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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY FOR APPROVAL OF )  
REGIONAL TRANSMISSION ORGANIZATION ) CAUSE NO. 44156 RTO 1  
ADJUSTMENT FACTORS TO BE APPLICABLE )  
DURING THE BILLING MONTHS OF MAY 2012 ) APPROVED: AUG 22 2012  
THROUGH OCTOBER 2012 PURSUANT TO )  
CAUSE NOS. 43526 AND 43969. )

ORDER OF THE COMMISSION ON REMAINING ISSUE

**Presiding Officers:**  
**Carolene R. Mays, Commissioner**  
**Aaron A. Schmoll, Senior Administrative Law Judge**

On February 2, 2012, Northern Indiana Public Service Company (“NIPSCO” or “Petitioner”) filed its petition for Indiana Utility Regulatory Commission (“Commission”) approval of regional transmission organization adjustment (“RTO Adjustment”) factors to be applicable during the billing months of May 2012 through October 2012. Petitioner also prefiled its case-in-chief on February 2 and 3, 2012, which consisted of the testimony and exhibits of Katherine A. Cherven, Manager of Compliance in the Rates and Regulatory Finance Department of NIPSCO, Matthew G. Holtz, Director of the System Reliability and Development Department of NIPSCO, Curt A. Westerhausen, Director of Rate and Contracts in the Rates and Regulatory Finance Department of NIPSCO, Ronald G. Plantz, Controller of NIPSCO and Daniel T. Williamson, Executive Director of Energy Supply and Trading for NIPSCO. NIPSCO Industrial Group (“Industrial Group”) filed its Petition to Intervene on March 2, 2012, which was subsequently granted at the April 10, 2012 evidentiary hearing. On March 20, 2012 the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the Prefiled Testimony of Stacie R. Gruca (Public’s Exhibit No. 1).

On March 30, 2012, Petitioner filed an Unopposed Motion to Modify Procedural Schedule moving the Commission to establish a Phase II in this proceeding to address NIPSCO’s request to retain Multi-Value Project (“MVP”) related revenues obtained through the Midwest Independent Transmission System Operators, Inc.’s (“MISO”) Schedule 26-A. At the April 10, 2012 evidentiary hearing, the Commission approved the modified procedural schedule to address the Schedule 26-A revenues in a subsequent hearing under this Cause.

On April 9, 2012, Petitioner prefiled supplemental testimony of Timothy A. Dehring, Senior Vice President, Transmission & Engineering of NIPSCO. On April 23, 2012, the OUCC prefiled supplemental testimony of Stacie R. Gruca and Industrial Group prefiled supplemental testimony of James R. Dauphinais, Principal of Brubaker & Associates, Inc. On April 30, 2012, Petitioner prefiled rebuttal testimony of Timothy A. Dehring.

The Commission issued its Order of the Commission on Less Than All Issues on April 25, 2012 which approved, among other things, Petitioner’s requested RTO Adjustment factors to be

applicable to bills rendered in the months of May 2012 through October 2012.

Pursuant to public notice duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the Commission's official file, a public hearing in this Cause was held on May 14, 2012, at 9:30 a.m. in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. At the hearing Petitioner, the OUCC, and Industrial Group appeared by counsel. Petitioner offered its prefiled supplemental and rebuttal testimony. OUCC and Industrial Group offered their respective prefiled supplemental testimony and exhibits, all of which were admitted into evidence without objection. No other party or members of the general public appeared.

Based upon the applicable law and the evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Proper notice of the hearing in this Cause was given as required by law. Petitioner is a public utility corporation incorporated under the laws of the State of Indiana, operating electric utility properties in northern Indiana and is subject to the jurisdiction of this Commission as provided in the Public Service Commission Act, as amended, Ind. Code ch. 8-1-2. Thus, the Commission has jurisdiction over NIPSCO and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner has its principal office at 801 East 86<sup>th</sup> Avenue, Merrillville, Indiana. Petitioner is engaged in rendering electric public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plants and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of such service to the public.

3. **Background and Requested Relief.** In Phase II of this proceeding, NIPSCO requests authority to retain one hundred (100%) percent of revenues it receives as the constructor of a portion of MISO's seventeen project MVP portfolio under MISO Schedule 26-A which, under MISO's FERC-approved tariff, are designed to recover the costs of building MVP projects, including certain transmission rate incentives. The Commission's August 25, 2010 Order in Cause No. 43526 ("43526 Order") and December 21, 2011 Order in Cause No. 43969 ("43969 Order") found that NIPSCO's MISO non-fuel costs and revenues should be included in a mechanism designated as the RTO Adjustment. The Schedule 26-A MVP related charges and credits are MISO non-fuel costs and revenues; therefore, without modification, all Schedule 26-A revenues would flow back to NIPSCO's retail customers through the RTO Adjustment mechanism, and NIPSCO would not be able to recover the costs of or return on the MVP projects or the transmission rate incentives.

