

STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION



PETITION OF NORTHERN INDIANA )  
PUBLIC SERVICE COMPANY FOR )  
APPROVAL OF A CERTIFICATE OF )  
AUTHORITY TO ISSUE BONDS, NOTES, OR ) CAUSE NO. 44191  
OTHER INDEBTEDNESS IN AN AMOUNT )  
NOT TO EXCEED \$400,000,000.00 THROUGH ) APPROVED:  
JUNE 30, 2014 AND FOR APPROVAL OF A )  
CAPITAL LEASE OBLIGATION NOT TO )  
EXCEED \$76,100,000.00. )

NOV 28 2012

ORDER OF THE COMMISSION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Gregory R. Ellis, Administrative Law Judge**

On April 17, 2012 Northern Indiana Public Service Company (“NIPSCO” or “Petitioner”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Verified Petition (“Petition”) in this Cause requesting the authority to issue bonds, notes, or other evidences of indebtedness in an amount not to exceed \$400,000,000 through June 30, 2014. In conformance with Ind. Code § 8-1-2-79, the Petition was verified by Frank A. Shambo, Vice President of Regulatory and Legislative Affairs for NIPSCO and Gary W. Pottorff, Corporate Secretary for NIPSCO. Petitioner also prefiled the Direct Testimony and Exhibits of Vincent V. Rea, Assistant Treasurer for NIPSCO on April 17, 2012.

On July 27, 2012 Petitioner filed its Amended Verified Petition (“Amended Petition”) with the Commission for a certificate of authority to issue bonds, notes, or other evidences of indebtedness in an amount not to exceed \$400,000,000 through June 30, 2014 and for approval of a Capital Lease Obligation in an amount not to exceed \$76,100,000. The Amended Petition was verified by Kathleen O’Leary, President of NIPSCO and Gary W. Pottorff, Corporate Secretary for NIPSCO in conformance with Ind. Code § 8-1-2-79. Petitioner also prefiled additional Direct Testimony and Exhibits of Jennifer L. Shikany, Assistant Controller for NIPSCO on July 27, 2012. On September 11, 2012 the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the Testimony of Stacie R. Gruca, Senior Utility Analyst in the Electric Division.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was held at 10:00 a.m. on October 9, 2012 in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Petitioner and the OUCC were present and

participated. The testimony and exhibits of both Petitioner and the OUCC were admitted into the record without objection. No members of the general public appeared or sought to testify at the hearing.

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

1. **Notice and Jurisdiction.** Due, legal and timely notice of the hearing in this Cause was given and published as required by law. Petitioner is a public utility as defined in Ind. Code § 8-1-2-1(a) and is subject to the jurisdiction of this Commission in the manner and to the extent provided by Indiana law, including Ind. Code § 8-1-2-76 to Ind. Code § 8-1-2-81, with respect to the issuance of debt. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is a public utility corporation organized and existing under the laws of the State of Indiana with its principal office and place of business at 801 East 86th Avenue, Merrillville, Indiana. Petitioner is engaged in rendering electric and gas public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the generation, transmission, distribution and furnishing of such service to the public.

Petitioner is authorized by the Commission to provide electric utility service to the public in all or part of Benton, Carroll, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, Saint Joseph, Starke, Steuben, Warren and White Counties in northern Indiana. NIPSCO provides electric utility service to over 456,000 residential, commercial, industrial, wholesale and other customers. Petitioner is authorized by the Commission to provide gas utility service to the public in all or part of Adams, Allen, Benton, Carroll, Cass, Clinton, DeKalb, Elkhart, Fulton, Howard, Huntington, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Miami, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben, Tippecanoe, Tipton, Wabash, Warren, Wells, White and Whitley Counties in northern Indiana. Applicant provides gas utility service to approximately 786,000 residential, commercial and industrial customers.

3. **Requested Relief.** NIPSCO seeks authorization to issue bonds, notes, or other evidences of indebtedness ("Notes") to NiSource Finance Corp. ("NFC Notes") or to unaffiliated parties in the external capital markets ("Market Notes") from time to time over the period ending June 30, 2014 (the "Financing Period") with maturities ranging from two to thirty years in an aggregate principal amount not to exceed \$400,000,000 (the "Financing Plan"). NIPSCO is also requesting approval of a Capital Lease Obligation in an amount not to exceed \$76,100,000 associated with the Eighteenth Amendment to the Flue Gas Processing Agreement by and between NIPSCO and Pure Air on the Lake, LP originally approved by the Commission in Cause No. 38849 and approval of the proposed accounting treatment for the Capital Lease Obligation.

