second, to offer a NIPSCO perspective on the types of protection that should be put in place before any

independent transmission company, such as Pioneer, is allowed to operate as a public utility within the State of Indiana. Mr. Dehring submitted several pages of testimony disputing several of Mr. Bradish's statements regarding the Reynolds to Greentown MVP Segment. In particular, he was concerned that taking these statements at face value might jeopardize the development rights of the Reynolds to Greentown MVP Segment, which at the time of the filing of Mr. Dehring's testimony was being litigated by Pioneer and NIPSCO in FERC Docket No. EL12-24-000.<sup>3</sup> Mr. Dehring expressed a concern that an out-of-state transmission company would not be subject to the same type of oversight and Commission scrutiny as an in-state utility. He also expressed concern about Pioneer's reaction to the concerns of property owners and ongoing operation and maintenance issues and stated that projects, such as Pioneer's, could possibly negatively impact the ability of in-state utilities to comply with ongoing reliability standards.

Mr. Dehring then spent several pages discussing the Reynolds to Greentown MVP Segment and the approval by the MISO Board of Directors. He went on to describe in detail the MVP process with regard to the Pioneer Project. He testified that on December 8, 2011, the MISO Board approved the Reynolds to Greentown MVP Segment of the Project but the terminus point had been changed from Meadow Lake to Reynolds, which was owned by NIPSCO. Mr. Dehring characterized Pioneer's request that the entire Pioneer Project be declared to be in the public interest as premature as development rights of the Reynolds to Greentown MVP Segment have not yet been decided and the remainder of the Project is still undergoing MISO or PJM planning review. He also said that should Pioneer be granted certain rights of a public utility, it should also include protections for Indiana citizens and NIPSCO's retail customers to assure that those rights are exercised in a reasonable manner.

**6. Testimony and Exhibits of the IURC Testimonial Staff.** David Johnston, Chief Technical Analyst for the RTO/FERC Team of the Commission, described the transmission planning processes conducted by MISO and PJM, which included review of the entire Pioneer Project. He stated that the Reynolds to Greentown MVP Segment has been approved by MISO and therefore the MVP would be in the public interest. Mr. Johnston testified about the concern as to whether Pioneer was the company designated to construct the Reynolds to Greentown MVP Segment. In addition, he stated that Pioneer has not provided as part of its direct evidence a Project plan, any engineering studies or any environmental impact statement for the Reynolds to Greentown MVP Segment. He also stated that Pioneer had not provided a reconciliation between the cost estimate included in the MISO 2011 MTEP Study and Pioneer's April 2012 Construction Cost Estimate.

Mr. Johnston testified about issues coordinating a joint project. He stated that the various divisions of authority as set forth in the two service agreements sponsored by Mr. Dawe could lead to complications if there is no overall project manager or authority to make decisions. He stated that a single company in charge of the Project instead of a joint venture could lead to more efficient Project development. Mr. Johnston testified about concerns regarding whether AEP and Duke Energy were committed financially to the Project or even to the Reynolds to Greentown MVP Segment. He said that Pioneer had not presented any evidence of commitments to the

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<sup>3</sup> Those development rights at least between NIPSCO and Pioneer, have been resolved. See summary of Mr. Dehring's supplemental testimony *infra* at 28-29.

Project from its parent corporation and that Pioneer should at a minimum present such evidence with regard to the Reynolds to Greentown MVP Segment.

Mr. Johnston testified that Duke Energy Indiana and AEP were technically capable of constructing and owning the first segment of the transmission line. Mr. Johnston testified that Pioneer may not have the managerial capability to construct and operate its portion of the Reynolds to Greentown MVP Segment, primarily because of the concerns raised in his testimony.

7. **OUCC Direct Testimony and Exhibits.** Mr. Ronald L. Keen, Senior Analyst with the Resource Planning and Communications Division of the OUCC, stated that if Pioneer built the Pioneer Project it would be acting as a public utility once any phase of the Project was constructed and operational. He said if Pioneer is authorized to operate as a public utility in Indiana, then it should also be authorized to transfer functional control of operations of this transmission facility to PJM and/or MISO. He also felt that if Pioneer was a public utility, it should be granted authority to maintain its books and records outside of the State.

Mr. Keen noted that Pioneer has not selected a route for any phase of the Project, and had not completed any environmental impact statement, engineering feasibility study, nor a Project plan for or any phase of the Project. He testified the Project plan would provide a detailed understanding of the Project scope as an integral part of project management. Mr. Keen stated that some project scope at the regional planning level for the Reynolds to Greentown MVP Segment has been identified through the MISO review process, but there was little or no documentation sufficient to constitute what the OUCC would consider to be a preliminary project analysis. He also stated the OUCC believed a detailed work breakdown structure (“WBS”) should be included as part of the detailed Project plan. Mr. Keen testified that development of a comprehensive Project plan identifying the preliminary route and addressing the myriad of other issues concerning the Project could potentially provide the OUCC some assurance that Pioneer can keep the projected costs for each phase of the overall Project in line with estimates. He testified this type of detail is necessary for examination in a cause such as this because MISO approval is based on evaluating the Reynolds to Greentown MVP Segment on a regional planning type level. Mr. Keen also testified that Pioneer had not provided any type of economic analysis or what the OUCC would consider an accurate cost estimate. He stated the total estimate of \$950 million was offered by Pioneer as a preliminary estimate based on the best information available at the time of its preparation. However, Mr. Keen noted that this estimate had a deviation accuracy of -50%/+100% and that the OUCC remained concerned that the lack of details supporting the estimate in Pioneer’s testimony could not explain why the estimate for the first phase of the Pioneer Project had increased from \$240.7 million to \$328.1 million.

Mr. Keen also testified about concerns that Pioneer had not sufficiently shown the company offered any advantages in construction of this Project versus having Indiana’s existing jurisdictional utilities (Duke Energy and/or NIPSCO) build the Reynolds to Greentown MVP Segment. He said that the OUCC found no evidence within the case presented by Pioneer that a jurisdictional utility could not develop the Project at lower costs. Mr. Keen stated while MISO staff considered and reviewed costs with Pioneer, the OUCC questioned the level of review since Pioneer could not provide detailed economic analysis or cost estimates within the case-in-chief.