4. **Summary of Evidence.**

A. **Petitioner's Direct Testimony.** Mr. Holtz provided testimony in support of NIPSCO's request to retain 100% of future MVP related revenues to be obtained through MISO's Schedule 26-A. Mr. Holtz provided an overview of the 2011 MISO Transmission Expansion Plan ("MTEP 11") including the new MVP Portfolio. He also described how MVPs are treated by MISO and how they impact NIPSCO. He identified the MVPs that connect to the NIPSCO system, including Reynolds – Burr Oak – Hiple 345kV (all NIPSCO substations) and the Reynolds (NIPSCO) to Greentown (Duke Energy) 765kV (collectively referred to herein as the "NIPSCO MVP Projects"). Finally, Mr. Holtz explained MISO's new Schedule 26-A and the treatment of

costs and revenues associated with the NIPSCO MVP Projects. Mr. Holtz testified that since NIPSCO will not be earning any state jurisdictional return on investment in the NIPSCO MVP Projects or collecting the necessary overall revenue requirement to support its construction in any other manner, NIPSCO is requesting, and it is reasonable and necessary, to exclude its Schedule 26-A revenues from the RTO Adjustment mechanism.

B. OUCG's Direct Testimony. In her direct testimony, Ms. Gruca recommended that the Commission defer consideration of NIPSCO's proposed treatment and recovery of Schedule 26-A MVP charges and revenues at this time and address the issue at the time NIPSCO actually begins incorporating charges from MISO under Schedule 26-A. She testified that in order to make a recommendation, the OUCG needed to acquire a better understanding and knowledge basis of the MVP Portfolio piece of the MISO MTEP 11 and that a summary proceeding such as NIPSCO's first initial RTO Adjustment filing did not allow adequate time to become familiar with the MISO MVP Portfolio and the treatment of MVP costs and revenues proposed by NIPSCO. She stated that due to the newness and recent approval of the MISO MVP Portfolio to be included in the MTEP 11, as well as the fact that MVP projects do not yet affect the amounts at issue in this RTO-1 filing, the OUCG believed it was premature to grant authority at this time. Ms. Gruca recommended that NIPSCO and the OUCG continue to engage in discussions regarding the MISO MVP Portfolio and NIPSCO's MVP Projects and address this issue in testimony when NIPSCO actually begins incorporating charges from MISO under Schedule 26-A.

C. Petitioner's Supplemental Testimony. Mr. Dehring provided further support for and summarized NIPSCO's request to retain MVP related revenues obtained through MISO Schedule 26-A. He responded to the OUCG's recommendation to defer consideration of NIPSCO's proposed treatment and recovery of Schedule 26-A MVP charges and revenues at this time and address the issue at the time NIPSCO actually begins incorporating MISO charges under Schedule 26-A and explained why a decision from the Commission on this request is appropriate at this time. Mr. Dehring testified that NIPSCO met with the OUCG and other stakeholders following the filing of its March 23, 2012 Motion for Extension of Time to discuss what type of entities will build MVP projects, how costs to build MVP projects are allocated to MISO load serving entities, and NIPSCO's request to retain 100% of MVP-related revenues obtained through MISO's Schedule 26-A.

Mr. Dehring testified that NIPSCO, as the constructor of a portion of MISO's 17 project MVP portfolio, is requesting authority to retain 100% of revenues it receives under MISO Schedule 26-A which, under MISO's FERC-approved tariff, are designed to recover the costs of building MVP projects.<sup>1</sup> He stated that the only question at issue is whether NIPSCO should retain 100% of Schedule 26-A revenues associated with NIPSCO's construction of MVP projects. The 43526 Order found that NIPSCO's MISO non-fuel costs and revenues should be included in a mechanism designated as the RTO Adjustment. The 43969 Order specified that the RTO Adjustment will be a semi-annual mechanism coordinated with the FAC audit process. The Schedule 26-A MVP related charges and credits are MISO non-fuel costs and revenues; therefore, without modification, all Schedule 26-A revenues would flow back to NIPSCO's retail customers through the RTO

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<sup>1</sup> MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("MISO Tariff"), available at: <https://www.misoenergy.org/LIBRARY/TARIFF/Pages/Tariff.aspx>.

Adjustment mechanism.