4. **The Financing Plan.**

A. **Purpose of the Financing Plan.** Assistant Treasurer for NiSource Inc. and NIPSCO, Vincent V. Rea, testified that NIPSCO will use the funds obtained through the

Financing Plan as follows:

- (1) to refinance various external notes maturing within the Financing Period;

Mr. Rea testified that NIPSCO will discharge or lawfully refund its obligations under the following five external notes that will mature within the Financing Period with an aggregate settled par value of \$68,000,000:

	<u>Par Value</u>
<u>Pollution Control Bonds -</u>	
5.20% due June 1, 2013	\$18,000,000
<u>Medium-Term Notes -</u>	
Series C - 7.35%, due July 8, 2013	\$7,500,000
Series C - 7.35%, due July 8, 2013	\$7,500,000
Series C - 7.21%, due July 22, 2013	\$5,000,000
Series C - 7.16%, due August 19, 2013	\$30,000,000

- (2) to comply with the Order in Cause No. 43969 (“43969 Order”) which requires NIPSCO to “finance, in aggregate, the projects for which it receives a Certificate of Public Convenience and Necessity (“CPCN”) in Cause No. 44012 with at least 60% debt capital”;

Mr. Rea testified that NIPSCO will finance the construction, completion, extension, or improvement of its facilities, plant, or distributing system; namely, the flue gas desulfurization (“FGD”) facilities and other projects for which NIPSCO requested a CPCN in Cause No. 44012 (“44012 Projects”). He stated this will allow NIPSCO to comply with the 43969 Order which directs NIPSCO to finance, in aggregate, the 44012 Projects with at least 60% debt capital. In its December 28, 2011 Phase I Order in Cause No. 44012, the Commission issued to NIPSCO a CPCN to construct and install and approved NIPSCO’s cost estimates for the following clean coal technology projects at NIPSCO’s R.M. Schahfer Generating Station:

- (1) Unit 14 FGD Facility Addition - \$203,000,000;
- (2) Unit 14/15 FGD Common Facilities - \$104,000,000; and
- (3) Unit 15 FGD Facility Addition - \$193,000,000 (“Phase I Projects”).

In its February 15, 2012 Phase II Order in Cause No. 44012, the Commission issued to NIPSCO a CPCN to construct and install the following clean coal technology projects:

- (1) U7 SCR Duct Burners - \$11,000,000;
- (2) U8 SCR Duct Burners- \$16,000,000;
- (3) U14 SCR Duct Burners - \$16,000,000;
- (4) U15 SNCR Installation - \$6,000,000;
- (5) U15 Continuous Particulate Monitors Addition - \$375,000;
- (6) U14 Continuous Particulate Monitors Addition - \$375,000;

- (7) U17 Continuous Particulate Monitors Addition - \$375,000;
  - (8) U18 Continuous Particulate Monitors Addition - \$375,000;
  - (9) U7/8 Continuous Particulate Monitors Addition common stack - \$375,000;
  - and
  - (10) U7/8 Continuous Particulate Monitors Addition bypass stack - \$375,000
- ("Phase II Projects").

Mr. Rea testified that the aggregate cost estimate of the Phase I and Phase II Projects is \$551,250,000. Sixty percent (60%) of the aggregate cost estimate is \$330,750,000.<sup>1</sup> He explained that the remaining 40% of the aggregate cost of these projects is anticipated to be funded using retained earnings.

- (3) to fund or reimburse NIPSCO for the cost of ongoing capital requirements in support of NIPSCO's public service obligations and repay short term debt; and
- (4) for other corporate purposes, including paying the issuance expenses related to the proposed new debt.

Mr. Rea testified that the remaining \$1,250,000 would be used in the normal course of NIPSCO's business for general capital requirements or to repay borrowings from the Money Pool.