Furthermore, he stated that without such an analysis, it is difficult for the OUCC to measure the true potential costs of the Project against any other option.

Mr. Keen testified that the Reynolds to Greentown MVP Segment of the Pioneer Project and especially phases two and three, are premature for a Commission ruling without Pioneer providing appropriate documentation which would allow the Commission to determine whether the overall Project is in the public interest.

**8. Pioneer Supplemental Testimony.** Mr. Dawe described the Settlement, and stated that Part A of the Settlement contains certain definitions for the purpose of settlement only which divide the Pioneer Project into three distinct segments.<sup>4</sup> Mr. Dawe stated that Part B sets forth the terms and conditions that the Settling Parties have agreed should be included in the final Commission order approving the Settlement. Subpart 1 of Part B concerns the public utility status of Pioneer. According to Mr. Dawe, the Settling Parties have agreed that Pioneer should be found to have the managerial, operational and financial capability to operate as a transmission-only public utility within the State of Indiana and that Pioneer's status as a transmission-only public utility should be approved. This Subpart also provides that Pioneer should be granted all the rights, responsibilities and privileges to do business in Indiana, including the right to exercise the power of eminent domain pursuant to Ind. Code ch. 32-24-4. Mr. Dawe noted the Settling Parties also agreed that Pioneer's request to transfer functional control of its 50% ownership of the Reynolds to Greentown MVP Segment to MISO (NIPSCO will own the remaining 50% of this segment) and to transmit electric power generated outside the borders of the United States should be approved as in the public interest. Finally, Mr. Dawe stated the Settling Parties agreed that Commission consent should be given to the Boards of County Commissioners of all Indiana counties to grant Pioneer such license, permits or franchises as may be necessary for Pioneer to occupy and use county roads, highways and other private right-of-ways with the provisions of its services and facilities pursuant to Ind. Code 36-2-2-23.

Mr. Dawe then discussed Subpart B2 of the Settlement, which sets forth the conditions that the Settling Parties have agreed should be attached to Pioneer's public utility status. First, the status should apply only to transmission facilities related to the Pioneer Project that Pioneer may construct, own and operate within Indiana that have been approved by an RTO and included in a regional transmission plan. Second, Pioneer agrees to abide by the applicable RTO processes for all segments of the Pioneer Project. Specifically, the Settling Parties agreed that nothing in the Settlement should be construed as (1) preempting the RTOs' transmission planning process or methodology for awarding development rights, or (2) altering the development rights and responsibilities for the Reynolds to Greentown MVP Segment as will be determined by FERC in FERC Docket No. EL12-24-000. Third, should Pioneer propose to construct, own or operate any project in Indiana in addition to the three segments of the Pioneer Project, Pioneer shall provide to the Commission and the OUCC 30 days written notice of the project before seeking RTO or FERC approval. This provision of Subpart B also provides that nothing in the Settlement shall prejudice the rights of any party to argue that additional Commission authorization is or is not required before Pioneer may commence construction of such projects. Fourth, Pioneer agrees to comply with all Indiana statutes. Fifth, Pioneer agrees

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<sup>4</sup> See note 3, *supra*, at 4.

that the Formula Rate Protocols as approved by FERC will apply to Pioneer. Finally, Pioneer agrees to provide the Commission's Director of Electricity Division and General Counsel and the OUCC with copies of a written notice and an electronic link to any filing or report or information required by the Formula Rate Protocols within three days of posting.

Mr. Dawe then testified regarding Subpart B3 of the Settlement, which establishes communication procedures between Pioneer, the IURC Testimonial Staff and the OUCC regarding all present and future Pioneer projects within Indiana. First, within six months of the Commission approving the Settlement, the parties will meet to discuss the status of the Reynolds to Greentown MVP Segment and, at a minimum, Pioneer will provide the most recent construction schedule for that segment and the Joint Development Agreement between Pioneer and NIPSCO. Furthermore, at this meeting, Pioneer will also make available any Project engineering that has been completed at that time. Subsequent to this meeting, the parties will schedule two additional meetings at six month intervals for a total of three meetings within an eighteen month period, where Pioneer will provide status reports, construction cost estimates and construction schedules for the Reynolds to Greentown MVP Segment. Further, the parties will subsequently confer as reasonably requested to discuss the status of that segment and Pioneer will provide to all parties any filing made with the Commission or FERC regarding the Reynolds to Greentown MVP Segment. Further, according to Mr. Dawe, Pioneer will provide written notice and an electronic link to documents submitted to the applicable RTO seeking inclusion of the remaining segments of the Pioneer Project in a regional transmission plan. Also, if requested, Pioneer will meet annually with the parties to discuss the status of the remaining segments of the Pioneer Project. These meetings would be in addition to the meetings described above. Finally, this Subpart provides that written notice required under the Settlement shall be provided to the Director of the Electricity Division and General Counsel, the OUCC and NIPSCO.

Mr. Dawe testified that Subpart B4 concerns Pioneer's books and records. He noted that in its original petition, Pioneer requested permission to maintain its books and records out of state. The Settlement provides that Pioneer's request should be approved. However, at the same time, Pioneer agrees to produce duplicate copies of those portions of its books and records in Indiana necessary for the OUCC and the Commission to perform their statutory duties. To the extent it presents an undue burden on Pioneer to produce in Indiana the books and records, the Settlement provides that Pioneer shall reimburse the Commission and the OUCC for all travel expenses incurred while inspecting Pioneer's books and records.

Mr. Dawe stated that on January 18, 2012, Pioneer submitted, pursuant to Ind. Code § 8-1-2-49, two affiliate service agreements. According to Mr. Dawe, Subpart B5 of the Settlement requires that if Pioneer enters into any other affiliate service agreements or modifies the two agreements already submitted to the Commission, it will submit such agreements to the Commission pursuant to Ind. Code § 8-1-2-49 and serve a copy of such agreements on the OUCC. The final provision of Subpart B of the Settlement provides that the IURC Testimonial Staff will file additional comments with FERC stating that they have reached a settlement with Pioneer and will no longer request a rejection of the settlement agreement filed in Docket No. EL12-24-000.