Mr. Dehring explained how MVPs fit into MISO's overall transmission planning process and why NIPSCO wants to build the two NIPSCO MVP Projects. He provided testimony to describe how MVP projects are different from NIPSCO's other transmission projects and why NIPSCO's proposed treatment of MVP related revenues is consistent with good public policy.

Mr. Dehring explained why NIPSCO needs a determination on its proposed treatment of the MVP related revenues under Schedule 26-A at this time. He testified that NIPSCO has already begun to spend money on its MVP Projects and has budgeted \$5.2 million in 2012 for engineering and preliminary land purchases and that these projects are substantial investments for NIPSCO. While the division of the project for development of the Reynolds to Greentown 765kV line is being litigated at FERC, the Reynolds to Hiple 345kV line is estimated to cost \$271 million, which is approximately 62 percent of the current net book value of NIPSCO's transmission assets. NIPSCO must have assurance that the Commission will allow NIPSCO to retain the revenues to support these investments in MVP projects prior to undertaking these regional transmission projects. He explained that if NIPSCO is not assured that the Commission will permit NIPSCO to retain MVP related revenues, NIPSCO will be in an undesirable position of considering another avenue to make these investments on short notice – e.g., either elect to make these investments through a separate transmission entity (or Transco) or assign its development rights to a third party. Mr. Dehring stated that NIPSCO (and NiSource) need to understand the regulatory treatment of this project because it impacts how it moves forward at FERC (including the Transco decision) and that NIPSCO, NiSource and their investors desire to know the playing field prior to committing to one specific path to complete these important regional projects. He also stated his belief that if state jurisdictional utilities are not permitted to retain 100% of FERC-approved revenues associated with MVP investments, it will deter state jurisdictional utilities from building these projects and result in more independent Transcos and merchant companies building these projects.

Mr. Dehring testified that the NIPSCO MVP Projects have been approved as part of MISO's MTEP 11 and if NIPSCO does not build these projects, another company will build them. He explained that regardless of who builds these projects, NIPSCO's customers will be charged for these projects through MISO Schedule 26-A charges. In other words, NIPSCO's customers will pay approximately 3% of the cost of these, and all other MVP projects, whether they are built by NIPSCO, an independent Transco or a merchant transmission company. He stated that the costs collected from NIPSCO's customers are based upon NIPSCO's load ratio share of the MVP costs because NIPSCO is acting as a load serving entity and that the costs are independent of whomever is the developer of the MVP.

Mr. Dehring explained that there is no possibility of double recovery of MVP related costs if NIPSCO retains the Schedule 26-A revenues and that it is reasonable to separate NIPSCO's MVP projects from NIPSCO's state jurisdictional rate base. He also explained how MISO Schedule 26-A charges are treated in the RTO-1 Adjustment mechanism. He stated that the cost allocation methodology for MVP projects was approved under the MISO Tariff and that interested stakeholders are welcome to participate (or continue to participate, as the case may be) in the MISO stakeholder process. He described the MISO stakeholder process and FERC proceedings in which the cost allocation scheme for MVPs was thoroughly discussed and ultimately approved. He testified that NIPSCO agreed to provide the most recent version of NIPSCO's Attachment O, GG and MM in

future RTO Adjustment filings. He stated that the information is designed to be responsive to and satisfy the request in testimony of OUCC Witness Gruca regarding further information concerning the NIPSCO MVP Projects.

D. OUCC's Supplemental Testimony. In her supplemental testimony, Ms. Gruca presented a review and provided recommendations concerning NIPSCO's request to retain MVP related revenues obtained through MISO Schedule 26-A. She also recommended how future new MISO non-fuel charge types should be addressed in NIPSCO's RTO Adjustment filings.

Ms. Gruca testified the OUCC continued to engage in discussions regarding the MISO MVP Portfolio and MISO Schedule 26-A charges as recommended in her direct testimony. She stated that in addition to Petitioner providing additional detail in its supplemental testimony, the OUCC participated in discussions with Petitioner's staff, as well as the above-referenced meeting with Petitioner and Industrial Group on March 23, 2012, in which the OUCC gained a better understanding of the MISO MVP Portfolio and Petitioner's request to retain MVP related revenues collected through MISO's Schedule 26-A. Ms. Gruca stated that as a result of such discussions, the OUCC better understands NIPSCO's need for this issue to be resolved through the current RTO-1 proceeding, which NIPSCO explained on pages 8 through 10 of its supplemental testimony.