**B. Description of the Financing Plan.** Mr. Rea testified that NIPSCO is requesting authority to secure up to \$400,000,000 from the issuance of long-term NFC Notes or Market Notes. He stated that NIPSCO requests authority to issue Notes from time to time through the Financing Period with maturities ranging from two to thirty years. Mr. Rea testified that NIPSCO is requesting authority for a flexible Financing Plan with various options in order to provide NIPSCO with maximum financial flexibility, allow NIPSCO to obtain cost-effective and timely long-term financing, and allow NIPSCO to appropriately ladder its debt maturities and avoid high levels of refinancing risk in any particular year. He stated that flexible timing also allows NIPSCO to take advantage of favorable interest rates and market conditions as they arise.

Mr. Rea also testified that beginning with this petition and going forward, NIPSCO proposes to file a petition approximately every two years to request authority to refinance any maturing long term debt, to fund ongoing capital requirements in support of NIPSCO's public service obligations, and to pay down short-term debt. He explained that in the past, NIPSCO filed petitions for certificates of authority to issue debt on a case-by-case basis, seeking authority to issue long-term notes for specific projects. He testified that regular financing petitions will

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<sup>1</sup> At the time NIPSCO filed its case-in-chief in this Cause, Phase III of Cause No. 44012 was pending to address NIPSCO's request for a CPCN for three clean coal technology projects at its Michigan City Unit 12: (1) FGD Facility Addition; (2) SCR Reheat Project; and (3) Continuous Particulate Monitors Addition ("Phase III Projects"). Mr. Rea testified that he anticipates that NIPSCO will request authority to issue Notes to finance the Phase III Projects with 60% debt as part of its next general financing proceeding in approximately two years. On September 5, 2012, the Commission issued a final order in Cause No. 44012 Phase III approving the Phase III projects.

allow NIPSCO the flexibility to proceed with greater speed to take advantage of favorable market conditions.

Mr. Rea testified that NIPSCO is requesting authority to issue Notes with various terms for several reasons: (1) issuing Notes with different terms will allow NIPSCO to appropriately ladder its debt maturities and avoid high levels of refinancing risk in any particular year; (2) NIPSCO generally prefers to match the financing term of a Note issued for a specific capital project with the life of the underlying asset; and (3) the Financing Plan envisions the issuance of multiple Notes for multiple purposes which each have different time horizons.

Mr. Rea explained that NIPSCO proposes to implement most of the Financing Plan by issuing either NFC Notes or Market Notes. He testified that NFC Notes would be unsecured and would be issued during the Financing Period. The NFC Notes will be issued for terms ranging from two (2) to thirty (30) years, will bear an interest rate that corresponds to the pricing being offered to companies with financial profiles similar to NIPSCO and will reflect market conditions at the time of issuance. The interest rate of the NFC Notes will be determined by the corresponding applicable Treasury yield (as reported in the Federal Reserve Statistical Release, H. 15 Selected Interest Rates (Daily)) effective on the date such NFC Note is issued, plus the yield spread on corresponding maturities for companies with a credit risk profile equivalent to that of NIPSCO (as reported by Reuters Corporate Spreads for Utilities) effective on the date such NFC Note is issued. For maturities not specifically referenced in the Statistical Release or Reuters, an interest rate will be calculated based upon a simple linear interpolation method. The Reuters Corporate Spread for Utilities report assigns yield spreads based on a company's Standard and Poor's ("S&P") and Moody's debt ratings. Mr. Rea testified that NIPSCO's senior unsecured debt is currently rated BBB- by S&P with a stable outlook and Baa2 by Moody's with a stable outlook. To the extent that a split-rating shall occur between the respective S&P and Moody's ratings, the higher credit rating shall apply to the interest rate calculation methodology described above. He stated that NFC Notes will not reflect any mark-up by NiSource Finance Corp. Mr. Rea testified that the Commission previously approved of this methodology in its November 12, 2009 Order in Cause No. 43563, NIPSCO's most recent long-term debt financing proceeding.

