ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY FOR (1) APPROVAL OF AND A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR QUALIFIED POLLUTION CONTROL PROPERTY, CLEAN COAL TECHNOLOGY, CLEAN ENERGY PROJECTS AND FEDERALLY MANDATED COMPLIANCE PROJECTS NECESSARY TO ALLOW PETITIONER TO COMPLY WITH THE MATS RULE; (2) APPROVAL OF PROPOSED COST ESTIMATES FOR MATS COMPLIANCE PLAN PROJECTS; (3) APPROVAL OF SPECIFIC RATEMAKING AND ACCOUNTING TREATMENT; (4) APPROVAL TO DEPRECIATE THE PROJECTS ACCORDING TO THE DEPRECIATION RATES APPROVED IN CAUSE NO. 43969; (5) APPROVAL OF ONGOING REVIEW OF THE MATS COMPLIANCE PLAN PROJECTS AS PART OF PETITIONER'S SEMI-ANNUAL PROGRESS REPORTS FILED IN CAUSE NO. 42150-ECR-XX; AND (6) AUTHORITY TO PERFORM DISPATCH OF ITS GENERATION UNITS IN A MANNER NECESSARY TO COMPLY WITH THE REQUIREMENTS OF THE MATS RULE; ALL PURSUANT TO IND. CODE §§ 8-1-2-6.8, 8-1-8.8-1 *ET SEQ.*, 8-1-8.7-1 *ET SEQ.*, 8-1-8.4 *ET SEQ.* AND 170 IAC 4-6-1 *ET SEQ.*;	)	CAUSE NO. 44311 APPROVED: OCT 10 2013

ORDER OF THE COMMISSION

Presiding Officers:
Kari A.E. Bennett, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On February 22, 2013, Northern Indiana Public Service Company ("Petitioner," "NIPSCO" or "Company") filed its Verified Petition in this Cause. On February 22, 2013, NIPSCO also filed its Case-In-Chief and a Motion for Protection and Nondisclosure of Confidential and Proprietary Information. On March 15, 2013, the NIPSCO Industrial Group ("Industrial Group") and on March 20, 2013, the Citizens Action Coalition of Indiana, Inc. ("CAC") filed petitions to intervene, both of which were subsequently granted. On March 21, 2013 CAC filed a Motion for Field Hearing, which was granted by Docket Entry on April 11, 2013. A public field hearing was held on April 22, 2013 at the Lake County Government Center Auditorium in Crown Point, Indiana.

On May 7, 2013, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled direct testimony and consumer comments and the Industrial Group prefiled direct testimony. NIPSCO prefiled rebuttal testimony on May 23, 2013.

Pursuant to notice given as provided by law, proof of which was incorporated into the record, an evidentiary hearing was held in this matter on June 3, 2013, at 9:30 a.m., in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the prefiled evidence of NIPSCO, OUCC and Industrial Group were admitted into the record without objection. CAC did not file testimony in this Cause. No members of the general public appeared or participated at the hearing.

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

1. **Notice and Jurisdiction.** Due, legal and timely notice of the hearing in this Cause was given as required by law. Petitioner is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.7-2, a "utility" within the meaning of Ind. Code § 8-1-2-6.8 and 170 IAC 4-6-1, an "energy utility" within the meaning of Ind. Code §§ 8-1-2.5-2 and 8-1-8.4-3, and an "eligible business" within the meaning of Ind. Code § 8-1-8.8-6. Pursuant to Indiana Code ch. 8-1-8.4, the Commission has authority to issue a Certificate of Public Convenience and Necessity ("CPCN") for federally-mandated projects. Pursuant to Indiana Code ch. 8-1-8.8, the Commission has authority to approve clean energy projects for certain incentives. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics and Generating System.** Petitioner is a public utility organized and existing under the laws of the State of Indiana and having its principal office at 801 East 86th Avenue, Merrillville, Indiana. Petitioner 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. The NIPSCO generation resources include 3,322 megawatts ("MWs") of coal, natural gas and hydroelectric generation as well as 100 MW of wind-generated purchases. Petitioner's demand-side resources include energy efficiency, energy conservation and demand response programs which help to reduce customers' electricity consumption, or shift consumption from peak hours to off-peak hours. In 2012, Petitioner's net generation by fuel consisted of 56% coal, 18% gas, and 26% a combination of wind, hydro and purchases from the Midcontinent Independent System Operator, Inc. ("MISO"). Petitioner's coal generation facilities include seven (7) units at three (3) separate sites and include R.M. Schahfer Generating Station ("Schahfer"), Michigan City Generating Station ("Michigan City") and Bailly Generating Station ("Bailly").

3. **Background and Requested Relief.** Petitioner's operations are subject to federal, state and local rules promulgated by, among others, the United States Environmental Protection Agency ("EPA") and the Indiana Department of Environmental Management ("IDEM"). Such rules establish environmental compliance standards that govern emissions from Petitioner's electric generating units.

On December 16, 2011, in accordance with section 112 of the Clean Air Act ("CAA"), the EPA signed a rule to reduce mercury, other non-mercury metals, and acid gas emissions from coal- and oil-fired power plants. Specifically, these standards established direct and surrogate emission standards based upon Maximum Achievable Control Technology ("MACT") (referred to by the EPA as its Mercury and Air Toxics Standards or "MATS" rule) to address hazardous air pollutant emissions ("HAPs") from new and existing coal- and oil-fired electric utility steam generating units. Compliance for Petitioner's affected units will be required within three years after the effective date

of the rule or April 16, 2015, with the possibility of an additional one year extension based upon a demonstration that additional time is needed in order to install control technology.

The MATS rule establishes new emission limits for Petitioner's coal-fired generators. In order to comply with the MATS rule, Petitioner has developed its MATS Compliance Plan. Petitioner's MATS Compliance Plan includes three types of capital projects: Activated Carbon Injection ("ACI") and Fuel Additives to reduce mercury emissions and Transformer Rectifier Sets ("TR Sets") to reduce particulate matter ("PM") emissions (together, the "MATS Capital Projects") and several incremental operating and maintenance ("O&M") projects ("O&M Projects") necessary to reduce emissions of mercury and PM to levels required by the MATS rule (collectively referred to as "MATS Compliance Plan Projects"). The MATS Capital Projects include the following: Unit 7 ACI (mercury reduction), Unit 7 Fuel Additives (mercury reduction), Unit 8 ACI (mercury reduction), Unit 8 Fuel Additives (mercury reduction), Unit 12 ACI (mercury reduction), Unit 12 Fuel Additives (mercury reduction), Unit 14 ACI (mercury reduction), Unit 14 Fuel Additives (mercury reduction), Unit 14 TR Sets (PM reduction), Unit 15 ACI (mercury reduction), Unit 15 Fuel Additives (mercury reduction), Unit 15 TR Sets (PM reduction), Unit 17 TR Sets (PM reduction), and Unit 18 TR Sets (PM reduction). The O&M Projects include the following: Precipitator and FGD Mist Eliminator Cleaning on Units 7 and 8, Unit 15 ESP Flow Modeling, and Schahfer Air and Water Testing (Units 14, 15, 17 and 18).

By its Petition, Petitioner requests the following relief on or before September 30, 2013:

(a) granting Petitioner a certificate of public convenience and necessity ("CPCN") for the MATS Compliance Plan Projects pursuant to Ind. Code § 8-1-8.8-1 *et seq.*, Ind. Code § 8-1-8.7-1 *et seq.*, and Ind. Code § 8-1-8.4 *et seq.*;

(b) approving the proposed cost estimates for the MATS Compliance Plan Projects;

(c) finding that the MATS Capital Projects constitute "qualified pollution control property" and "clean coal technology" and are eligible for the ratemaking treatment described in Ind. Code § 8-1-2-6.8, Ind. Code § 8-1-8.7-1 *et seq.*, and 170 IAC 4-6-1 *et seq.*;

(d) finding that the MATS Capital Projects constitute "clean energy projects" under Ind. Code § 8-1-8.8-1 *et seq.*, and finding that the projects are reasonable and necessary and therefore eligible for the financial incentives set forth in Ind. Code § 8-1-8.8-11;

(e) finding that the MATS Compliance Plan Projects constitute "federally mandated compliance projects," that the costs incurred in connection with the MATS Compliance Plan Projects are "federally mandated costs" under Ind. Code § 8-1-8.4-1 *et seq.*, and that the MATS Compliance Plan Projects are eligible for the ratemaking treatment described in Ind. Code § 8-1-8.4-7;

(f) authorizing Petitioner to utilize construction work in progress ("CWIP") ratemaking treatment for qualified pollution control property and clean energy projects consistent with and through Petitioner's currently-effective Rider 672 – Adjustment of Charges for Environmental Cost Recovery Mechanism ("ECRM") tracking mechanism;

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

(h) authorizing Petitioner to accrue allowance for funds used during construction ("AFUDC") relating to the MATS Capital Projects;