Ms. Gruca testified that the OUCC agrees with NIPSCO's proposed treatment of MVP related revenues collected under MISO Schedule 26-A. She explained that if NIPSCO did not receive some form of relief, MVP revenues received by NIPSCO would be passed along to its customers, while NIPSCO bore the cost of the projects in its region. She stated it would not be reasonable for NIPSCO customers to recover 100% of these revenues while only bearing approximately 3% of the costs for projects that have been constructed to benefit the entire MISO footprint and not primarily for the need of NIPSCO's customers. She contrasted MVP Projects with traditional transmission projects, which are constructed for the benefit of NIPSCO customers and are included in NIPSCO's state jurisdictional rate base. She stated that NIPSCO's customers recover costs and revenues associated with traditional transmission projects through MISO Schedule 26. Ms. Gruca explained that because NIPSCO receives a return on its traditional transmission projects included in rate base, 100% of the revenues associated with traditional transmission projects are recovered by NIPSCO's customers. She testified that MVPs are different. They are constructed for regional needs and the benefit of the entire MISO footprint and therefore NIPSCO does not plan to include MVPs in NIPSCO's state jurisdictional rate base. As a result, she testified that NIPSCO will not earn any state jurisdictional return on its investment, nor will it collect the necessary overall revenue requirement to support its construction in any other manner.

Ms. Gruca testified that it is in the best interest of NIPSCO's customers for NIPSCO to build the NIPSCO MVP Projects. She explained that the MVPs are not only within NIPSCO's service territory, but will connect with NIPSCO's existing facilities. She also stated that ratepayers would benefit from NIPSCO building these MVPs because NIPSCO is familiar with the customers and communities that these lines will impact and therefore NIPSCO will be well-suited to address the specific customer and community needs that may arise with line routing, design and construction. Ms. Gruca testified that the MISO cost-benefit analysis shows that customers both in the Indiana region and across the wider MISO footprint will benefit from these projects through reliable and economic delivery of energy. Furthermore, Ms. Gruca testified that NIPSCO has agreed to provide the OUCC with the most recent versions of its Attachment O, GG and MM filings in future RTO

Adjustment filings and that NIPSCO has agreed to work with the OUCC to develop a template that will include detailed project status information for new MVPs, which can also be provided as part of NIPSCO's work papers in future RTO Adjustment filings.

Ms. Gruca testified the issue of MVP cost recovery should be addressed at this time because NIPSCO has already begun to incur expenses for the project. As NIPSCO's supplemental testimony now clearly indicates, NIPSCO plans to incur \$5.2 million in 2012 and significantly greater amounts in 2013 and beyond. Given that 100% of MVP revenues would currently flow directly to customers, she explained that failing to address this issue now would leave NIPSCO in the position of spending money on the NIPSCO MVP Projects without any prospect of recovering those costs. However, she testified that the OUCC's recommendations in this Cause should not necessarily determine how other Indiana utilities should treat MVP projects in the future because such issues need to be examined in the broader context of how transmission rates and cost recovery are treated overall with respect to each utility. She stated the OUCC will continue to review transmission developments at MISO as it looks at what rate treatments are most appropriate in future proceedings.

Ms. Gruca testified that the OUCC recommends: (1) the Commission approve NIPSCO's proposed treatment of Schedule 26-A revenues associated with MVPs, allowing NIPSCO to retain 100% of its Schedule 26-A revenues, as long as NIPSCO's MVPs are excluded from its state jurisdictional rate base; (2) the Commission's decision regarding the treatment of Schedule 26-A revenues for NIPSCO not set precedent for treatment of such revenues as the appropriateness of such recovery treatments depends on the individual facts and circumstances of each utility and its overall approach to transmission rates and cost recovery; and (3) the Commission require NIPSCO to provide a detailed narrative in testimony describing any modified, new or future MISO non-fuel charge types to be recovered through NIPSCO's RTO Adjustment mechanism, as well as illustrate costs as a separate line item in its exhibits and/or schedules.

E. Industrial Group's Supplemental Testimony. Mr. Dauphinais responded to NIPSCO's proposal to retain all MISO Schedule 26-A revenues rather than pass at least a portion of them back to ratepayers. Mr. Dauphinais provided a brief description of MISO Schedule 26-A and then described NIPSCO's specific proposal. He explained that NIPSCO, as a MISO transmission customer for its native load customers, will be allocated approximately 3% of all MISO transmission owner MVP costs through MISO Schedule 26-A. He stated that the Industrial Group does not oppose NIPSCO retaining the 97% of the MISO Schedule 26-A revenues NIPSCO receives that are not ultimately collected from NIPSCO retail customers in exchange for 97% of the cost of the associated MVP transmission projects constructed by NIPSCO being excluded from recovery in NIPSCO's retail rates.