Mr. Rea testified that Market Notes would be issued in the external capital markets using one of four possible approaches: (1) a traditional public debt offering that would utilize a conventional Indenture of Trust; (2) a Rule 144A quasi-public debt offering that would also utilize an Indenture of Trust; (3) tax-exempt notes issued through the Indiana Finance Authority; or (4) a traditional private placement debt offering that would utilize a Note Purchase Agreement directly between NIPSCO and the note purchasers. He explained that if Market Notes are issued, the obligations would be evidenced by a promissory note and an Indenture of Trust, Note Purchase Agreement, or similar document, under terms mutually agreeable to NIPSCO and a qualified financial institution in conformity with generally accepted market conventions. He stated that the terms for the issuance of such Market Notes will be established through negotiated offerings in which NIPSCO will negotiate the terms of each offering with such underwriters, purchasers or agents. Market Notes would be issued on a senior unsecured basis for a term of between two (2) and thirty (30) years at either a fixed or variable rate.

Mr. Rea testified that the main factors NIPSCO will consider when selecting the type and maturity of Notes to be issued during the Financing Period include: (1) appropriately laddering NIPSCO's debt maturities to avoid high levels of refinancing risk in any particular year; (2) NIPSCO's general preference for matching the maturity of a Note with the life of the underlying asset; (3) market conditions; (4) overall cost effectiveness; and (5) the purpose for the Note and the associated time horizon.

## **5. The Capital Lease Obligation.**

**A. Description of the Capital Lease Obligation.** By its Amended Petition, NIPSCO also sought approval of a Capital Lease Obligation in an amount not to exceed \$76,100,000 associated with the Eighteenth Amendment to the Flue Gas Processing Agreement by and between NIPSCO and Pure Air on the Lake, LP ("Pure Air") dated July 1, 1989 ("Agreement") originally approved by the Commission in Cause No. 38849. Assistant Controller for NIPSCO Jennifer L. Shikany testified that the Agreement governs the ownership and operation of the FGD or "scrubber" located at NIPSCO's Bailly Generating Station. The Agreement was initially executed in 1989. Under the Agreement, Pure Air owns and operates the FGD and NIPSCO pays for these services under a mix of fixed and variable charges. Both the Agreement and the FGD facility were approved by the Commission in Cause No. 38849. The original term of the Agreement was twenty (20) years. The Agreement had been amended seventeen (17) times prior to the most recent amendment. Pure Air has owned and operated the FGD at Bailly since its construction. NIPSCO has paid for services under a mix of fixed and variable charges under the Agreement for that same period. By its terms, the Agreement would have terminated on June 30, 2012.

Ms. Shikany testified that NIPSCO and Pure Air engaged in discussions regarding an extension of the Agreement for approximately twelve (12) months prior to executing the 18th Amendment on June 28, 2012, which extends the term of the Agreement for an additional ten (10) years. She stated that under the Agreement, Pure Air will continue to own and operate the FGD in the same manner as the previous twenty (20) years and NIPSCO will pay for services under a similar mix of fixed and variable charges.

Ms. Shikany testified that the Agreement, as amended by the 18th Amendment, is a lease under Financial Accounting Standards Board Accounting Standards Codification 840 ("ASC 840"). She explained that ASC 840-10-15-6 states "[a]n arrangement conveys the right to use property, plant, or equipment if the arrangement conveys to the purchaser (lessee) the right to control the use of the underlying property, plant, or equipment." Ms. Shikany testified that because the FGD facility was constructed on NIPSCO property, NIPSCO has the ability to control physical access to the assets. In addition, she explained that NIPSCO provides and emits 100 percent of the flue gas scrubbed by Pure Air and, therefore, Pure Air has no other customers. As such, the Agreement, as amended by the 18th Amendment, qualifies as a lease. Ms. Shikany also testified that the Agreement, as amended by the 18th Amendment, is a capital lease under ASC 840-10. ASC 840-10-25-1 provides four capital lease conditions to consider when a lessee is classifying a lease as capital or operating and if any of the four conditions are met, the lease will be classified as a capital lease. Ms. Shikany testified that NIPSCO determined that condition (3) (whether the lease term is 75% or greater of the estimated economic life of the

leased asset) is met because the estimated economic life of the scrubber asset equals the lease term. She explained the FGD facility was constructed on NIPSCO property and NIPSCO provides and emits 100 percent of the flue gas scrubbed by Pure Air. She stated the scrubber asset cannot be dismantled and relocated and, therefore, has no certain economic value beyond the term of the lease. Finally she testified that because the estimated economic life is equal to 100% of the lease term for the scrubber asset, NIPSCO must account for the Agreement as a capital lease in accordance with ASC 840.