Mr. Bradish discussed the technical experience with 765 kV transmission systems that AEP brings to the Pioneer Project and how that experience will enhance the design, construction, operation, maintenance and safety of the Pioneer Project. Mr. Bradish stated that AEP has over four decades of experience planning, developing, building, maintaining and operating 765 kV transmission projects throughout the United States. He noted that AEP built and currently owns and operates 2,116 of the 2400 miles of 765 kV lines currently in operation in the United States. He said that AEP's 765 kV system is the primary backbone of its transmission network. As a result of its history with 765 kV transmission systems, AEP has developed equipment standards and specifications and maintenance and testing practices that are not readily available to other utilities. He stated AEP's transmission history has allowed AEP to work with and develop strong relationships with many key transmission contractors and equipment vendors including Black & Veatch, Burns & McDonnell, Commonwealth Associates, ABB, and others.

Mr. Bradish described the benefits that AEP would provide, initially noting that AEP is the only utility in the United States that currently designs and engineers 765 kV facilities on a routine basis. This makes AEP uniquely qualified to design and engineer the Pioneer Project. With AEP's established design criteria, standards and specifications, developed through years of AEP's research, development and operational experience, the Pioneer Project will be designed in an efficient and cost effective manner. Also, the use of AEP's established designs, standards and reference materials will minimize Project costs because the actual design work of the line will be focused on the specific project as opposed to developing standard specifications for the voltage level.

Mr. Bradish testified that AEP's specialty designs and standards will be a crucial element in minimizing the costs of the Project. He stated that another utility would incur costs to develop designs and standards for a 765 kV system which would be significant and would add to the Project engineering costs. He stated that the material and equipment required for a 765 kV transmission line is not available in standards catalogs and cannot be effectively developed by simply extrapolating lower voltage lines. He said AEP has several 765 kV tower designs that could be used on the Reynolds to Greentown MVP Segment, all of which have been tested at full scale testing facilities and through real world application in AEP's transmission system. Mr. Bradish said that to build a line without AEP, another utility would either need to design the 765 kV lines and order material and equipment without the benefits of standards and specifications developed from real world experience or engage engineering firms to perform this work. This could present significant challenges including (1) structural testing and development for tower designs, (2) the development of multi-conductor bundles with appropriate electric characteristics to develop a structural configuration, (3) layouts and clearances and designs and testing of insulators in hardware conditions and (4) the development of maintenance procedure.

Mr. Bradish testified that AEP's involvement in Pioneer will bring other advantages to the Project. As an AEP affiliate, he stated Pioneer will have access to AEP's A. Ray King Transmission Training Center and AEP's Dolan Technology Center. The training center offers state-of-the-art indoor training space for lineman and mechanics as well as a fully operational low voltage substation. Particularly relevant to the Pioneer Project, the training center includes a 14-acre outdoor hands-on training area that features several transmission line structures including a number of 765 kV towers and other 765 kV equipment. The technology center

includes a high voltage test yard and has the capability to test the performance of insulators and line hardware up to 1,200 kV. With this center, Pioneer will be able to mitigate potential issues by properly testing any new or modified designs needed to accommodate specific project conditions.

Mr. Bradish discussed AEP's assistance in operating the Reynolds to Greentown MVP Segment under the proposed service agreements. Once the Reynolds to Greentown MVP Segment is in service, he stated AEP will be responsible for the operation and maintenance of the Pioneer Project. AEP has developed the knowledge, skill and equipment to operate and maintain 765 kV facilities safely and cost-effectively because its transmission crews have been performing maintenance on its transmission system since the 1960s. Also in the event of a major outage, he testified that AEP's experience will benefit the Project by reducing down time and insuring the safe restoration of the transmission grid. He stated AEP's involvement and standardized equipment will also facilitate maintenance by providing Pioneer access to AEP's spare equipment. He testified that this access should greatly reduce the lead time required to obtain replacement parts and insure that the parts available will have the correct specifications.

Mr. Pollack, Designated Project Manager for the Pioneer Project, testified regarding the development of the construction cost estimate for the Reynolds to Greentown MVP Segment and the manner in which AEP's involvement in the Pioneer Project should provide considerable project cost savings rather than if Duke Energy Indiana executed the Pioneer Project without AEP's involvement.

Mr. Pollack testified that on April 9, 2012, Pioneer submitted a Construction Cost Estimate ("CCE") to the Commission for the Reynolds to Greentown MVP Segment. The first line of the CCE was a \$240.7 million (in 2010 dollars) conceptual estimate that had been submitted to MISO for planning purposes. The final line of the CCE is the 2012 estimate, including a contingency, of \$328.1 million ("2012 Estimate"). As a first step in the development of the CCE, Mr. Pollack said the Project Team, consisting of planning, engineering and Project management representatives from both Duke and AEP, developed a high level work breakdown structure with categories such as Project management and controls, permitting and siting, land acquisition, engineering, procurement, material and construction. He said the Project Team then developed a Project Milestone Schedule which is a high level bar chart schedule that is used to assist in the development of the cost estimate and associated cash flow. The schedule is based on completion of construction in February 2018.

As a next step, Mr. Pollack said the Project Team then initiated a "table top routing" study to identify several potential line routes and the associated mileage. He said that while three potential routes were identified, the northern route was deemed most feasible. He stated this route was supported by field visits and an ecological consultant who conducted a river crossing assessment. Mr. Pollack stated that the route selected will likely be modified as specific siting activities are performed.

In terms of developing the various cost estimates contained in the CCE, Mr. Pollack said each functional team developed its portion of the budget based on the Project milestone schedule and past experience executing similar scopes of work. For example, he said the Duke Energy

siting and environmental group started by developing a basic work scope to permit a 70 mile transmission line. The group evaluated the cost of permitting other similar transmission projects including a 40 mile transmission line siting project for the Lee Nuclear Station and compared those costs to this Project, making adjustments for differences in work scope such as the length of the line, level of permitting difficulty and unique features. He said the materials and construction budgets were developed in a similar manner by their respective teams.