Mr. Dauphinais explained that the Industrial Group opposes allowing NIPSCO to retain the 3% of MISO Schedule 26-A revenues NIPSCO receives that are ultimately collected from NIPSCO's retail customers because that would transfer ratemaking authority over the 3% of the MISO MVP transmission projects constructed by NIPSCO that are assignable to NIPSCO's retail customers from the Commission to FERC. He stated that this would include the determination of the prudence of the costs incurred by NIPSCO, the allowed return on equity for recovery, the reasonable capital structure for cost recovery, whether Construction Work in Progress for the projects can be placed into rate base, whether abandoned plant is recoverable and any other matter related to the recovery of the cost of this transmission investment from NIPSCO's retail customers in NIPSCO's rates. Since FERC's

policies have been much more generous to electric utilities with respect to these areas than the Commission in order to encourage new transmission investment and participation in Regional Transmission Organizations (“RTO”), this will likely result in NIPSCO’s retail customers paying higher rates for the recovery of the transmission investment costs in question under FERC ratemaking than those that would result under Commission ratemaking.

Mr. Dauphinais testified that even without the transmission rate incentives commonly approved by FERC, for every \$10 million of transmission investment by NIPSCO that is recovered under FERC’s current capital structure and return on equity (“ROE”) for NIPSCO under the MISO Tariff, NIPSCO’s annual revenue requirement would increase by approximately \$593,000 versus recovery under NIPSCO’s current capital structure and ROE approved in Cause No. 43969. He testified that if FERC granted transmission rate incentives to NIPSCO for the MVP transmission projects NIPSCO is constructing, the adverse impact to NIPSCO’s retail customers would be even larger.

Mr. Dauphinais testified that it is important for the Commission to retain ratemaking authority over the portion of the NIPSCO MVP Projects that are assignable to NIPSCO’s retail customers because traditionally the Commission has had ratemaking authority over a utility’s retail rates and is charged with balancing the interests of the utility and its retail customers. FERC, on the other hand, has authority over wholesale ratemaking. He stated that the MISO and FERC stakeholder process is not a sufficient substitute for Commission ratemaking authority over MVP costs that NIPSCO’s customers ultimately pay. Mr. Dauphinais explained NIPSCO’s responsibility to participate in the MISO stakeholder process and at FERC in a manner that is consistent with providing reliable electric service to its retail customers at the lowest reasonable cost, and while FERC ultimately determines the cost allocation of MVP projects among transmission owners, that fact should not impact the Commission’s ratemaking authority over NIPSCO-constructed MVP transmission project costs assigned to NIPSCO in its role as the MISO transmission customer for its retail customers.

Mr. Dauphinais recommended that the Commission only allow NIPSCO to retain the portion of the MISO Schedule 26-A revenues NIPSCO receives that are not ultimately recovered from NIPSCO’s retail customers. Under this recommendation, NIPSCO would be permitted to later seek to incorporate into its Indiana-jurisdictional rate base the cost of that portion of the MISO MVP transmission projects that NIPSCO constructs which is ultimately assigned to NIPSCO in its role as a MISO transmission customer for its retail customers. He also testified that if, despite his recommendation, the Commission decides to grant NIPSCO’s request, the Commission should clarify that the granting of NIPSCO’s requested relief is conditioned on the allocation of total MVP costs to NIPSCO as a transmission customer on behalf of its retail customers remaining a small amount (e.g., less than 5%) of total MISO MVP costs.

F. NIPSCO’s Rebuttal Testimony. Mr. Dehring responded to the supplemental testimony filed by the OUCC and Industrial Group and explained why the Industrial Group’s recommendation to only allow NIPSCO to retain the portion of MISO Schedule 26-A revenues that are not ultimately recovered from NIPSCO’s retail customers is inconsistent with federal policy, the MISO Tariff and prior Commission orders.

Mr. Dehring explained that it is appropriate for NIPSCO to retain all of the MISO Schedule

26-A MVP-related revenues because NIPSCO will not recover the cost of building the MVP projects or a return on MVP investments in any other way except by retaining Schedule 26-A revenues as MVP projects are not and will not be included in its state jurisdictional rate base. He stated that Mr. Dauphinais' recommendation that 3% of NIPSCO's MVP projects be carved out and treated as jurisdictional property subject to state ratemaking is inappropriate and should be rejected. Mr. Dehring also stated that FERC policy and ratemaking rules govern the treatment of MVP projects.