(i) authorizing Petitioner to depreciate the MATS Capital Projects according to depreciation rates approved in the Commission's December 21, 2011 Order in Cause No. 43969 ("43969 Order");

(j) authorizing the timely recovery of reasonably incurred O&M expenses and depreciation expenses relating to the MATS Capital Projects consistent with and through Petitioner's currently-effective Rider 673 – Adjustment of Charges for Environmental Expense Recovery Mechanism ("EERM") tracking mechanism pursuant to Ind. Code § 8-1-8.8-11;

(k) authorizing Petitioner to recover 80% of the federally mandated costs incurred in connection with the O&M Projects through Petitioner's currently-effective EERM tracking mechanism pursuant to Ind. Code § 8-1-8.4-7;

(l) authorizing Petitioner to defer depreciation and O&M expenses relating to the MATS Compliance Plan Projects until such expenses are recovered through Petitioner's currently-effective EERM tracking mechanism;

(m) authorizing Petitioner to defer 20% of the federally mandated costs incurred in connection with the O&M Projects for recovery in Petitioner's next general rate case pursuant to Ind. Code § 8-1-8.4-7;

(n) authorizing Petitioner to recover pre-construction costs incurred prior to and after approval of a Final Order in this proceeding to the extent that such costs are reasonable and consistent with the scope of the projects described in Petitioner's evidence through Petitioner's currently-effective ECRM tracking mechanism;

(o) providing for ongoing review of the MATS Compliance Plan Projects as part of Petitioner's semi-annual progress reports filed in Cause No. 42150-ECR-XX; and

(p) authorizing Petitioner to perform dispatch of its generation units in a manner necessary to comply with the requirements of the MATS rule and declaring such procedures to be in compliance with current and future dispatch parameters relating to the recovery of fuel costs.

4. <u>Summary of Evidence</u>.

A. <u>Petitioner's Direct Testimony</u>.

i. <u>Direct Testimony of Timothy R. Caister</u>. Timothy R. Caister, Director of Regulatory Policy for NIPSCO, testified that NIPSCO designed a portfolio of projects (the "MATS Compliance Plan") in order to comply with the MATS rule. Mr. Caister stated that

NIPSCO was seeking: (1) approval of and a CPCN for qualified pollution control property ("QPCP"), clean coal technology, clean energy projects, and federal mandated compliance projects necessary to allow NIPSCO to comply with the MATS rule pursuant to Ind. Code §§ 8-1-2-6.8, 8-1-8.8-1 *et seq.*, 8-1-8.7-1 *et seq.*, and 8-1-8.4-1 *et seq.*; (2) approval of the proposed cost estimates for the MATS Compliance Plan Projects; (3) approval of specific ratemaking and accounting treatment; (4) approval to depreciate the projects according to the depreciation rates approved in the 43969 Order; (5) approval of ongoing review of the MATS Compliance Plan Projects as part of NIPSCO's semi-annual progress reports filed in Cause No. 42150-ECR-X; and (6) authority to perform dispatch of its generation units in a manner necessary to comply with the requirements of the MATS rule.

ii. Direct Testimony of Kelly R. Carmichael. Kelly R. Carmichael, Director of Environmental Policy and Permitting for NIPSCO, testified that the MATS rule established numerical standards for existing coal-fired electric generation units including emission limits for: Mercury ("Hg"), Total PM (surrogate for non-Hg metals), and sulfur dioxide ("SO_2") or Hydrogen Chloride ("HCl") surrogates for acid-gas HAPs. Mr. Carmichael stated that the legal challenges to the MATS rule may not be resolved until 2014. He stated that despite the pendency of litigation, the MATS compliance deadline is, and remains, April 16, 2015, and NIPSCO will proceed with its current compliance plan. He stated that NIPSCO submitted a letter to IDEM on January 30, 2013, requesting a one year extension for meeting the emission standards for (1) Michigan City Unit 12 related to SO_2, Hg and PM, (2) Schahfer Unit 14 related to Hg, and (3) Schahfer Unit 15 related to Hg, which he expected would be approved.

Mr. Carmichael testified that numerous recent and pending air, water and solid waste regulations have the potential to affect NIPSCO's electric generation units: (1) Clean Air Interstate Rule ("CAIR"), the nitrogen oxide ("NO_x") and SO_2 emission allowance trading program; (2) tighter National Ambient Air Quality Standards ("NAAQS"); (3) Greenhouse Gas emission thresholds; (4) EPA's proposed Phase II Rule of the Clean Water Act Section 316(b); (5) impending Effluent Limitation Guidelines; and (6) EPA's proposed rule for regulation of Coal Combustion Residuals. NIPSCO has included the long-term compliance implications – and costs – of each of these into its planning process.

Mr. Carmichael testified relating to the process through which NIPSCO determined that its coal units do not currently comply with the MATS rule and how its MATS Compliance Plan will help it comply with the rule – including a discussion about the relationship between ACI and Fuel Additives. He testified that the Company's MATS Compliance Plan is reasonable, appropriate and in the public interest because it is a cost effective approach to achieving compliance with the emission standards set forth in the MATS rule.

iii. Direct Testimony of Michael Hooper. Michael Hooper, Vice President of Major Projects for NIPSCO, testified that the MATS Compliance Plan is necessary to reduce emissions of mercury and PM to levels required by the MATS rule. He stated the total estimated capital costs associated with NIPSCO's MATS Compliance Plan is $59.28 million.

Mr. Hooper testified that to develop the MATS Compliance Plan, various departments within NIPSCO reviewed historical emissions data to evaluate which units have potential compliance risk. NIPSCO then commissioned an engineering study by Sargent & Lundy, LLC ("S&L") to assess each unit relative to the emissions data as well as the physical characteristics and

condition of each unit (the "S&L Report"). Mr. Hooper testified that the Company also reviewed the current configuration and condition of its facilities and other physical attributes. NIPSCO then reviewed engineering recommendations contained in the S&L Report and, through an iterative process, developed a proposed project portfolio for each unit. He stated that the proposed project portfolio is supported by both the engineering study results and the emissions test data. Mr. Hooper indicated that the implementation schedule is guided by the April 16, 2015 effective date of the MATS rule but that since the Company has requested from IDEM an extension of the deadline for Units 12, 14 and 15, the compliance date for those units would be April 16, 2016.

Mr. Hooper testified that the MATS Compliance Plan Projects constitute QPCP, clean energy projects, and are federally-mandated. He stated the projects all consist of air pollution control devices that will be used on a coal burning energy generating facility and that they directly or indirectly reduce airborne emissions of mercury or other regulated air emissions associated with the combustion or use of coal. Mr. Hooper testified each of these projects will reduce emissions of pollutants including mercury and PM from NIPSCO's generating plants. He stated NIPSCO will obtain all required permits to install these projects and they will meet applicable state or federal requirements. As a result, each capital project included in the MATS Compliance Plan constitutes both QPCP and clean coal technology under Ind. Code § 8-1-2-6.8, and a clean energy project under Ind. Code § 8-1-8.8-2(B). He testified that because MATS is a requirement imposed by the EPA, it is a federally mandated requirement under Ind. Code § 8-1-8.4-5(7). Mr. Hooper testified that because NIPSCO's MATS Compliance Plan is related to the direct compliance by NIPSCO with the EPA's MATS rule, the MATS Compliance Plan is a compliance project under Ind. Code § 8-1-8.4-2 and the costs NIPSCO will incur in connection with the MATS Compliance Plan are federally-mandated costs under Ind. Code § 8-1-8.4-4.

iv. **Direct Testimony of Cecelia Largura.** Cecelia Largura, Director of Strategic Execution for NIPSCO, testified regarding the process NIPSCO used to evaluate various options for compliance with the MATS rule. She stated that for each unit, both the MATS Compliance Plan as well as the options presented in the S&L Report were evaluated to determine whether the decision to invest in various compliance equipment options was preferred over unit retirement. She testified the option to replace each coal unit's generation with market alternatives was also evaluated.

Ms. Largura described the Strategist® model, which was used to evaluate the options described above, based on a twenty-year planning horizon. She stated the options were ranked based on net present value revenue requirement ("NPVRR"). She testified that NIPSCO identified potential changes in assumptions that could impact the decision, and conducted that sensitivity and scenario analysis with different input assumptions, as well as breakpoint analysis, to evaluate the impact on the MATS Compliance Plan decision.

Ms. Largura testified that the results of the analysis demonstrated that NIPSCO's MATS Compliance Plan is the preferred option to meet the future resource needs of its customers. She stated that the MATS Compliance Plan carries the lowest NPVRR and appropriately mitigates risk.

v. **Direct Testimony of Angela P. Camp.** Angela P. Camp, Manager of Financial Reporting for NIPSCO, testified regarding NIPSCO's requested accounting treatment for the MATS Capital Projects and O&M Projects. She testified that NIPSCO proposes to continue recording AFUDC associated with QPCP and clean energy project costs, in accordance with

Generally Accepted Accounting Principles, until such costs are given CWIP ratemaking treatment or are otherwise reflected in NIPSCO's base electric rates or the MATS Compliance Plan Projects are placed in service, whichever occurs first.