**B. Proposed Accounting Treatment for the Capital Lease Obligation.** Ms. Shikany explained the effect of classifying the Agreement, as amended by the 18th Amendment, as a “capital lease”. She testified that under the original Agreement, which represented a servicing arrangement, NIPSCO recorded operations and maintenance expense equal to amounts invoiced to NIPSCO by Pure Air on a monthly basis. Because the Agreement as amended by the 18th Amendment is now classified as a capital lease, NIPSCO will record a capital asset and liability equal to the present value of the minimum lease payments. Ms. Shikany stated that NIPSCO will record amortization expense on the leased asset. Throughout the term of the lease, NIPSCO will allocate each lease payment between principal and interest.

Ms. Shikany explained the initial accounting treatment for the “minimum lease obligation”. NIPSCO concluded that the annual Base Facility Charge and the Life Extension and Facility Upgrade Charge should be included in the monthly calculation of the “minimum lease obligation.” The annual gross future minimum lease payment of \$9,216,000 is equal to \$92,160,000 over the ten (10) year lease term. NIPSCO calculated the present value of the minimum lease obligation using its incremental borrowing rate of 3.95 percent to be approximately \$76,034,000. In accordance with the Code of Federal Regulations, Conservation of Power and Water Resources Chapter 18, NIPSCO will record this obligation within the Uniform System of Accounts in Account 227, Obligations Under Capital Leases – Noncurrent, on the balance sheet with a corresponding long-term capital lease asset within Utility Plant when the lease term commences on July 1, 2012. Per ASC 840 the incremental borrowing rate is the rate that, at lease inception, the lessee would have incurred to borrow the funds necessary to buy the leased asset on a secured loan with repayment terms similar to the payment schedule defined in the lease. NIPSCO’s incremental borrowing rate of 3.95 percent represents all-in-yield for NIPSCO to borrow funds from a third party for a ten year term. The incremental borrowing rate was provided to NIPSCO by NiSource Finance Corp.

With respect to the ongoing accounting treatment related to the capital lease, Ms. Shikany testified that NIPSCO will allocate each lease payment between principal and interest using the same incremental borrowing rate used when determining the present value of the minimum lease payments in accordance with ASC 840. She testified that ASC 840 requires that the capital asset be amortized on a straight line basis over the life of the lease. However, Ms. Shikany explained that ASC 980, Regulated Operations, states that for rate-making purposes a capital “lease may be treated as an operating lease” and similar to an operating lease an amount equal to the minimum lease payment should be expensed in the period in which it covers. She explained that the timing of amortization of the leased asset will be modified through the use of a regulatory asset so that the total of interest on the lease obligation and amortization of the leased asset shall equal the minimum lease payment. By its Amended Petition in this Cause, NIPSCO is requesting approval

of the Capital Lease Obligation and of this proposed accounting treatment for the Capital Lease Obligation.

Ms. Shikany testified that the Agreement, as amended by the 18th Amendment, includes other monthly charges that will not be included in the long-term asset including the Base Variable Charge, Wastewater Variable Charge, and Testing Charges which all represent ownership type costs and, therefore, were excluded from the “minimum lease obligation.” She explained these charges and any related escalation charges will be recorded as operating and maintenance expenses in the period in which the charges occur. In addition, NIPSCO anticipates variable charges, such as limestone, for which there was no corresponding fixed component. These charges will also be recorded as operating and maintenance expenses in the period in which the charges occur.

**6. Summary of the OUCC’s Evidence.** Stacie R. Gruca, Senior Utility Analyst in the Electric Division of the OUCC explained her review of NIPSCO’s request and provided recommendations based on her review. Ms. Gruca testified that in preparing her testimony she reviewed the Petition, the testimony and exhibits of Petitioner’s witnesses, Petitioner’s Amended Petition, and reviewed Petitioner’s responses to OUCC discovery questions. She indicated that the OUCC has no concerns with NIPSCO’s proposed use of debt proceeds. She stated that while the OUCC does not oppose NIPSCO’s proposed methodology for determining the interest rate of the NFC Notes or the Market Notes, the OUCC recommends that NIPSCO’s issuances pursuant to this authority be at a competitive, market rate regardless of whether NIPSCO borrows from an affiliate or an unaffiliated party in the external capital market. With respect to NIPSCO’s proposed two to thirty years maturity of the debt, Ms. Gruca testified the OUCC believes that long-term debt typically has a maturity of up to thirty years; therefore NIPSCO’s request is reasonable.