Mr. Dehring testified that the portion of the NIPSCO MVP Projects that will be recovered from NIPSCO's customers through the RTO Adjustment mechanism should not be considered "state jurisdictional" projects because MVP projects are transmission projects that are identified in MISO's FERC-approved planning process, subject to the approval by the MISO Board of Directors, and enable the reliable and economic delivery of energy in support of documented energy policy mandates or that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple transmission zones. Mr. Dehring noted that the OUCC now agrees with NIPSCO on this point.

Mr. Dehring testified that no portion of NIPSCO's Schedule 26-A revenues should be subject to Commission ratemaking as the Industrial Group suggested and that it is incorrect to state that if NIPSCO excludes the MVP projects from its jurisdictional rate base and retains all of Schedule 26-A revenues that would somehow "transfer ratemaking authority of the 3% of MISO MVP transmission projects constructed by NIPSCO that are assignable to NIPSCO's retail customers from the Commission to the FERC." He explained that on one hand, NIPSCO is a load serving entity, and it will pass FERC-approved Schedule 26-A charges along to its customers (i.e., approximately 3% of the entire MVP portfolio) even if NIPSCO does not build any MVP projects. On the other hand, NIPSCO is a constructor—building its MVP projects and recovering the projects' costs and a return on its investment under the MISO Tariff. He stated that the 3% is not about NIPSCO's share of the MVP portfolio as a constructor; rather, it is referencing NIPSCO's requirement, as a load serving entity, to pay for its share of the projects on behalf of its customers, regardless of who constructs the MVP projects. Mr. Dehring testified that Mr. Dauphinais' assertion that this would transfer ratemaking authority forgets that this is clearly within the process approved by FERC and authorized by FERC policies. It is already FERC jurisdictional and should remain as such since it is for the benefit of the MISO footprint. Mr. Dauphinais' testimony presumes a concern when there is none. He stated there is little difference between this scenario and that experienced on the interstate natural gas pipeline system - i.e., projects are reviewed and certificated under a FERC approved process.

Mr. Dehring testified that Mr. Dauphinais' faulty premise is that the 3% should be included in NIPSCO's jurisdictional rate base. Because the MVP projects provide regional benefits, it is difficult to imagine a situation where they should be treated as jurisdictional projects. Mr. Dehring explained that the Industrial Group's proposal treats NIPSCO, the constructor, differently than it would a developer that is not the incumbent electric utility. Were NIPSCO to form a Transco, and build the project as a Transco, or were it to assign its development rights to a third party, Mr. Dehring believes we would not be having this discussion. Mr. Dehring testified that the Commission previously recognized that some types of transmission projects should be "non-jurisdictional" in Vectren's Cause No. 43111.

Mr. Dehring testified that since MVPs are not currently and should not be included in state jurisdictional rate base, there would be no corresponding revenue to compensate NIPSCO as the

constructor for the 3% of MVP project costs that Mr. Dauphinais' recommends NIPSCO should not be allowed to recover. He stated that Mr. Dauphinais is inappropriately mixing the concepts of MVP costs allocated by MISO to NIPSCO the load serving entity (i.e., NIPSCO's load share ratio of the entire MVP portfolio) with the concept of recovery of project costs by NIPSCO the constructor (i.e., revenues to recover NIPSCO's specific MVP projects). He explained that these two items are distinguishable and serve two separate purposes. The costs charged by MISO to NIPSCO the load serving entity are associated with charges assessed to NIPSCO load for the MVP portfolio of projects constructed by all of the different MVP constructors and are not at all dependent on NIPSCO's role as an MVP constructor. Mr. Dehring stated it is difficult to imagine that any utility developing a large project would agree to give up 3% of its recovery off of the top. If this were to occur, NIPSCO would have no reasonable opportunity to recover its FERC-approved revenue requirement for the investment into the project.

Mr. Dehring disagreed with Mr. Dauphinais' assertion that NIPSCO's customers suffer "adverse impact" when FERC transmission ratemaking treatment applies versus Commission ratemaking. He stated there is no question that FERC transmission ratemaking rules do apply to MVP projects—state ratemaking treatment is not appropriate so the comparison is not relevant. Furthermore, he testified that there are solid policy reasons for the various returns and incentives provided under FERC ratemaking - they are intended to drive investment in transmission facilities, and that ultimately benefits NIPSCO's customers.