Ms. Camp testified that for O&M expenses associated with the QPCP and clean energy projects, NIPSCO is proposing that associated depreciation and O&M expenses be deferred until such expenses receive ratemaking treatment or are otherwise reflected in NIPSCO's base electric rates. She stated the Company will certify its expenses to the Commission and request approval to recover actual depreciation and O&M expenses once the MATS Compliance Plan Projects are placed in service on an annual basis, consistent with past practice using the EERM. Ms. Camp testified that the ACI and Fuel Additives and the TR Sets will be depreciated based on the depreciation rates that were approved in the 43969 Order.

Ms. Camp testified that pursuant to Ind. Code § 8-1-8.4-7, NIPSCO proposes to recover 80% of the actual O&M expenses associated with the O&M Projects through NIPSCO's EERM. She stated that NIPSCO proposes to defer 20% of the actual O&M expenses associated with the O&M Projects, as a regulatory asset for recovery as part of NIPSCO's next general rate case.

vi. **Direct Testimony of Derric J. Isensee.** Derric J. Isensee, Manager of Regulatory Support and Analysis for NIPSCO, testified that NIPSCO proposes to seek ratemaking treatment for its MATS Compliance Plan Projects through its currently-effective ECRM and EERM tracker mechanisms. He stated that NIPSCO seeks authority to (a) implement CWIP ratemaking treatment for the MATS Compliance Plan Projects capital costs through the ECRM and (b) record an AFUDC on the MATS Compliance Plan Projects' construction costs until the costs receive either CWIP ratemaking treatment through the ECRM, are placed in service or are otherwise reflected in base electric rates. Mr. Isensee stated that the Company requests timely recovery, through the EERM, of reasonably incurred O&M and depreciation expenses associated with each approved project beginning when it is placed in service. With respect to the QPCP and clean energy projects within NIPSCO's MATS Compliance Plan, Mr. Isensee testified that NIPSCO is proposing to include all (1) capital expenditures in the semi-annual ECRM filings, and (2) pursuant to Ind. Code § 8-1-8.8-11, depreciation and O&M expenses in the annual EERM filings.

Mr. Isensee testified that rather than creating a new tracking mechanism, NIPSCO is proposing to include 80% of all O&M expenses related to the O&M Projects in the annual EERM filings in order to recover such project expenses in a timely manner. He stated that these expenses would be treated consistently with O&M expenses recovered as part of NIPSCO's other environmental compliance plans (NOx Compliance Plan, CAIR/CAMR Compliance Plan and Multi-Pollutant Compliance Plan).

B. **OUCC's Direct Testimony.**

i. **Direct Testimony of Edward T. Rutter.** Edward T. Rutter, Utility Analyst, testified that the MATS Compliance Plan is consistent with NIPSCO's 2011 Integrated Resource Plan ("IRP"). Mr. Rutter testified concerning the possible risks associated with continued retrofits to existing coal generating facilities relative to retirement and/or replacement and concluded that the latter alternatives will not replace existing generation or may have attendant risks or problems that may nullify or minimize any perceived advantages. Mr. Rutter testified that, in his

opinion, the MATS Compliance Plan was based on reasonable assumptions of costs and circumstances for each of the alternatives tested based on what is known today.

ii. **Direct Testimony of Cynthia M. Armstrong.** Cynthia M. Armstrong, Senior Utility Analyst in the Electric Division, testified concerning all of the regulations, in addition to the MATS rule, that are driving the need for the MATS Compliance Plan, and described the impact of proposed environmental regulations. Ms. Armstrong focused on MATS, Cross State Air Pollution Rule ("CSAPR"), CAIR, and the fine PM NAAQS, as she testified they have the most impact on NIPSCO's proposed environmental projects. She testified that many of NIPSCO's units are non-compliant with both current mercury limits and the MATS Hydrochloric Acid ("HCI") standard.

Ms. Armstrong testified that there is a need for NIPSCO's requested Schahfer TR Sets as well as the ACI Systems on Bailly Units 7 and 8, Michigan City Unit 12 and Schahfer Units 14 and 15 and therefore the OUCC recommends the issuance of a CPCN for these items. However, she stated that the Fuel Additives systems are not necessary and testified that NIPSCO may have overstated the units' AC injection rate in its Fuel Additives system economic analysis, which would then alter the cost effectiveness of installing and testing the Fuel Additives systems. Thus, the OUCC recommended the denial of a CPCN for Fuel Additives systems on Bailly Units 7 and 8, Michigan City Unit 12 and Schahfer Units 14 and 15. She testified that if after testing the ACI systems on these units, NIPSCO finds that the AC injection rate is high enough to warrant testing the Fuel Additives system, NIPSCO can re-apply for a CPCN for the Fuel Additives systems at that time. She stated that NIPSCO should report the results of the ACI tests on its units to the Commission, the OUCC, and any other interested consumer parties.

iii. **Direct Testimony of Anthony A. Alvarez.** Anthony A. Alvarez, Utility Analyst in the Resource Planning and Communications Division, testified concerning Bailly, including air pollution control devices in use as well as a discussion of the Bailly MATS Compliance Plan Projects. Mr. Alvarez recommended the approval of the ACI Project and its $11,899,320 cost for Bailly. He recommended the denial of the proposed Fuel Additives projects for Bailly Units 7 and 8. He testified concerning the possibility that fuel additives can increase the corrosion risk in some areas of the boiler and flue gas path, and have the potential to present wastewater discharge complications, as well as the lack of certainty in the AC injection rate which is critical in determining economic feasibility. Mr. Alvarez also stated that NIPSCO should provide updated information regarding the (1) residence time of the AC on Bailly Unit 7 electrostatic precipitator ("ESP"); (2) AC injection rates to achieve compliance for Bailly Units 7 and 8; (3) economic feasibility analysis of the Fuel Additives system after determining the AC injection rates; (4) status of the "own-and-operate" commercial arrangement for the Bailly wet flue gas desulphurization ("FGD"); (5) operating status and condition of the wet FGD bypass smokestack; and (6) corrosion mitigation and control plan for Bailly Unit 8 ESP high voltage compartment decks.

iv. **Direct Testimony of Ray L. Snyder.** Ray L. Snyder, Utility Analyst in the Resource Planning and Communications Division, testified concerning Schahfer, including air pollution control devices presently in operation or approved for construction. He compared the S&L Report to the MATS Compliance Plan and testified that the capital cost of executing S&L's recommendations would be $174,176,600 more than what would be implemented in the MATS Compliance Plan. Mr. Snyder testified that the OUCC recommended that the Commission approve

of the MATS Compliance Plan Projects at Schahfer, with the exception of the Fuel Additives projects. He stated the OUCC believes that the potential environmental risk and uncertainty of financial justification for those projects is too great. He testified that as NIPSCO gains experience with ACI additions and the amount of chemical consumed, the OUCC recommends NIPSCO re-evaluate the benefit/cost ratio of Fuel Additives systems and consider installation of Fuel Additives projects based on those results.

v. **Direct Testimony of Maclean O. Eke.** Maclean O. Eke, Utility Analyst in the Resource Planning and Communication Division, testified concerning Michigan City. He stated that NIPSCO will employ halogen-based fuel additives in conjunction with future dry FGD to first oxidize additional mercury present in the flue gas and then capture it in the FGD and particulate collection devices. Mr. Eke testified that final mercury emission trimming to meet compliance levels will be achieved by the ACI located upstream of the baghouse. He stated that NIPSCO's studies have not yet progressed to the point of a project schedule and scope and that NIPSCO currently does not have a contracting strategy.

Mr. Eke testified that the OUCC recommends the Commission approve installation of an ACI system for the Michigan City MATS Compliance Plan Projects. He stated that the OUCC recommends that the Commission deny NIPSCO's request to use Fuel Additives at Michigan City because using the baghouse/fabric filters approved in Cause No. 44012 as air pollution control equipment for Michigan City can achieve compliance without Fuel Additives.

vi. **Direct Testimony of Wes R. Blakley.** Wes R. Blakley, Senior Utility Analyst, testified regarding the OUCC's recommendations concerning NIPSCO's requested ratemaking treatment for its proposed MATS Compliance Plan Projects. He testified concerning the OUCC's disapproval of NIPSCO's effort to seek cost recovery for its MATS Compliance Plan Projects through three different statutes and testified that he does not believe the legislature intended for a utility to be able to cherry pick which statutory scheme it wanted to apply. He stated that should the Commission approve NIPSCO's request for a CPCN, the OUCC recommends that the cost recovery for all of NIPSCO's MATS Compliance Plan Projects be provided for under Ind. Code § 8-1-8.4 since the MATS Compliance Plan Projects are all federally mandated.