In response to NIPSCO’s proposed date by which authority to borrow funds would cease, Ms. Gruca testified the OUCC is not in favor of excessively long or open ended timeframes for authority to issue debt. She indicated the OUCC would typically suggest a twenty-four month period to be a reasonable timeframe; therefore the OUCC believes that an expiration date, in which authority to borrow funds would cease, of June 30, 2014 is reasonable.

Ms. Gruca testified the OUCC recommends that NIPSCO provide a written report to both the OUCC and the Commission within fifteen days of issuance of NFC Notes or Market Notes that provides, at a minimum, the debt amount, interest rate, terms, and intended purpose. She also testified the OUCC recommends that any authority granted in this Cause does not limit the OUCC’s ability to review the prudence of any rate base additions funded by this debt in a future rate proceeding.

Ms. Gruca agreed with NIPSCO that the Pure Air Agreement, as amended by the 18<sup>th</sup> Amendment, qualifies as a lease under ASC 840 and qualifies as a capital lease under ASC 840-10. She also agreed with NIPSCO’s accounting treatment related to the capital lease.

Ms. Gruca testified NIPSCO’s total outstanding capitalization, after accounting for its financing and capital lease obligation authority request in this proceeding, will not be in excess

of the fair value of NIPSCO's property used and useful for the convenience of the public. She stated the OUCC recommends the Commission approve NIPSCO's requested financing program and capital lease obligation authority in this proceeding, as well as the financing program conditions proposed by the OUCC.

**7. Commission Discussion and Findings.**

**A. Financing Plan.** The record evidence shows the total effect of the proposed Financing Plan would be to reduce NIPSCO's short-term debt by approximately \$106,679,000 and increase NIPSCO's long-term debt by approximately \$332,000,000. The evidence further demonstrates the proposed Financing Plan will result in a total capitalization of \$3,137,069,000<sup>2</sup> - an amount which is less than the fair value of Petitioner's property used and useful for the convenience of the public. Based on this evidence, we find the capital structure that will result from the Financing Plan is reasonable and that NIPSCO's total outstanding capitalization will not exceed the total value of NIPSCO's property.

The evidence demonstrates that the amount of debt that NIPSCO plans to issue through the Financing Plan does not exceed an amount that is reasonably necessary. NIPSCO is requesting authority to issue NFC Notes and Market Notes in an aggregate principal amount not to exceed \$400,000,000. This amount includes \$68,000,000 needed to refinance external notes coming due during the Finance Period, 60% of the aggregate cost estimate for the Cause No. 44012 Phase I and Phase II Projects—\$330,750,000, and \$1,250,000 to support NIPSCO's ongoing capital requirements in its normal course of business. The proposed debt to be issued through the Financing Plan is reasonable in aggregate amount because it will allow NIPSCO to fulfill its obligation under the 43969 Order to finance Cause No. 44012 Projects with at least 60% debt capital, result in a reasonable overall capital structure, and support NIPSCO's ongoing provision of public utility service to its customers. Finally, the Financing Plan, including the aggregate amount requested, is consistent with NIPSCO's new practice of filing a petition with the Commission approximately every two years to request authority to refinance any long term debt coming due, fund ongoing capital requirements in support of NIPSCO's public service obligations, pay down short-term debt, and finance any known capital projects.

The record evidence shows that NIPSCO will use the funds obtained through the Financing Plan for several purposes: (1) to refinance various external notes maturing within the Financing Period; (2) to comply with the 43969 Order which orders NIPSCO to "finance, in aggregate, the projects for which it receives a CPCN in Cause No. 44012 with at least 60% debt capital"; (3) to fund or reimburse NIPSCO for the cost of ongoing capital requirements in support of NIPSCO's public service obligations and repay short term debt; and (4) for other corporate purposes, including paying the issuance expenses related to the proposed new debt. We find the proposed use of these funds is reasonable and consistent with Indiana law and should be approved.