Mr. Pollack said that the project team utilized AEP's vast experience in designing, constructing, operating and maintaining 765 kV transmission lines. He said that the AEP engineering team developed the elevation data for the centerline of the selected route and then performed a tower optimization study utilizing industry standard software to determine a lattice tower count which formed the basis for the weight of the towers to be used in the CCE. He said the line mileage was used to estimate the conductor and right-of-way costs and that the construction labor estimate was based on recent AEP 765 kV line construction activities. He said AEP's substation estimate was based on its most recent 765 kV station design for its Vassell 765/345/138 kV project located north of Columbus, Ohio. The estimate for the major substation equipment was based on AEP's equipment blankets for 765 kV transformers and circuit breakers.

Mr. Pollack stated that as each functional team prepared its estimate, all assumptions were documented. This information was then reviewed by the entire Project Team. He said as this process unfolded, adjustments were made to improve the quality and accuracy of the estimate based on the combined experience and expertise of both companies representatives. Mr. Pollack explained that a large number of assumptions must be made in all preliminary estimates. However, he noted that assumptions utilized in developing the CCE were based on the actual experience of AEP and Duke Energy. For example, the steel pricing was assumed at a level that was consistent with competitive bid pricing that AEP had received on other 765 kV transmission line projects. Also right-of-way costs assumed a 200 foot width at a price per acre that has actually been experienced by Duke Energy for a recent project. He said all of the assumptions used in the development of the CCE were based on actual experienced gained by the Project partners.

Mr. Pollack then discussed the drivers of the increase of the estimate from \$240.7 million to \$328.1 million. One major driver was inflation, which increased the \$240.7 million to \$252.5 million, assuming a 2.4% inflation rate. Other major drivers were changes of right-of-way acquisition costs and the 7 mile increase in the line mileage caused by MISO's decision to change the terminus point of the Project from Meadow Lake to Reynolds. Together these factors increased the price estimate by approximately \$30 million. Another \$16 million went to Project management and material sales tax. Finally, the 2010 estimate did not include a contingency to account for unforeseen costs. The 2012 Estimate includes a contingency of 10%, which increased the total estimated Project cost to \$328.1 million.

Mr. Pollack noted that the Pioneer Project is in the very early stages of development with no detailed engineering being completed. Other than the "table top routing study," very little additional work can be officially executed without first completing the siting and environmental reviews to allow the Project Team to finalize the route, determine the length of transmission line

and initiate detailed costs. In his opinion, it would be inappropriate for Pioneer to pursue such tasks without first having the appropriate regulatory approvals. Mr. Pollack believes that the preliminary estimate will be changed as detailed routing, engineering and actual procurements are undertaken. He also believed that the settlement agreement in FERC Docket EL 12-24-000 will impact the cost estimate. As a result of that settlement agreement, Pioneer and NIPSCO have entered into a Joint Development Agreement whereby NIPSCO and Pioneer are jointly involved and will equally own 50% of the Reynolds to Greentown MVP Segment. He testified that NIPSCO is currently in the process of reviewing the underlying cost estimates and the parties were scheduled to meet in mid-February 2013. In his opinion, it is likely that as a result of NIPSCO's review, the costs of the estimates will change if only because of NIPSCO's extensive knowledge of its own Reynolds Substation, the terminus of this segment.

Mr. Pollack then testified as to the consequences or impact if Duke were to execute the Reynolds to Greentown MVP Segment without AEP's knowledge or experience. In his opinion, the estimated costs would increase by 15-30%. Mr. Pollack said that as the CCE was prepared, he sees several areas where AEP involvement has provided for cost savings which would be lost if it was not involved -- for example, use of the AEP in-house engineering team. Without this in-house experience, Duke Energy would have to hire an outside engineering firm to duplicate the scope of work for which AEP is currently responsible. In Mr. Pollack's experience, he would expect an outside engineering firm to include a profit and contingency in its bid price of at least 15%. As to AEP's in-house 765 kV expertise, Mr. Pollack said Duke Energy would have to develop a Request for Proposal for consulting services for construction of the 765 kV transmission project, bid the work, evaluate bids, negotiate and award a contract and then administer the contract. He noted that Duke Energy would also add engineering resources to review and oversee the work prepared by the consultant to insure it passes scrutiny. Also, AEP's 765 kV expertise allows for a lower contingency, which was included in the 2012 Estimate at 10%. Mr. Pollack said this contingency level is very low for a project with such a limited level of engineering detail and was discussed in considerable detail with the Project Team. He said he would expect with the current level of engineering detail, a normal contingency would be 15-30%. He said this projected contingency is based on Duke Energy's current in-house standards and is also consistent with the Association for Advancement of Cost Engineering recommendations. However, because of AEP's experience, the Project Team felt the lower 10% contingency was reasonable and appropriate. Finally, the Project cost will be a higher, according to Mr. Pollack, without the benefit of AEP's significant level of experience in designing, constructing and commissioning 765 kV transmission lines and substations. He noted that Duke Energy does not have this experience. In his opinion, AEP's participation in this Project eliminates a high degree of uncertainty from a project management perspective and will help Pioneer avoid many pitfalls that may otherwise be encountered.

**9. IURC Testimonial Staff's Supplemental Testimony.** Mr. Johnston supported the Settlement, which addressed the four categories of questions and concerns that he raised in his direct testimony. These categories are:

(1) The definition of the Pioneer Project. Mr. Johnston stated that the original Petition described the Pioneer Project as an approximately 245 mile 765 kV transmission line between the Rockport Substation in Spencer County in southern Indiana and the Greentown

Substation in Howard County in north central Indiana. Mr. Johnston testified that the Agreement clarifies that the Pioneer Project consists of three segments and that Pioneer's portion of the Reynolds to Greentown MVP Segment has been approved by MISO. With regard to the other two segments, Mr. Johnston stated that the Agreement provides that Pioneer must receive approval from the appropriate RTO prior to constructing either of these two segments and Pioneer must provide notice and information to the Commission and the OUCC when the remaining two segments of the Pioneer Project are submitted to the appropriate RTO.