C. **Industrial Group's Direct Testimony.**

i. **Direct Testimony of Nicholas Phillips, Jr.** Nicholas Phillips, Jr., a Managing Principal of Brubaker & Associates, Inc., testified regarding the allocation of fixed MATS compliance costs in this proceeding and the need to treat those costs separately from the current pollution control costs being recovered in NIPSCO's existing ECRM and EERM trackers.

Mr. Phillips testified that NIPSCO had allocated QPCP fixed costs to classes on the basis of firm load (deducting interruptible load) of the four summer coincident peaks ("4 CP") method for many years, but that method was changed to the 12 coincident peak method ("12 CP") without subtracting interruptible load in Cause No. 42150 ECR 19 ("ECR 19"). Mr. Phillips stated that because: (1) the current approved base rates for NIPSCO are not a result of the 12 CP method; (2) the rates the Commission approved in Cause No. 43969 were not based on an approved cost of service study; (3) the flaws in NIPSCO's cost of service study in Cause No. 43969; and (4) the outdated and changed data upon which the Commission approved the 12 CP methodology in Cause

No. 43526, the most reasonable allocation for the new MATS Compliance Plan costs is to use the revenue allocation approved in NIPSCO's last base rate case, Cause No. 43969.

Mr. Phillips testified that although NIPSCO prepared and filed a cost of service study as part of its original filing in Cause No. 43969, it did not advocate rates based on the study, and the rates the Commission approved were not based on any cost of service study. Mr. Phillips stated that the Commission's Order in Cause No. 43969 discussed the difficulty in determining NIPSCO's true cost of service for each rate class because of a number of factors that existed during the test year.

Mr. Phillips stated that in Cause No. 43969, NIPSCO proposed an entirely new industrial rate structure. The information required to perform a cost of service study contained various uncertainties associated with customer operations during a severe recession and from customers operating on rate schedules that were being eliminated or contracts that had or would expire between the test year and implementation of new rates. Mr. Phillips noted that load data at the time of one-hour monthly system peaks during the test year may have been based on abnormal data due to the severe economic downturn. He said another problem was that customers on non-firm rates or a special contract during the test year were migrated to a firm rate under NIPSCO's proposed rate structure, making it difficult to estimate or assume exactly how a customer being migrated from a non-firm rate or special contract would operate under a different rate schedule with different price signals. He stated NIPSCO had to make various assumptions in migrating special contract customers' loads during the test year to existing rates and then had to make additional assumptions in migrating those customers' loads that were on non-firm rates, or customers who would have migrated to the non-firm rates, to firm rates. He testified these various factors created obstacles for any cost of service study in the rate case and these obstacles are reflected in the 12 CP allocators approved in ECR-19.

Mr. Phillips testified the Settling Parties recognized that load data, class migrations, revised pricing structures and the severe recession had a significant impact on normal usage characteristics and, therefore, any cost allocation study would be suspect. Consequently, the Settling Parties used an across-the-board approach to allocate the base rate revenue requirement (cost responsibility) to customer classes with mitigation of the increase to the residential class to arrive at a reasonable allocation of the revenue requirement to the customer classes. He added that as with a cost of service study, the agreed upon revenue responsibility by class in Cause No. 43969 established the allocation parameters upon which to allocate NIPSCO's revenue requirement among the customer classes. The resulting cost responsibility of the customer classes is reflected on Mr. Phillips NP-1. He stated that the Commission found that the revenue allocation constituted just and reasonable rates.

Mr. Phillips testified that he recommended the base rate revenue requirement allocation approved in Cause No. 43969 be used to allocate the fixed MATS costs to classes. Mr. Phillips based this recommendation on the fact that the revenue requirement allocation reflects the manner in which the Settling Parties agreed that cost responsibility is shared among the customer classes for base rates; no agreement on a cost of service method was achieved, or approved, in Cause No. 43969 because of the problems involving load data, rate migrations, and interruptible load transfers to firm service. He added that because no cost of service method was approved and allocation factors based on unreliable loads would be unreasonable, the agreed upon and Commission approved allocation of base rate revenue requirement by class is the superior, reasonable and most appropriate method for allocating the fixed MATS costs in this cause.

Mr. Phillips also explained the underlying problems with using the 12 CP methodology based on the Commission's findings in Cause No. 43526. He testified that the load data in Cause No. 43526 upon which the Commission adopted the 12 CP methodology was from a 2007 test year, prior to what might be the worst economic recession since the great depression. He noted that the loads, jobs and manufacturing activity may never return to the 2007 level. He said that basing a current finding on how new environmental project costs should be allocated on a methodology that relied upon 2007 data is unreasonable in his view.

Mr. Phillips added that the data, rate migrations and assumptions regarding customer loads in Cause No. 43526 made the resulting rates unworkable and they were never implemented. He noted the rates resulting from the 12 CP allocation methodology were based on the 2007 cost of service, loads, billing determinants and data that was fraught with difficulties. Mr. Phillips concluded that the 2007 data, which supported the Commission's findings that a 12 CP methodology was appropriate in Cause No. 43526, should not be used as the cornerstone of approving a methodology to allocate MATS costs to customer classes in this case.

Mr. Phillips testified the 12 CP factors from NIPSCO's cost study in Cause No. 43969 suffers from the same problems and therefore no valid reason exists to use NIPSCO's 12 CP allocation factors to allocate MATS costs to customers in this proceeding. He added that as utilities use trackers more and more and have rate cases less frequently, proper allocation methodologies are essential to providing just and reasonable rates and sending accurate signals to ratepayers.

Mr. Phillips testified that one way to address the need to use the allocation parameters in Cause No. 43969 for recovery of the MATS firm costs is to establish a new rider for recovery of the MATS Compliance costs. He said another possibility is NIPSCO could continue to use the existing ECRM and EERM Riders and prepare a separate schedule for the allocation of the MATS project costs, allocating the fixed costs pursuant to the base rate revenue requirement and allocating the variable costs on energy. He explained the separately allocated MATS costs could then be recovered as part of the ECRM and EERM riders.

Mr. Phillips also addressed the impact on the residential class of the allocation of base rate revenue requirement to customer class versus the 12 CP methodology of allocating fixed MATS costs to classes. Mr. Phillips testified the 12 CP method allocates 27.03% of fixed QPCP costs to the residential class, whereas the allocation of base rate revenue requirement method approved by the Commission in Cause No. 43969 allocates 27.882% to the residential class, which is very close to the same percentage. He said on that basis, there is no adverse impact to the residential class from the use of the approved allocation of base rate revenue requirement to class.

He added that under the base rate revenue allocation in Cause No. 43969, all classes received less than or approximately the system average increase other than the large industrial classes. Mr. Phillips testified the base rate revenue allocation resulted in the residential class receiving only a 4.788% increase in base rates, whereas the large industrial classes received over an 18% rate increase in Cause No. 43969. Mr. Phillips concluded that using the revenue requirement allocation parameters from NIPSCO's last rate case provides some rate relief to the largest employers in NIPSCO's service territory while having minimal impact on the residential class.

ii. **Direct Testimony of James R. Dauphinais.** James R. Dauphinais, Managing Principal of Brubaker & Associates, Inc., testified that he recommended that any CPCN granted for NIPSCO's MATS Compliance Plan Projects be conditioned on the following: (1) the Commission at this time only approve capital expenditure amounts no greater than those identified by NIPSCO in Petitioner's Exhibit No. MH-1; (2) the Commission should note that to the extent the actual NIPSCO MATS Compliance Plan Projects capital expenditure amounts exceed the Commission-approved amounts, that excess and the incremental AFUDC associated with the capital expenditure amounts above approved amounts should not be approved at this time and need to be addressed following a public hearing as part of the Commission's ongoing review; (3) NIPSCO must adhere to the same stakeholder reporting and meeting requirements that were imposed on it in Section 5.E of the Commission's December 28, 2011 Phase I Order in Cause No. 44012; and (4) NIPSCO must make a compliance filing with the Commission with regard to establishing a plan to manage the price risk associated with its Activated Carbon and Fuel Additive purchase costs associated with its MATS Compliance Plan.