Mr. Dehring disagreed with Mr. Dauphinais' alternative recommendation that "the Commission clarify that the granting of NIPSCO's requested relief is conditioned on the allocation of total MVP costs to NIPSCO as a transmission customer on behalf of its retail customers remaining a small amount (e.g., less than 5% of total MISO MVP costs)." He testified that the MISO Tariff provides that MVP costs are allocated to load serving entities on the basis of their actual energy usage and that NIPSCO's share of the total MISO MVP costs will only change significantly if NIPSCO's load share changes significantly. Mr. Dehring testified that NIPSCO's ability, as a load serving entity, to pass along costs of the total MVP portfolio to its customers should not be arbitrarily tied to a ceiling for NIPSCO's load as it compares to all load within MISO. Mr. Dehring testified that it is reasonable and consistent with prior Commission Orders to separate 100% of NIPSCO's MVP projects from NIPSCO's state jurisdictional rate base, and NIPSCO should be authorized to retain 100% of the Schedule 26-A revenues associated with NIPSCO's construction of MVP projects.

## **5. Commission Findings and Discussion.**

A. MVPs and the MISO Planning Process. The record evidence demonstrates that MTEP 11 is a comprehensive long-term regional plan for the electric grid under MISO's control that the MISO Board of Directors approved on December 8, 2011. The MTEP process is a stakeholder-driven process that FERC has found complies with FERC Order 890.

As indicated by the record, in 2010, MISO and the MISO Transmission Owners proposed revisions to the MISO Tariff (which were subsequently approved by FERC) to establish MVPs as a new category of transmission projects and cost allocation provisions for MVPs. As defined by MISO, MVPs are transmission projects that are determined to enable the reliable and economic delivery of energy in support of documented energy policy mandates or that address, through the

development of a robust transmission system, multiple reliability and/or economic issues affecting multiple transmission zones.

The record evidence shows that the MVP Portfolio includes 17 individual projects and represents \$5.2 billion of investment over the upcoming decade. MISO calculated the regional benefits of the MVP portfolio to be in excess of 1.8 to 3.0 times its costs for the whole MISO footprint. Mr. Holtz testified that under the MISO Transmission Owners Agreement (“TOA”), each Transmission Owner has the responsibility to construct and maintain facilities that connect only to its system and to share equally, unless otherwise agreed, in the responsibility to construct and maintain facilities that are connected between its system and that of another (or more) Transmission Owner(s). He testified that if a Transmission Owner can’t meet its obligation to build its MVPs, the TOA contains steps to ensure the project will be built.

The record evidence shows MISO’s FERC-approved MVP planning process (a subset of MISO’s MTEP cycle) lasted approximately eighteen (18) months and was an open planning process with significant stakeholder input. The evidence also shows that all stakeholders, including NIPSCO, have an interest in seeing MVP projects (\$5.2 billion in aggregate) constructed in a prudent and cost effective manner because all load serving entities share the costs of all seventeen of these projects.

B. MISO’s Tariff - Schedule 26-A Revenues and Costs. Mr. Holtz testified that under the MISO Tariff, each Transmission Owning entity that builds an MVP project must complete an Attachment MM annually to determine the revenue requirement associated with its investment. MISO summarizes the revenue requirements of all MVP projects, utilizing all Attachment MMs, into an overall revenue requirement for the MVP portfolio. He explained that MISO uses this overall revenue requirement to determine the MVP Usage Rate (“MUR”) that it will charge all of its transmission customers that withdraw energy and assesses this charge through Schedule 26-A. The evidence further shows that MISO collects these Schedule 26-A charges monthly from all load, and distributes them to each MVP constructing Transmission Owner in the form of Schedule 26-A revenues. As the constructor of the NIPSCO MVP Projects, NIPSCO will collect supporting revenues for these projects under FERC jurisdictional rates per Attachment MM of the MISO Tariff. These revenues will be distributed to NIPSCO via Schedule 26-A.

As a load serving entity, NIPSCO will be assessed Schedule 26-A charges for the costs of all MVP projects based on its load ratio share (historically, about 3%), regardless of who builds the MVP projects. We note that Schedule 26-A charges are FERC-approved charges so it is appropriate to pass them through to NIPSCO’s customers via the RTO Adjustment mechanism consistent with the 43526 Order and 43969 Order as well as with the “filed rate doctrine.” *See, Entergy Louisiana, Inc. v. Louisiana Public Service Comm’n*, 539 U.S. 39 (2003).

C. Retention of the Schedule 26-A MVP Revenues. There is no dispute that NIPSCO should retain the portion of Schedule 26-A revenues associated with charges that will not ultimately be allocated to NIPSCO as a load serving entity. The only issue we must decide is whether the portion of the Schedule 26-A revenues associated with charges that will be allocated to NIPSCO as a load serving entity and ultimately to NIPSCO’s customers should be treated differently.