(2) Responsibility to Construct. Mr. Johnston stated that MISO, in its 2011 Midwest Transmission Expansion Plan, indicated that Duke and NIPSCO were responsible for constructing the Reynolds to Greentown MVP Segment. Mr. Johnston discussed the history of the complaint filed by Pioneer in FERC Docket No. EL12-24-000 and the fact that Pioneer, NIPSCO and Duke have reached a Settlement Agreement in that docket. Attached to the Settlement Agreement in that docket is a letter of assignment executed by MISO, NIPSCO and Duke Energy, assigning Duke Energy's responsibility to construct the Reynolds to Greentown MVP Segment to Pioneer. Mr. Johnston noted that the Settlement Agreement in Docket No. EL12-24-000 provides that the responsibility to construct this segment belongs equally to NIPSCO and Pioneer.

(3) Pioneer's Capabilities. Mr. Johnston stated that in his direct testimony, he did not question the financial and technical capabilities of Pioneer, Duke and AEP. However, in his opinion, Pioneer had not provided sufficient evidence in its case-in-chief regarding its managerial capabilities. Mr. Johnston was concerned that the multi-layer joint venture aspects of Pioneer could increase costs and reduce efficiencies. Mr. Johnston testified that Pioneer, Duke Energy and AEP have provided detailed information regarding Pioneer's participation in MISO and PJM and how it formulated its 2012 construction cost estimate. As a result of this detailed information, summarized in Pioneer's supplemental testimony, Mr. Johnston is of the opinion that Pioneer does have the managerial, technical and financial capability to construct, own, operate and maintain the Reynolds to Greentown MVP Segment in coordination and conjunction with NIPSCO.

(4) Benefits of Pioneer's Involvement. Mr. Johnston testified that Pioneer's earlier testimony did not provide sufficient information to show the benefits of Pioneer's involvement. He stated that AEP has since provided detailed information regarding the benefits of its participation which include: (1) reduced costs, by having 765 kV towers already designed and tested, (2) increased operational and maintenance efficiencies from the use of employees trained by AEP that regularly work on 765 kV facilities, and (3) access to backup material and supplies that are already maintained by AEP. As a result of this additional testimony, Mr. Johnston testified that the IURC Testimonial Staff is of the opinion that Pioneer has demonstrated the benefits of its participation in the construction, ownership, operation and maintenance of the Reynolds to Greentown MVP Segment. He concluded his testimony by stating that the IURC Testimonial Staff supports the Settlement.

**10. OUCC Supplemental Testimony.** Mr. Keen testified that the OUCC believes Pioneer would act as a public utility in the State of Indiana once any phase of the Pioneer Project is constructed and operational. He also stated that Pioneer should be authorized to transfer

functional control of operations of these transmission facilities to PJM and/or MISO. As to the financial, technical and managerial expertise to operate as a transmission company and act as a public utility in Indiana, Mr. Keen testified that NIPSCO, Duke Energy Indiana, Indiana Michigan Power Company and AEP each have the financial, technical and managerial expertise to continue to operate as energy suppliers, as operator of transmission systems and as public utilities in Indiana. He said the combined company (Pioneer) has access so that it can rely entirely upon its parent companies for that expertise, personnel and resources.

Mr. Keen explained that the Settlement specifically states that Pioneer's public utility status applies only to those segments of the Project that have been approved by an RTO and which Pioneer constructs, owns and operates. He noted that only the Reynolds to Greentown MVP Segment has received RTO approval, and the two remaining segments have yet to receive such approval. He said that the Settlement makes any construction by Pioneer regarding these other two segments contingent on approval by the appropriate RTOs as part of their regional plan and he said that the Settlement further provides that any such approval had to be received pursuant to the RTO's transmission planning process or methodology for awarding development rights. Mr. Keen further stated that Pioneer has provided adequate evidence supporting the proposed Settlement as in the public interest. He noted that Pioneer supplemented the record with additional information and technical detail, which helped assure the OUCC that Pioneer has sufficient technical, managerial, and financial capability to efficiently and cost effectively construct, own and operate the Reynolds to Greentown MVP Segment. Mr. Keen concluded his testimony by opining that granting Pioneer's petition as outlined in the Settlement would be in the public interest and that the OUCC recommended Commission approval without change.

**11. NIPSCO Supplemental Testimony.** NIPSCO presented the supplemental testimony of Mr. Dehring. Mr. Dehring outlined the events in Docket No. EL12-24-000 and noted that NIPSCO and Pioneer had agreed to jointly develop the Reynolds to Greentown MVP Segment. Mr. Dehring testified that the offer of settlement in the FERC proceeding and the Settlement in the instant proceeding addresses NIPSCO's concerns and it supports Commission approval of the Agreement.

**12. Commission Discussion and Findings.** The Commission begins with a general discussion of settlement agreements. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order including the approval of a settlement must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the

Commission can approve the Settlement, a copy of which is attached to this Order and incorporated by reference, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such Settlement serves the public interest.

As to the Settlement, the Commission finds that the Settlement provides a just and reasonable resolution in the public interest. Pioneer's request for transmission-only public utility status represents a unique case before this Commission. The original Petition in this Cause represented a significant departure from previous proceedings decided by the Commission in that Pioneer, a public utility subject to the primary jurisdiction of FERC, is seeking Commission approval to operate as a transmission-only utility within the State of Indiana with regard to a project to be constructed entirely within the State. Pioneer is one of many electric transmission companies that were formed for the purpose of providing transmission services for wholesale power transactions throughout the United States. Therefore, it is important that the framework for approving such transmission-only utilities protects the interests of all stakeholders, including incumbent electric utilities and Indiana ratepayers.

While Pioneer's initial filing generated some controversy amongst the parties, the Settling Parties' supplemental testimony demonstrates the Settlement addresses these controversies and resolves them in a manner that leads to appropriate oversight by this Commission and the applicable RTO, with regard to the Reynolds to Greentown MVP Segment and the future segments that are part of the overall Pioneer Project. No segment of the Pioneer Project can be constructed without the appropriate RTO approval. This same requirement applies with equal force to any other transmission project that Pioneer may develop within the State of Indiana. Not only is RTO approval required before construction, notice to the Commission and the OUCC is also required as Pioneer moves forward with RTO approval.