D. **Petitioner's Rebuttal Testimony.**

i. **Rebuttal Testimony of Timothy R. Caister.** Mr. Caister testified that the one-year pilot for Fuel Additives projects for Units 7, 8, 12, 14 and 15 is a win-win scenario for customers. Mr. Caister stated that Mr. Blakley's position that "NIPSCO's entire MATS Compliance Plan Project cost recovery should be governed by IC 8-1-8.4" would require the Commission to: (1) ignore the plain language of Ind. Code § 8-1-8.4-6(a); (2) read into Ind. Code Ch. 8-1-8.4 language that is simply not there; and (3) ignore the plain language of Ind. Code § 8-1-2-6.8 and Ind. Ch. 8-1-8.8. In response to Mr. Phillips' suggestion that a new rider could be used for the MATS Compliance Plan Projects, Mr. Caister testified that NIPSCO does not believe it is necessary to create a new tracking mechanism for the MATS Compliance Plan Projects. Mr. Caister stated that the ECRM and EERM are well-established rate adjustment mechanisms for environmental compliance project costs. Finally, Mr. Caister testified that NIPSCO commits to provide updates and/or further information regarding the Bailly Unit 7 ACI project and the Bailly Unit 8 ESP high voltage compartment decks (as well as others) through its semi-annual progress reports filed in its Cause No. 42150-ECR-X filings to the extent that any of these items or subjects cause a change in the scope, schedule or cost estimate for any of the MATS Compliance Plan Projects.

ii. **Rebuttal Testimony of Kelly R. Carmichael.** Mr. Carmichael testified that NIPSCO disagrees with the OUCC's position regarding the Fuel Additives projects. He indicated that the Company does not agree with the OUCC that there must be 100% certainty of a one-year payback period for each of the five (5) proposed Fuel Additives projects in order to approve them. Mr. Carmichael stated that if one or more of the Fuel Additives projects are successful, customers will reap the benefits of reduced O&M expenses for years to come, so the relevant payback period should not be limited to one year. He testified that the OUCC's concerns regarding the risks associated with the assumed injection rates for ACI are far outweighed by the benefits associated with reduced O&M expenses. Mr. Carmichael also testified that NIPSCO believes its assumptions regarding the baseline AC injection rate are reasonable and based on sound information, but even if there is some uncertainty regarding the injection rates, the real cost savings driver is in the reduction in ACI usage.

Mr. Carmichael also testified that IDEM approved NIPSCO's request for a one-year extension of the MATS compliance deadline for Units 12, 14 and 15. Mr. Carmichael stated that disallowance of the Fuel Additives projects would increase the overall O&M costs to customers because the O&M expenses associated with ACI will increase significantly over the estimates set forth in Petitioner's Exhibit No. MH-1. Finally, in response to Mr. Alvarez's testimony, Mr. Carmichael testified that the FGD bypass stack can only be used in limited start-up conditions and that NIPSCO does not believe that the MATS rule will result in any changes in the operating status and condition of the wet FGD bypass stack.

5. **Commission Discussion and Findings.** Petitioner has separated the MATS Compliance Plan Projects into two distinct projects, the MATS Capital Projects and the O&M Projects. For the MATS Capital Projects, Petitioner has requested relief under Ind. Code § 8-1-2-6.8 and Ind. Code ch. 8-1-8.8. For the O&M Projects, Petitioner has requested relief under Ind. Code ch. 8-1-8.4.

A. **Clean Coal Technology, Qualified Pollution Control Technology, Clean Energy Projects and Federally Mandated Compliance Projects.** As an initial matter, we must determine whether the MATS Capital Projects constitute "clean coal technology" under Ind. Code § 8-1-2-6.8 and Ind. Code § 8-1-8.8-3, "qualified pollution control technology" under Ind. Code § 8-1-2-6.8, and "clean energy projects under Ind. Code § 8-1-8.8-2, and whether the O&M Projects are "federally mandated compliance projects" under Ind. Code § 8-1-8.4-2.

i. **Clean Coal Technology under Ind. Code § 8-1-2-6.8 and Ind. Code § 8-1-8.8-3.**

The term "clean coal technology" or CCT is defined as:

> a technology (including precombustion treatment of coal): (1) that is used in a new or existing energy generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and (2) that either: (A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or (B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

Ind. Code § 8-1-2-6.8(b).[1]

[1] Under Ind. Code § 8-1-8.8-3, CCT is defined as "a technology (including precombustion treatment of coal): (1) that is used in a new or existing energy production or generating facility and directly or indirectly reduces or avoids airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and (2) that either: (A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or (B) has been selected by the United States Department of Energy for funding or loan guaranty under an Innovative Clean Coal Technology or loan guaranty program under the Energy Policy Act of 2005, or any successor program, and

NIPSCO Witness Hooper testified that each of the MATS Capital Projects will reduce emissions of pollutants including mercury and PM which are regulated air emissions under the MATS rule. He also testified that none of the MATS Capital Projects included in the MATS Compliance Plan were in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989. No party disputed this testimony.

Based on our review of the record evidence, we find that the MATS Capital Projects constitute "clean coal technology" as defined in Ind. Code § 8-1-2-6.8 and Ind. Code § 8-1-8.8-3.

ii. **Qualified Pollution Control Property under Ind. Code § 8-1-2-6.8.** Ind. Code § 8-1-2-6.8 defines "qualified pollution control property" ("QPCP") as "an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements." Ind. Code § 8-1-2-6.8(c).

Mr. Hooper testified that the MATS Capital Projects are all air pollution control devices that will be used on coal burning energy generating facilities. Mr. Hooper also testified that NIPSCO will obtain all required permits to install these projects and they will meet applicable state or federal requirements. No party disputed this testimony. Based on our review of the record evidence, we find that the MATS Capital Projects are air pollution control devices to be used on coal burning facilities and are CCT designed to meet applicable federal and state environmental laws and regulations. We find that the proposed MATS Capital Projects will allow for the continued burning of coal in Petitioner's generating units by allowing them to comply with applicable state and federal environmental regulations. Accordingly, we find that the MATS Capital Projects constitute "qualified pollution control property" as defined in Ind. Code § 8-1-2-6.8.

iii. **Clean Energy Projects under Ind. Code Ch. 8-1-8.8.** The term "clean energy projects" ("CEP") includes, among others, "[p]rojects to provide advanced technologies that reduce regulated air emissions from or increase the efficiency of existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, ..." Ind. Code § 8-1-8.8-2(1)(B).[2]

We have already concluded that the MATS Capital Projects constitute CCT as defined by Ind. Code § 8-1-8.8-3. Mr. Hooper testified that Unit 7 ACI, Unit 7 Fuel Additives, Unit 8 ACI, Unit 8 Fuel Additives, Unit 12 ACI, Unit 12 Fuel Additives, Unit 14 ACI, Unit 14 Fuel Additives, Unit 14 TR Sets, Unit 15 ACI, Unit 15 Fuel Additives, Unit 15 TR Sets, Unit 17 TR Sets, and Unit 18 TR Sets provide advanced technologies that reduce regulated air emissions from or increase the efficiency of existing energy production or generating plants. The evidence shows that ACI is a relatively new technology. Mr. Hooper stated that very few coal power plants have ACI installed

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is finally approved for such funding or loan guaranty on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

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

and that it is among the most effective technologies for removing mercury. Mr. Hooper testified that Fuel Additives is also relatively new, it is used in conjunction with ACI to optimize the functionality of ACI. He explained that with Fuel Additives, less activated carbon is required to be injected to remove the mercury. He stated that few coal power plants have Fuel Additives installed.

With respect to High Frequency TR Sets, Mr. Hooper stated that use of this equipment did not begin until after 2000. OUCC Witness Snyder testified that replacing the existing TR Sets with high frequency power supplies ("HFPS") will significantly improve ESP performance. He stated that the improved ESP performance will ensure MATS fine PM emission compliance. Mr. Snyder indicated that the HFPS maintains higher ESP field voltages with greatly reduced sparking, increasing particulate collection and reducing fine PM emissions. He cited a January 2012 article by the Electric Power Research Institute ("EPRI") that reported five case histories where switch mode power supply ("SMPS," another name for HFPS) technology reduced fine PM emissions to the 0.03 lb/mmbtu MATS limit. Mr. Snyder testified that according to the EPRI, these case studies confirmed the significant PM emission reduction potential of SMPS retrofits.

No party disputed that the MATS Capital Projects constituted advanced technology under Chapter 8.8. Based on our review of the record evidence, we find that the MATS Capital Projects constitute advanced technologies that reduce regulated air emissions from existing energy generating plants and therefore find the MATS Capital Projects constitute CEP as defined in Ind. Code § 8-1-8.8-2.

iv. <u>Federally Mandated Compliance Projects under Ind. Code Ch. 8-1-8.4</u>.

Ind. Code § 8-1-8.4-2 provides:

> (a) As used in this chapter, "compliance project" means a project that is: (1) undertaken by an energy utility; and (2) related to the direct or indirect compliance by the energy utility with one (1) or more federally mandated requirements.

The term "federally mandated requirement" is defined as "a requirement that the commission determines is imposed on an energy utility by the federal government in connection with any of the following: (1) The federal Clean Air Act (42 U.S.C. 7401 et seq.)" and also includes "(7) Any other law, order, or regulation administered or issued by the United States Environmental Protection Agency, the United States Department of Transportation, the Federal Energy Regulatory Commission, or the United States Department of Energy." Ind. Code § 8-1-8.4-5.