The record evidence demonstrates that MVPs are regional projects, with regional benefits,

and the costs of MVPs are assigned in a broad regional construct (i.e., spread to all MISO load serving entities based on usage). Ms. Gruca contrasted MVP projects with traditional transmission projects, which are constructed for the benefit of NIPSCO customers and are included in NIPSCO's state jurisdictional rate base. She stated that NIPSCO's customers recover costs and revenues associated with traditional transmission projects through MISO's Schedule 26. MVP projects, by definition, are deemed by MISO and FERC to be for the benefit of the entire system. According to the record evidence, MISO's MTEP process showed that these MVP projects will provide greater benefits than costs, including the Indiana zone. Furthermore, MVP projects are regional projects and are not intended to focus on a specific set of state jurisdictional customers. For that reason, NIPSCO's retail customers will only pay their load ratio share (historically, about 3%) of the costs of the entire MVP portfolio, including the NIPSCO MVP Projects.

We have previously recognized that some types of transmission projects should be treated as "non-jurisdictional." In Cause No. 43111 regarding Vectren's proposed treatment of Regional Expansion Criteria and Benefit ("RECB") project revenues that flow through MISO Schedule 26, we stated:

Petitioner will be authorized to retain the allocated portion of cost recovery from native load customers as calculated under Schedule 26 as well as the revenues received from other MISO transmission owners under Schedule 26 as such Schedule 26 recoveries shall be treated as non-jurisdictional and outside the earnings test to allow Petitioner to recover its costs. Petitioner's RECB projects will not be included in retail rate base.

August 15, 2007 Order in Cause No. 43111. Although we note that our Order in Cause No. 43111 was ultimately based on a settlement agreement between the parties, we support the general premise that MVP projects should be excluded from state rate base and the constructing utility should be authorized to retain MVP-related revenues through Schedule 26-A.

The proposed MVP Projects included in MISO's MTEP 11 will be built, either by NIPSCO or another entity, and that NIPSCO, as a load serving entity, will be allocated its load ratio share of the costs regardless of who builds the projects. We conclude there should be no difference in the way that MVP revenues are recovered regardless of whether the constructor is an Indiana jurisdictional utility like NIPSCO or an independent transmission company.

It is important to view NIPSCO in two separate roles in this MVP process. As Mr. Dehring testified, on one hand, NIPSCO is a load serving entity, and it will pass FERC-approved Schedule 26-A charges along to its customers even if NIPSCO does not build any MVP projects. On the other hand, NIPSCO is a constructor—building these projects and recovering project costs and a return on its investment under the MISO Tariff. We conclude that NIPSCO, the MVP constructor, should not be treated differently than an independent transmission company or merchant entity simply because NIPSCO is also a load serving entity.

We note that there would be no difference in the costs assessed to NIPSCO's customers if another company were to build these projects. NIPSCO is authorized to recover MISO non-fuel costs that it incurs in its role as a load serving entity through the RTO Adjustment mechanism. As a

result, NIPSCO's customers will pay approximately 3% of the cost of all MVP projects (including the NIPSCO MVP Projects) whether they are built by NIPSCO, an independent Transco or a merchant transmission company. Furthermore, NIPSCO agreed to provide the most recent version of NIPSCO's Attachments O, GG and MM in future RTO Adjustment filings to help satisfy the OUCC's request in testimony regarding further information around these projects.

Similarly, we disagree with the Industrial Group's recommendation that the granting of NIPSCO's requested relief be conditioned on the allocation of total MVP costs to NIPSCO as a transmission customer on behalf of its retail customers remaining a small amount (e.g., less than 5% of total MISO MVP costs) because that proposal would similarly treat NIPSCO differently because it is a jurisdictional utility. These rates and charges for these projects will be under FERC-jurisdiction regardless of the size of the allocation, and therefore we see no reason to differentiate treatment for a jurisdictional utility.

D. Conclusion. Based on our review of the record evidence and our analysis set forth herein, we conclude that it is reasonable and consistent with prior Commission orders to separate 100% of NIPSCO's MVP projects from NIPSCO's state jurisdictional rate base, and NIPSCO should be authorized to retain 100% of the Schedule 26-A revenues associated with NIPSCO's construction of MVP projects.

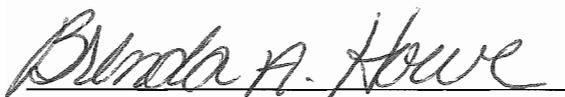
**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. NIPSCO is authorized to retain 100% of the MISO Schedule 26-A revenues associated with NIPSCO's construction of MVP projects.
2. MVP projects constructed by NIPSCO shall not be included in NIPSCO's state jurisdictional rate base for purposes of state ratemaking.
3. This Order shall be effective on and after the date of its approval.

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

**APPROVED: AUG 22 2012**

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



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