The supplemental testimony reveals that Pioneer's structure, supported by the respective expertise of its members (AEP and Duke Energy), provide benefits to Indiana consumers as Pioneer plans to invest almost a billion dollars in the State of Indiana, through the enhancement of transmission of renewable resources to the market and the provision of construction and manufacturing jobs. AEP's involvement in the Reynolds to Greentown MVP Segment will produce significant cost-savings for ratepayers. Additionally, the costs of all three segments will be allocated throughout the MISO and PJM footprints. Moreover, the Reynolds to Greentown MVP Segment will be owned, constructed, operated and maintained by NIPSCO and subsidiaries of two electric utility holding companies. Utilizing the knowledge and expertise of these three organizations will produce significant benefits to Indiana ratepayers.

The Settlement presented by the Settling Parties in this Cause provides for Commission approval of Pioneer's status as a transmission-only public utility in Indiana, including the right to exercise the power of eminent domain. Consequently, Pioneer would be accountable as a public utility subject to the Commission's jurisdiction. In an effort to

insure the operations of Pioneer are transparent and accessible, the Settlement also contains provisions relating to the reporting of construction, operation and benefits, communications with the Commission and OUCC, maintenance of Pioneer's books and records, and means by which the OUCC and Commission will have access to those books and records. Finally, the supplemental testimony demonstrates that Pioneer has the financial, technical and managerial capability to operate as a transmission-only public utility within the State of Indiana.

With respect to affiliate agreements, Pioneer filed two service agreements with the Commission in accordance with Ind. Code § 8-1-2-49. These two agreements were also included in the evidence filed in this Cause. While we recognize the term of the affiliate agreements is longer than five years, a term generally considered by the Commission in its General Administrative Order 2010-1 to be in the public interest, we find the two service agreements to be reasonable based upon the evidence presented and the nature of these particular agreements. In addition, we note that to the extent Pioneer enters into any additional affiliate service agreements, the Settlement obligates Pioneer to submit those agreements pursuant to the provisions of Ind. Code § 8-1-2-49.

Based on the evidence presented, we find the Settlement is a reasonable, balanced and comprehensive resolution of the issues in this Cause. The Settlement provides that Pioneer's operations will be transparent, accountable and compliant with the Commission's regulations and should not adversely affect Indiana consumers. The Settlement also provides for ongoing communication amongst the parties and the filing and sharing of information related to Pioneer's operations. Taken together, the terms of the Settlement serve the public interest, satisfy the important public policy of fostering settlement over litigation and should provide benefits to Indiana. Therefore, the Commission finds that the Settlement is reasonable and in the public interest and should be approved.

Finally, the parties agree that Settlement should not be used as precedent in any other proceeding or for any other purpose except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

**13. Confidentiality.** On June 28, 2012, NIPSCO filed a *Motion for Protection and Nondisclosure of Confidential Information*, which was supported by affidavit showing documents to be submitted to the Commission were trade secret information within the scope of Ind. Code § 24-2-3-2. On July 19, 2012, the Presiding Officers issued a Docket Entry finding the information described in NIPSCO's request to be preliminarily confidential, after which such information was submitted under seal. The Commission finds that, pursuant to Ind. Code §§ 8-1-2-29 and 5-14-3-4, the confidential information presented in this proceeding should be afforded confidential treatment as trade secrets and continue to be held as confidential by the Commission.

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

1. The Settlement Agreement shall be and hereby is approved.
2. The Terms and Conditions of the attached Settlement Agreement are incorporated as part of this Order.
3. Pioneer's status as a transmission-only public utility shall be and hereby is approved.
4. Pioneer shall be and hereby is granted all rights, responsibilities and privileges to do business in Indiana, including the right to exercise the power of eminent domain pursuant to Ind. Code ch. 32-24-4.
5. Pioneer shall be and hereby is authorized as in the public interest to (a) transfer functional control of its 50 percent ownership of the Reynolds to Greentown MVP Segment to MISO and (b) to transmit electric power generated outside the borders of the United States. Pioneer shall notify the Commission upon the transfer of functional control of its portion of the Reynolds to Greentown MVP Segment to MISO.
6. The Commission hereby gives its consent to Boards of County Commissioners of all Indiana counties to grant Pioneer such licenses, permits or franchises as may be necessary for Pioneer to use and occupy county roads, highways and other public right-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23.
7. The confidential information presented in this proceeding is found to be confidential and shall continue to be excepted from public disclosure.
8. This Order shall be effective on and after the date of its approval.

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

**APPROVED: APR 17 2013**

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



**Shala M. Coe**  
**Acting Secretary to the Commission**

STATE OF INDIANA  
BEFORE THE  
INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF PIONEER TRANSMISSION, LLC FOR:  
(1) A DETERMINATION OF ITS STATUS AS A PUBLIC  
UTILITY UNDER INDIANA LAW; (2) FOR A  
DETERMINATION OF ITS CAPABILITY TO  
OPERATE AS A PUBLIC UTILITY IN INDIANA; (3)  
FOR AUTHORITY TO OPERATE AS A PUBLIC  
UTILITY IN INDIANA, INCLUDING AUTHORITY TO  
EXERCISE ALL RIGHTS AND PRIVILEGES OF AN  
INDIANA PUBLIC UTILITY; (4) FOR AUTHORITY TO  
TRANSFER FUNCTIONAL CONTROL OF  
OPERATIONS OF ITS TRANSMISSION FACILITIES  
TO ONE OR MORE REGIONAL TRANSMISSION  
ORGANIZATIONS; (5) FOR AUTHORITY TO KEEP  
ITS BOOKS AND RECORDS OUTSIDE THE STATE OF  
INDIANA; AND (6) FOR THE COMMISSION'S  
CONSENT TO BOARDS OF COUNTY  
COMMISSIONERS FOR PETITIONER TO OCCUPY  
PUBLIC RIGHTS-OF-WAY**