We have already found that NIPSCO is an "energy utility" as defined by Ind. Code § 8-1-8.4-3. Mr. Caister testified that the MATS rule is a federally mandated requirement because the EPA promulgated and imposed the rule under the federal Clean Air Act with which NIPSCO must comply. Mr. Caister further testified that the MATS Compliance Plan comprises of qualifying compliance projects because they are undertaken by the Company, an energy utility, and are related to the direct or indirect compliance with a federally mandated requirement. Mr. Hooper testified that the O&M Projects are necessary to reduce emissions of mercury and PM to levels required by the MATS rule. Mr. Caister stated that NIPSCO's MATS Compliance Plan Projects include qualifying costs incurred in connection with compliance of the MATS rule.

With respect to the O&M Projects, Mr. Hooper testified that the Precipitator and FGD Mist Eliminator Cleaning O&M project for Units 7 and 8 involves increased frequency of cleaning of Precipitators and common FGD Mist Eliminators throughout the year to ensure compliance with the new emissions limits under MATS. He stated that NIPSCO has included $900,000 per year for this purpose. Mr. Hooper testified the Unit 15 ESP Flow Modeling Project is a one-time project meant to identify flow irregularities that will need to be addressed to comply with MATS. NIPSCO's response to the Commission's Docket Entry Question Hooper 1 indicated that in order to comply with the more stringent PM emissions limits imposed by MATS, the flow distribution into Unit 15 ESP must be improved and that uniform distribution flow is a critical parameter for increasing the efficiency of the ESP to comply with MATS. Finally, Mr. Hooper stated the Schahfer Air and Water Testing program will provide the Company with more distinct data associated with the effectiveness and appropriateness of applying the mercury removal technologies associated with the MATS Compliance Plan. NIPSCO's response to the Commission's Docket Entry Question Hooper 2 indicated that of the proposed $500,000 for Air and Water Testing, Air Testing will cost approximately $375,000 and Water Testing will cost approximately $125,000.

With respect to the Air and Water Testing, we agree with NIPSCO that Air Testing is associated with MATS Compliance. However, we disagree that NIPSCO has demonstrated that Water Testing is federally mandated under the MATS Rule. While such testing may be necessary for NIPSCO to comply with current or future water standards, NIPSCO did not indicate any other federal mandate other than the MATS Rule, which does not pertain to water discharge. Accordingly, we find that NIPSCO has not met its burden to demonstrate the Water Testing is a "compliance project."

Based on our review of the record evidence, we find that the O&M Projects, with the exception of Water Testing, constitute federally mandated "compliance projects" under Ind. Code § 8-1-8.4-2 because they will be undertaken by an energy utility (NIPSCO) and are related to the direct or indirect compliance by NIPSCO with MATS—a federally mandated requirement.

B. <u>MATS Compliance Plan Projects</u>. Petitioner requests the issuance of a CPCN for the MATS Compliance Plan Projects pursuant to Ind. Code chs. 8-1-8.8 and 8-1-8.4.

Initially, we note that there is some dispute among the parties concerning whether Chapter 8.8 provides for the relief sought by NIPSCO. The OUCC and Industrial Group suggest that because NIPSCO is seeking a CPCN, a CPCN can only be issued pursuant to Chapter 8.4, because Chapter 8.8 does not provide for a CPCN. The OUCC also argues that because NIPSCO is seeking relief for a portion of the MATS Compliance Plan Projects under Chapter 8.4, the Commission should consider NIPSCO's entire request for relief under Chapter 8.4. Further, the parties state that Chapter 8.7 does not apply because the MATS Compliance Plan Projects do not reduce sulfur or nitrogen-based pollutants, and thus are not CCT under Chapter 8.7.

The legislature has created multiple avenues for a utility to seek recovery of plant investments, some of which may overlap. However, the fact that a utility has several options for relief does not foreclose the opportunity for the utility to seek relief under multiple avenues. As we noted in *Indianapolis Power & Light*, Cause No. 44242 (IURC Aug. 14, 2013) ("44242 Order"), Chapter 8.8 provides for Commission approval of incentives for clean energy projects, not a CPCN. A CPCN issued under Chapter 8.7 for Chapter 8.7-defined clean coal technology involves consideration of different factors for approval and involves defined procedures for updating the

Commission on a utility's progress. Like NIPSCO, IPL was seeking approval of MATS Compliance Projects, but was seeking approval under Chapters 8.7 and 8.8, not Chapters 8.4 and 8.8. Ultimately, this Commission granted relief under Chapter 8.8 for all of IPL's MATS projects, even though some of them were also subject to Chapter 8.7. Further, the Commission noted that had IPL presented sufficient evidence to obtain a CPCN under Chapter 8.7, the Commission could have granted relief for CCT under Chapter 8.7 and treated the remainder as CEP under Chapter 8.8.

Section 6(a) of Chapter 8.4 similarly provides for multiple avenues of relief. Ind. Code § 8-1-8.4-6(a) states:

> Except as provided in subsection (c), or unless an energy utility has elected to file for:
>
> (1) a [CPCN]; or
>
> (2) the recovery of costs;
>
> under another statute, an energy utility that seeks to recover federally mandated costs under section 7(c) of this chapter must obtain from the commission a certificate that states that public convenience and necessity will be served by a compliance project proposed by the energy utility.

Here, NIPSCO has elected to file for the recovery of its MATS Capital Projects under Chapter 8.8 and recovery of its MATS O&M Projects under Chapter 8.4.[3] Chapter 8.4 explicitly provides that the Commission may grant relief under alternate provisions, and although we agree with the consumer parties that Chapter 8.8 does not provide for a CPCN, we must focus on the nature of the relief requested, which, for purposes of Chapter 8.8, is an approval of financial incentives for CEP. Accordingly, we address the MATS Capital Projects and MATS O&M Projects in turn.

i. <u>Approval for MATS Capital Projects</u>. Petitioner requests approval of the MATS Capital Projects pursuant to Ind. Code ch. 8-1-8.8. Indiana Code § 8-1-8.8-11 provides that "[a]n eligible business must file an application to the commission for approval of a clean energy project" and that "[t]he commission shall encourage clean energy projects by creating [certain] financial incentives for clean energy projects, if the projects are found to be reasonable and necessary." As discussed above, NIPSCO is an "eligible business" for purposes of Chapter 8.8, and the MATS Capital Projects constitute clean energy projects under Ind. Code § 8-1-8.8-2(1)(B). Accordingly, we must determine whether the MATS Capital Projects are reasonable and necessary.

The extensive evidence presented by NIPSCO and the OUCC provides a thorough description of MATS. We find that MATS establishes new direct and surrogate emission standards based upon the MACT to address HAPs including mercury and fine PM for NIPSCO's coal-fired generators. The compliance deadline for NIPSCO's Units 7, 8, 17 and 18 is three years after the effective date of the MATS rule or April 16, 2015. The compliance deadline for NIPSCO's Units 12, 14 and 15 is April 16, 2016 because NIPSCO has been granted a one-year extension based upon a demonstration that additional time is needed in order to install control technology.

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[3] While NIPSCO's Verified Petition in this Cause suggests that Chapter 8.7 may apply, its MATS Compliance Projects do not reduce sulfur or nitrogen-based pollutants, and NIPSCO's proposed order did not reference Chapter 8.7.

The evidence shows that NIPSCO cannot currently meet the MATS emissions limits. NIPSCO Witness Carmichael and OUCC Witness Armstrong provided evidence regarding the specific emissions applicable to NIPSCO. Mr. Carmichael testified that mercury continuous emissions monitors ("CEMs") data from Bailly Units 7 and 8 has historically fluctuated above and below the MATS standard of 1.2 lb/TBtu and that Michigan City Unit 12 and Schahfer Units 14 and 15 have typically emitted more than the MATS standard. Mr. Carmichael also indicated that Bailly and Michigan City Unit 12 have at times in the past exceeded the MATS standard for PM. Further, he said Schahfer Units 14, 15, 17 and 18 risk exceeding the limit when continuously monitored (under the MATS rule, each unit must comply at all times during operation). Ms. Armstrong testified that NIPSCO's coal-fired generating units are not able to meet the MATS limits at this time.

The evidence provided by NIPSCO Witness Carmichael and OUCC Witness Armstrong shows that the MATS rule is a command and control standard that prescribes MACT-based limits for HAPs and does not contemplate a flexible emissions allowance trading program. As a result, we find there are essentially two primary compliance options for NIPSCO: (1) retire some or all of NIPSCO's coal-fired generation units and replace the retired energy and capacity (i.e. retire and replace); or (2) install pollution control equipment to reduce regulated emissions (i.e. retrofit).