Based upon our review of the record evidence, we find that NIPSCO's Financing Plan is

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<sup>2</sup> This calculation includes the value of property to be acquired by the proposed issue; however, the calculation does not reflect any other adjustments to capitalization for future results of operations and dividend declarations.

reasonably necessary in the operation and management of NIPSCO's business because it provides NIPSCO flexibility to secure cost-effective and timely long-term financing, appropriately ladder its debt maturities and avoid high levels of refinancing risk in any particular year, and take advantage of favorable interest rates and market conditions as they arise. We also find the OUCC's proposed Financing Plan conditions to be reasonable and in the public interest, noting that the OUCC would have the opportunity to review any rate base additions funded by the Financing Plan in a future rate proceeding as a party to the proceeding. We further note NIPSCO did not provide any testimony rebutting the OUCC's recommendations. We find that NIPSCO's Financing Plan will support the provision of adequate service and facilities by financing, in part, clean coal technology projects that will allow NIPSCO to comply with federal and state environmental regulations. Therefore, the Commission finds the Financing Plan will serve the public interest and should be approved.

**B. Capital Lease Obligation.** The record evidence shows the net incremental effect of the Capital Lease Obligation (over and above the effect of the proposed Financing Plan) to NIPSCO's balance sheet would be to increase NIPSCO's Other Noncurrent Liabilities and Electric Utility Plant by approximately \$76,034,000. The evidence further demonstrates that NIPSCO's total outstanding capitalization after accounting for the Capital Lease Obligation and upon completion of the financing program and each component thereof and the application of the proceeds therefrom, is \$3,137,069,000<sup>3</sup> and will not be in excess of the fair value of Petitioner's property used and useful for the convenience of the public.

We find that the amount of the Capital Lease Obligation is reasonably necessary because it allows the continued use of Bailly Generating Station as the FGD allows NIPSCO to comply with federal and state environmental regulations. We also find that the amount of the Capital Lease Obligation does not exceed an amount that is reasonably necessary.

Finally, based on our review of the evidence, we find the Capital Lease Obligation is reasonably necessary in the operation and management of NIPSCO's business. Specifically, we find that the Capital Lease Obligation will support NIPSCO's provision of adequate service and facilities by allowing the continued use of the FGD at Bailly Generating Station which will allow NIPSCO to comply with federal and state environmental regulations. We therefore find that the Capital Lease Obligation serves the public interest and should be approved. We also find that NIPSCO's proposal to treat the Capital Lease Obligation as an operating lease for regulatory purposes is consistent with ASC 980 and the proposed accounting treatment described by NIPSCO's Witness Shikany is reasonable and should be approved.

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

1. Petitioner shall be and is hereby granted authority to issue from time to time over the period ending June 30, 2014 up to \$400,000,000 in aggregate principal amount in promissory notes and other evidences of indebtedness on terms consistent as set forth herein.

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<sup>3</sup> *supra* note 2.

2. Petitioner shall be and is hereby issued a Certificate of Authority for the issuance of such securities.

3. Petitioner shall be and is hereby granted authority to execute such other transaction documents and evidences of indebtedness as are necessary and appropriate to effectuate the issuance of such long term debt.

4. Petitioner's indebtedness shall be issued at a competitive, market rate.

5. Petitioner shall be and is hereby granted authority to use and apply the cash proceeds arising from the issuance of such long term debt for the purposes set forth herein.

6. The Capital Lease Obligation associated with the Eighteenth Amendment to the Flue Gas Processing Agreement by and between NIPSCO and Pure Air on the Lake, LP originally approved by the Commission in Cause No. 38849 in an amount not to exceed \$76,100,000 shall be and is hereby approved.

7. Petitioner's proposed accounting treatment for regulatory purposes for the Capital Lease Obligation shall be and is hereby approved.

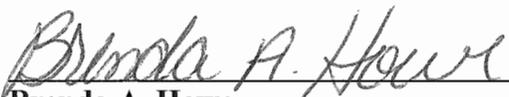
8. Within fifteen (15) days of exercising any of the financing authority approved in this Cause, Petitioner shall file a report in this Cause which report shall state the principal amount borrowed, the applicable interest rate(s), how the interest rates(s) was (were) determined, any collateral required, the term of the borrowing and any other pertinent repayment terms.

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

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

APPROVED: NOV 28 2012

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

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