CAUSE NO. 44135

**STIPULATION AND SETTLEMENT AGREEMENT**

THIS AGREEMENT is made and entered into by and among Pioneer Transmission, LLC ("Pioneer" or "Petitioner"), the Testimonial Staff of the Indiana Utility Regulatory Commission ("IURC Testimonial Staff"), the Indiana Office of Utility Consumer Counselor ("OUCC"), and Northern Indiana Public Service Company ("NIPSCO"), (collectively the "Parties" and individually "Party"). The Parties having been duly advised by their respective staff, experts and counsel, and solely for purposes of compromise and settlement, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters in this proceeding pending before the Indiana Utility Regulatory Commission ("Commission" or "IURC"), subject to their incorporation into a final, non-appealable order ("Final Order") of the

Commission without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement"), in its entirety, the entire Settlement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

**WITNESSETH:**

**WHEREAS**, Pioneer has petitioned the Commission for approval, to the extent necessary, of Pioneer's status as a transmission only public utility and for related regulatory relief as set forth in the Petition in this Cause dated December 16, 2011 and have supported such request with prepared testimony and exhibits filed in this proceeding as supplemented on February 14, 2013;

**WHEREAS**, the IURC Testimonial Staff and the OUCC, as well as the other Parties in this Cause, have analyzed the Petitioner's filing, conducted discovery, participated in technical meetings, and otherwise given consideration to the relief sought by Petitioner in this Cause;

**WHEREAS**, the IURC Testimonial Staff and the OUCC desire to have access to information necessary for the IURC Testimonial Staff and the OUCC to understand and assess Pioneer's planning, construction and operations on a forward going basis;

**WHEREAS**, Pioneer, IURC Testimonial Staff and the OUCC believe that Pioneer should be transparent, accountable and compliant with the Commission's regulations and should not adversely affect Indiana consumers;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the Parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

## A. DEFINITION

1. For definitional purposes of this settlement only and without precedent in any other proceeding, the "Pioneer Project" means the transmission project that consists of three segments:

- 1) Pioneer's portion of a 765 kV line running from Duke Energy Indiana's Greentown substation to the NIPSCO Reynolds substation (the "Reynolds to Greentown MVP segment")<sup>1</sup>, jointly developed by Pioneer and NIPSCO, with Pioneer as the assignee of Duke Energy (see Exhibit A),
- 2) a 765 kV line running from Reynolds to the Indiana Michigan Power Company's Sullivan substation, with the portion within the Reynolds substation being owned by NIPSCO, and
- 3) a 765 kV line running from Sullivan to Indiana Michigan Power Company's Rockport generating plant.

## B. TERMS AND CONDITIONS OF FINAL ORDER

1. Public Utility Status. The parties agree that:
  - a. Pioneer should be found to have the managerial, operational and financial capability to operate as a transmission only public utility within the State of Indiana.
  - b. Pioneer's status as a transmission only public utility should be approved.

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<sup>1</sup> "MVP" is the acronym for "Multi-Value Project." The Reynolds to Greentown MVP was approved as Project Number 2202 in the 2011 Midwest Transmission Expansion Plan ("2011 MTEP") of the Midwest Independent Transmission System Operator, Inc. ("MISO").

- c. Pioneer should be granted all rights, responsibilities and privileges to do business in Indiana, including the right to exercise the power of eminent domain pursuant to IC 32-24-4-1, et seq.
- d. Pioneer's requests to: 1) transfer functional control of its 50 percent ownership of the Reynolds to Greentown transmission facilities to MISO and 2) to transmit electric power generated outside the borders of the United States should be approved as in the public interest.
- e. Consent should be given to Boards of County Commissioners of all Indiana counties to grant Pioneer such licenses, permits or franchises as may be necessary for Pioneer to occupy and use county roads, highways and other public right-of-ways for the provision of its services and facilities pursuant to I.C. 36-2-2-23.

2. Conditions on Public Utility Status.

- a. Pioneer's Public Utility status shall apply only to transmission facilities related to the Pioneer Project that Pioneer may construct, own and operate within Indiana that have been approved by a Regional Transmission Organization ("RTO") and included in a regional transmission plan.
- b. Pioneer agrees to abide by the applicable RTO processes for all segments of the Pioneer Project. Nothing in this Settlement should be construed as 1) preempting the RTOs' transmission planning process or methodology for awarding development rights, or 2) altering the development rights and responsibilities for the Reynolds to Greentown MVP segment, as will be determined in FERC Docket No. EL12-24-000.

- c. If Pioneer proposes to construct, own or operate any project in Indiana in addition to the Pioneer Project described in Paragraph A1, it shall provide the Commission and the OUCC thirty days written notice of the project before seeking RTO or FERC approval. Nothing in this Settlement shall prejudice the rights of any party to argue that additional Commission authorization is or is not required before Pioneer may start the construction of the projects described in this paragraph.
  - d. Pioneer agrees to comply with all Indiana statutes, including those enforced under the jurisdiction of the Commission.
  - e. The Formula Rate Protocols applicable to Pioneer as approved by the FERC shall apply and are incorporated herein by reference. A copy of the MISO Protocols for Pioneer is attached as Exhibit B to this Settlement.
  - f. Pioneer shall provide to the Commission's Director of the Electricity Division and General Counsel and the OUCC copies of, or a written notice and an electronic link to, any filing, report, or information required by the Formula Rate Protocols hereto within three (3) business days of posting.
3. Communications with Testimonial Staff and OUCC.
- a. No later than within six months of the Commission order approving this Settlement, the Parties shall meet to discuss the project status of the Reynolds to Greentown MVP segment of the Pioneer Project. At a minimum, Pioneer shall provide the most recent construction schedule for the Reynolds to Greentown MVP segment and the Joint Development Agreement between

Pioneer and NIPSCO. Pioneer shall also make available any project engineering that has been completed at the time of the meeting.