With respect to the "retire and replace" option, NIPSCO Witness Largura testified that NIPSCO's simulation analysis showed the cost to be greater than the retrofit option. She described Strategist®, a software system that the Company uses to support electric utility decision analysis and corporate strategic planning such as its integrated resource planning process. Ms. Largura listed the key inputs in the Strategist® model: compliance options' capital, O&M costs; discount rate; correlated fuel supply costs and electricity market prices for capacity and energy; carbon prices; and customers' peak and energy needs. Ms. Largura testified that the results of the analysis demonstrate that NIPSCO's MATS Compliance Plan is the preferred option for reliably and cost effectively serving its customers today and in the future while addressing environmental requirements and the inherent uncertainties and risks associated with the electricity industry. She indicated that the initial conclusions from the Strategist® analysis were that the installation of control equipment is preferred. The NPVRR[4] for the MATS Compliance Plan was $12,421,670 and the option to retire all coal stations yielded a NPVRR of $14,730,430, a difference of $2,308,760 from the preferred plan.

Ms. Largura also testified that the breakpoints in her analysis demonstrate further that the retrofit is the clear choice. She indicated that natural gas cost breakpoints that favored the capital investments at Bailly Units 7 and 8 occurred at or above: (1) $2.49/MMBtu (2012 natural gas price, escalating annually at 6.68%); (2) $4.37/MMBtu (2012 natural gas price, escalating annually at 2%); and (3) $5.16/MMBtu (2012 natural gas price, escalating annually at 0%). NIPSCO's Response to IURC Docket Entry Question Largura 3 clarified that natural gas prices above these values favor retrofitting all units (including Bailly Units 7 and 8) with the MATS Compliance Plan Projects and that these are the price points below which NIPSCO would exclude the investments at Bailly Units 7 and 8 but still invest in the remaining MATS Compliance Plan Projects. Ms. Largura testified that an escalation in capital cost breakpoint analysis indicates that escalation in capital cost for MATS Compliance Plan Projects has virtually no impact on the decision. In fact, according to Ms. Largura, costs of the MATS Capital Projects would have to rise more than 1,000% for each unit

[4] All NPVRR dollars cited herein are stated in 2011 nominal dollars in thousands.

in order to change the decision. Finally, Ms. Largura testified that carbon price breakpoints that favored the capital investments at Bailly Units 7 and 8 occurred at or below $32.73/ton in 2020. NIPSCO's Response to the Commission's Docket Entry Question Largura 3 clarified that this is the carbon price breakpoint at which NIPSCO would exclude the Bailly Units 7 and 8 projects but still invest in the remaining MATS Compliance Plan Projects.

OUCC Witness Rutter testified that the MATS Compliance Plan is consistent with NIPSCO's 2011 IRP and that the economic analysis supporting the Plan was based on reasonable assumptions of costs and circumstances for each of the alternatives tested based on what is known today. Mr. Rutter's testimony supports the conclusion that the cost of the retire and replace option is greater than the MATS Compliance Plan. He did state that there is some degree of risk associated with the MATS Compliance Plan because of evolving EPA regulations, but not enough evidence to suggest it should be rejected. Based on our review of the record evidence, we find that the cost of the "retire and replace" option would be greater than installing pollution control equipment to achieve compliance. However, we must also evaluate the alternative project portfolios identified and discussed by NIPSCO and the OUCC.

Mr. Hooper testified that in developing the MATS Compliance Plan, NIPSCO evaluated many different types of pollution control equipment, including the full set of projects identified in the S&L Report and other technologies including a filterable PM strategy, the installation of high frequency TR Sets, upgrading the rapping systems, replacing the ESP internals, adding an additional field or additional plate area to the ESP, converting part of the ESP to a baghouse, converting existing ESP into a baghouse, an O&M project strategy, ESP cleaning, mist eliminator cleaning, ESP flow modeling, a mercury removal strategy, FGD units, fuel additives, wet FGD re-emission additives, ACI and a mercury oxidation catalyst. He stated that NIPSCO also explored the option of changing coal sources for Bailly Units 7 and 8 in lieu of installing ACI and Fuel Additives facilities, but that the economics show that making the capital investments is the preferred option.

Mr. Hooper testified that NIPSCO selected a subset of the projects identified in the S&L Report for its MATS Compliance Plan. He stated that the S&L Report is a zero-compliance risk option, but NIPSCO is looking to balance capital cost with the compliance margin risk while ensuring that all of the projects are supported by emissions test data. Mr. Hooper stated that ultimately, NIPSCO selected the projects in the MATS Compliance Plan over the alternatives that it considered because it believes the projects included in its MATS Compliance Plan represent the most cost-effective option for each unit to comply with the mercury and PM emissions limits imposed by the MATS rule considering the emissions test data, implementation schedule, risks, compliance margin and fuel and operating cost considerations.

Mr. Carmichael and Mr. Hooper testified that the MATS Capital Projects will provide significant reduction in mercury and fine PM emissions. Mr. Hooper and Mr. Carmichael testified that the TR Sets will reduce PM emissions. Mr. Hooper also indicated that the ACI and Fuel Additives projects will reduce mercury emissions. Mr. Carmichael described the Fuel Additives projects and indicated they will have the effect of increasing the amount of oxidized mercury in the flue gas to a level greater than 90% of the total mercury and that oxidized portion is then readily captured in the downstream pollution control devices. Mr. Carmichael and Mr. Hooper each testified that NIPSCO anticipates that the MATS Capital Projects will be successfully constructed and operated by the compliance deadline set forth in the MATS rule. Mr. Hooper did add that although the data and analysis indicate that the current suite of projects included in NIPSCO's

MATS Compliance Plan will allow for MATS compliance, if after a period of operation there remain areas where sufficient compliance margin does not exist, NIPSCO may seek to perform additional activities in order to meet the compliance requirements. Mr. Hooper testified that this is neither anticipated nor expected; however, it should not be excluded from the conversation either.

With respect to the Fuel Additives projects, Mr. Carmichael testified they are designed to add halogenated compounds to coal and thus to the combustion process. He stated that Fuel Additives systems, such as calcium bromide and calcium chloride, are a low capital cost option for improving mercury capture for units equipped with pollution controls, including FGD technology, that have a low proportion of oxidized mercury to elemental mercury. Mr. Carmichael testified that the potential O&M cost savings to customers from using Fuel Additives during the one year Fuel Additives pilot alone outweighs the capital cost of the Fuel Additives facilities as well as the Fuel Additives O&M. Therefore, even if use of Fuel Additives is not allowed after the one year Fuel Additives pilot due to adverse water impacts, the capital and O&M costs associated with the Fuel Additives pilot would be offset by the reduction in ACI O&M costs during the one year pilot period.

The OUCC supports approval of NIPSCO's proposed MATS Capital Projects except for the Fuel Additives projects. Specifically, the OUCC recommends that the Commission deny approval for the Fuel Additives projects for Units 7, 8, 12, 14 and 15. OUCC Witness Armstrong testified that although the Fuel Additives systems may provide economic benefits and operational flexibility, NIPSCO may have overstated the units' AC injection rate, which would then alter the cost effectiveness of installing and testing the Fuel Additives systems. Importantly, Ms. Armstrong stated that the projects' payback periods must be less than a year for the OUCC to support a CPCN for these systems, as this is the time period for which NIPSCO has secured a variance from IDEM on its National Pollutant Discharge Elimination System ("NPDES") permits to test the impacts of the fuel additives. Further, Ms. Armstrong stated that if NIPSCO has assumed an overstated AC injection rate for these units – which is a concern raised by other OUCC witnesses, then the cost effectiveness of the Fuel Additives systems may not be enough to warrant installing and testing them in a one-year pilot. Finally, she expressed concerns about the possibility of the fuel additive negatively affecting the water effluent quality and a possibility of not receiving IDEM's approval. OUCC Witness Alvarez testified that a critical component in determining the economic feasibility of the Fuel Additives pilot project is the activated carbon injection rate needed to attain compliance and without a clear understanding of the AC injection rate level, a high degree of uncertainty exists regarding the economic analysis provided by NIPSCO. OUCC Witness Snyder testified that if the initial ACI feed rate is much less than the rate assumed by NIPSCO in its analysis, there may not be enough reduction in ACI usage possible to justify the Fuel Additives projects. OUCC Witness Eke testified that the industry standard AC injection rates for a unit similar to Unit 12 with a baghouse/fabric filter and Selective Catalytic Reduction is 2 lb/MMacf and that if that rate is assumed for Unit 12, the payback period for the Unit 12 Fuel Additives project would be 3.48 years.

In rebuttal, NIPSCO Witness Carmichael testified that the Company does not agree with the OUCC that there must be 100% certainty of a one-year payback period for each of the five proposed Fuel Additives projects in order to approve them. He stated that for a project, even a seven year payback period could be considered an attractive capital investment because utilities need to consider investments to serve customers cost-effectively over the long-term, not just one-year payback cycles. Mr. Carmichael also testified that if only one of the Fuel Additives projects is successful, customers will reap the benefits of reduced O&M expenses for years to come.

Petitioner's Exhibit No. KRC-2 (Confidential) shows the annual savings by unit. Mr. Carmichael said that the Company must weigh these substantial future benefits against the relatively small risk that: (a) none of the projects will be allowed to continue past the one-year trial period; and (b) the O&M savings achieved during the one-year trial period is significantly less than NIPSCO has assumed in Petitioner's Exhibit No. KRC-2 (Confidential).