- b. Subsequent to the first meeting described in paragraph 3a, the Parties shall schedule two additional meetings with the Parties at six month intervals, for a total of three meetings within an eighteen month period, to provide status reports, construction cost estimates and construction schedules for the Reynolds to Greentown MVP segment.
- c. The Parties shall subsequently meet or confer as reasonably requested to discuss the status of the Reynolds to Greentown MVP segment and Pioneer shall provide to all Parties any filing made with the IURC or FERC regarding the Reynolds to Greentown MVP segment.
- d. Pioneer shall provide written notice and an electronic link to documents submitted to the applicable RTO seeking inclusion of the remaining segments of the Pioneer Project in a regional transmission plan. Pioneer shall provide copies of such documents upon request by the Parties. If requested, Pioneer shall meet annually with the Parties to discuss the status of the remaining segments of the Pioneer Project. These meetings are in addition to those to be scheduled under Paragraphs 3a, 3b and 3c above.
- e. Written notices required to be served under this Settlement may be provided in electronic form (“email”) and shall be provided to the following:  
  
IURC – Director of the Electricity Division and General Counsel  
  
OUCC – The Utility Consumer Counselor  
  
NIPSCO

4. Pioneer's Books and Records.

- a. The Parties agree that Pioneer's request to maintain its books and records out of state should be approved. Pioneer agrees to produce in Indiana, upon reasonable notice, duplicate copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties. To the extent it presents an undue burden on Pioneer to produce in Indiana the books and records, Pioneer shall reimburse the Commission and the OUCC for all travel expenses, including travel fare, mileage, lodging and meals, incurred while inspecting Pioneer's books and records while outside of Indiana.

5. Affiliate Agreements.

The following affiliate agreements should be deemed submitted with the Commission and therefore effective on January 18, 2012, as required by IC 8-1-2-49.

- a. Services agreement between Pioneer and American Electric Power Service Corporation, Affiliate Contract No. AEPSC-44135; and
- b. Services agreement between Pioneer and Duke Energy Business Services, LLC, Affiliate Contract No. DEBS-44135.

If Pioneer enters into any other affiliate services agreements, or modifies the two affiliate agreements listed above, it shall submit such agreements with the Commission pursuant to I.C. 8-1-2-49 and serve a copy of such agreements on the OUCC.

6. FERC Docket No. EL 12-24-000.

- a. The IURC Testimonial Staff agrees to file additional comments in FERC Docket No. EL12-24-000 stating that they have reached a settlement with

Pioneer in this proceeding and no longer request rejection of the settlement in Docket No. EL12-24-000.

**C. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION**

1. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. Pioneer shall supplement its testimony to include in the record substantive information regarding Pioneer's benefits and contribution to the public interest, such as has been discussed with the Parties during the course of the settlement negotiations.

2. The Parties shall jointly move for leave to file this Settlement and supporting evidence. Such evidence shall be offered into evidence without objection and the Parties hereby waive cross-examination. The Parties propose to submit this Settlement and the supporting evidence conditionally, and if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any Party, the Settlement and supporting evidence shall be withdrawn and the proceedings in Cause No. 44135 shall resume at the point they were suspended by the filing of this Settlement.

3. A Final Order approving this Settlement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Parties as an Order of the Commission.

4. The Parties shall jointly agree on the form, wording and timing of a public/media announcement (if any) of this Settlement and the terms thereof. No Party shall release any information to the public or media prior to the aforementioned announcement. The Parties may respond individually without prior approval of the other Parties to questions from the public or

media, provided that such responses are consistent with such announcement and do not disparage any of the Parties. Nothing in this Settlement shall limit or restrict the Commission's ability to publicly comment regarding this Settlement or any Order affecting this Settlement.

#### **D. EFFECT AND USE OF SETTLEMENT**

1. It is understood that this Settlement is reflective of a negotiated settlement and neither the making of this Settlement nor any of its provisions shall constitute an admission by any Party to this Settlement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement is in consideration and support of each and every other term.

2. This Settlement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement.

3. This Settlement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

4. The Parties agree that the evidence in support of this Settlement constitutes substantial evidence sufficient to support this Settlement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible.

5. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of

settlement and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise, except as set forth in Paragraph C1.

6. The undersigned Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successors and assigns, who shall be bound thereby.

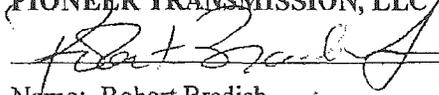
7. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement). The Parties shall support or not oppose this Settlement in the event of any appeal or a request for a stay by a person not a party to this Settlement if this Settlement is the subject matter of any other state or federal proceeding.

8. The provisions of this Settlement shall be enforceable by any Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

9. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED as of the 7<sup>th</sup> day of February, 2013.

**PIONEER TRANSMISSION, LLC**

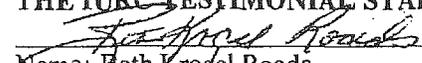


Name: Robert Bradish  
Its: President

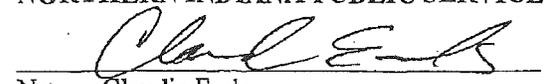
**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

  
Name: A. David Stippler  
Its: Utility Consumer Counselor

**THE IURC TESTIMONIAL STAFF**

  
Name: Beth Krogel Roads  
Its: Counsel for the IURC Testimonial Staff

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

  
Name: Claudia Earls

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered or emailed, postage prepaid, in the United States Mail, this 7<sup>th</sup> day of February, 2013, to the following:

Robert Mork  
Indiana Office of Utility Consumer Counselor  
National City Center  
115 W. Washington Street  
Suite 1500 South  
Indianapolis, IN 46204

Steve Griesemer  
Lewis & Kappes, P.C.  
One American Square, Suite 2500  
Indianapolis, IN 46282

Jennifer A. Washburn  
603 E. Washington St., Suite 502  
Indianapolis, IN 46204

Beth Krogel Roads  
Indiana Utility Regulatory Commission  
101 W. Washington St., Suite 1500 E.  
Indianapolis, IN 46204

Claudia J. Earls  
Timothy R. Caister  
NiSource Corporate Services Company  
150 W. Market St., Suite 600  
Indianapolis, IN 46204

Jerome E. Polk  
Polk & Associates, LLC  
101 W. Ohio St., Suite 2000  
Indianapolis, IN 46204



\_\_\_\_\_  
Attorney for Petitioner  
Pioneer Transmission, LLC

Peter L. Hatton (Atty. No. 7970-45)  
300 North Meridian Street, Suite 2700  
Indianapolis, IN 46204  
Telephone: (317) 237-8294  
Facsimile: (317) 237-1000  
peter.hatton@faegrebd.com