Mr. Carmichael indicated that the OUCC's concerns regarding the risks associated with the assumed injection rates for ACI are far outweighed by the benefits associated with reduced O&M expenses. Mr. Carmichael also testified that NIPSCO believes its assumptions regarding the baseline AC injection rate are reasonable and based on sound information, but even if there is some uncertainty regarding the injection rates, the real cost savings driver is in the reduction in ACI usage. Additionally, he stated that (1) NIPSCO anticipates that within the one year trial, the capital cost of the Fuel Additives projects will be recovered via avoided O&M costs and that (2) the opportunity for long term cost saving benefits far outweigh the risks associated with sunk capital investment. He testified that NIPSCO believes that the recommended disallowance of the Fuel Additives projects would increase the overall O&M costs to customers because the O&M expenses associated with ACI will increase significantly over the estimates set forth in Petitioner's Exhibit No. MH-1.

We note that under Chapter 8.8, we must determine whether CEP is "reasonable and necessary." This Commission's determination of what is "reasonable and necessary" is afforded broad discretion. While Chapter 8.8 does not set forth any specific factors the Commission should consider in determining the reasonableness and necessity of a clean energy project, the Commission has considered some factors outlined in Chapter 8.7 in other cases. *See Northern Indiana Public Service Co.*, Cause No. 44012 (Phase I Order), at 20 (IURC Dec. 28, 2011) (discussing effect of compliance project on operations and comparing cost of retirement); *see also Indiana Michigan Power Co.*, Cause No. 44182, at 53-54 (IURC July 17, 2013) (Chapter 8.7 factors relevant for LCM Project under Chapter 8.8).

With respect to the Fuel Additives projects, NIPSCO's economic analysis suggests there is a strong possibility that the customer payback period will be less than one year, which suggests that even if the projects must be shut down after one year, customers will benefit. Even if the payback period is greater than one year, the Fuel Additives projects should still be in the public interest. The OUCC's evidence shows that even with a much lower assumed injection rate, the payback period would still be less than four years. So long as the Fuel Additives projects do not negatively affect water effluent quality, customers will benefit from the reduced ACI O&M expenses in future years. We therefore conclude that NIPSCO's proposed one-year pilot for the Fuel Additives projects for Units 7, 8, 12, 14 and 15 should be approved as part of NIPSCO's MATS Compliance Plan.

Ultimately, we find that the MATS Capital Projects, including the Fuel Additives projects, present a MATS compliance option with a reasonable balance of costs, risks and policy based upon consideration of all the factors impacting the decision, including uncertainties about the future and those factors that are known at this time. Specifically, we find that the MATS Capital Projects are a commercially appropriate solution to allow NIPSCO to: (1) comply with MATS; (2) provide the required amount of energy and capacity to NIPSCO's customers; (3) meet the deadlines imposed by MATS; and (4) mitigate various risks. The MATS Capital Projects, including the Fuel Additives projects, balance capital costs with the risk of compliance and is supported by emissions test data. Finally, we note that most of NIPSCO's coal-fired generation units (Units 7, 8, 12, 14, 17 and 18)

burn some coal sourced from the Illinois Basin[5] and the evidence shows that if the MATS Compliance Plan Projects are not installed, NIPSCO would be required to shut down its coal-fired generation units as of April 16, 2015. As we discussed above, the MATS Capital Projects constitute "clean energy projects" under Ind. Code § 8-1-8.8-2. We find that the MATS Capital Projects are reasonable and necessary to reduce mercury and fine PM emissions from NIPSCO's coal-fired generating units, and approve the MATS Capital Projects pursuant to Ind. Code § 8-1-8.8-11.

We note that under our public interest review of the MATS Capital Projects, it is appropriate for the Commission to tie its reasonable and necessary finding, whether implicitly or explicitly, to the cost estimate (with an appropriate range of accuracy) and underlying analysis provided by the petitioning utility in order to determine the viability of the proposed project. As we explained in our Phase I Order in Cause No. 44012, "the initial granting of a CPCN depends in large part upon the economic efficacy of a proposed project, and as such, the initial cost estimates are a significant factor in the Commission's decision making process." *NIPSCO*, Cause No. 44012 Phase I Order, at 18 (IURC Dec. 28, 2011). Similarly, we find that the MATS Capital Projects are reasonable and necessary so long as the final cost of the MATS Capital Projects do not exceed $74.1 Million (excluding AFUDC), subject to our ongoing review discussed in Para. 5(D). As noted in Para. 5(B)(3)(A) below, through this Order we are only approving the recovery of NIPSCO's estimated cost of $59.28 Million.

Based on the record evidence, we find that NIPSCO's construction, implementation and use of the MATS Capital Projects are reasonable and necessary under Chapter 8.8 based on the estimated cost, range of accuracy, and the associated analysis provided by NIPSCO.

ii. <u>CPCN for O&M Projects</u>. For the O&M Projects, Petitioner requests the issuance of a CPCN pursuant to Ind. Code Ch. 8-1-8.4. In order to grant a CPCN under Ind. Code Ch. 8-1-8.4, we must find that the O&M Projects will allow NIPSCO to comply directly or indirectly with one (1) or more federally mandated requirements and we must examine each of the following factors described in Ind. Code § 8-1-8.4-6(b):

> (1) The following, which must be set forth in the energy utility's application for the certificate sought, in accordance with section 7(a) of this chapter:
>
> > (A) A description of the federally mandated requirements, including any consent decrees related to the federally mandated requirements, which the energy utility seeks to comply with through the proposed compliance project.
> >
> > (B) A description of the projected federally mandated costs associated with the proposed compliance project, including costs that are allocated to the energy utility:
> >
> > > (i) in connection with regional transmission expansion planning and construction; or
> > > (ii) under a Federal Energy Regulatory Commission approved tariff, rate schedule, or agreement.

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

(C) A description of how the proposed compliance project allows the energy utility to comply with the federally mandated requirements described by the energy utility under clause (A).

(D) Alternative plans that demonstrate that the proposed compliance project is reasonable and necessary.

(E) Information as to whether the proposed compliance project will extend the useful life of an existing energy utility facility and, if so, the value of that extension.

(2) Any other factors the commission considers relevant.

With respect to factor 1(A), we find there was substantial evidence submitted by Petitioner and the OUCC concerning the MATS rule, which is the federally mandated requirement. With respect to factor 1(B), NIPSCO's evidence, including the direct testimony of Mr. Hooper and the Responses to the IURC Docket Entry Questions provided a detailed description of the projected federally mandated costs associated with the O&M Projects. This evidence is discussed in detail in Section C below.

With respect to factor 1(C), Mr. Hooper's testimony and the Responses to the Commission's Docket Entry Questions provided evidence regarding how the O&M Projects will allow Petitioner to comply with the MATS rule, with the exception of the Water Testing project. NIPSCO did not demonstrate how the Water Testing project helps it achieve compliance with the MATS Rule. In the Commission's view, the purpose of the Water Testing project is to allow NIPSCO to demonstrate compliance with NPDES limits due to the Fuel Additives pilot project, not to show compliance with MATS. While we have found the Fuel Additives projects to be reasonable and necessary pursuant to Chapter 8.8, those projects are not federally mandated, and NIPSCO could comply with MATS without undertaking the Fuel Additives pilot. Accordingly, we find that while NIPSCO has sufficiently demonstrated how the remaining O&M Projects will allow NIPSCO to comply with the MATS rule, it did not meet its burden to show that the Water Testing project will allow NIPSCO to comply with the MATS rule.

With respect to factor 1(D), as discussed above in Paragraph 5B(i) with respect to the MATS Capital Projects, we similarly find that the cost of the MATS O&M Projects is less than the "retire/replace" alternative for MATS compliance. We also find that the MATS O&M Projects constitute a MATS compliance option with a reasonable balance of costs, risks and policy based upon consideration of all the factors impacting the decision. Finally, with respect to factor 1(E), as discussed in Paragraph 5B(i) above, we similarly find that without the MATS O&M Projects, NIPSCO would be required to shut down its coal-fired generation units as of April 16, 2015 and so the O&M Projects will extend the useful economic life of NIPSCO's facilities.

Based on our review of the record evidence, we find that the O&M Projects, with the exception of the Water Testing project, will allow NIPSCO to comply directly or indirectly with MATS—a federally mandated requirement, and we have made a finding on each of the factors described in Ind. Code § 8-1-8.4-6(b). We therefore approve the O&M Projects, with the exception of the Water Testing project, pursuant to Ind. Code Ch. 8-1-8.4 and find that NIPSCO's request for a CPCN for the O&M Projects, with the exception of the Water Testing project, should be granted, limited to the estimated cost of the projects as set forth by NIPSCO.

iii. **Cost Estimate.**

A. **MATS Capital Projects.** Petitioner requests approval of the cost estimates for the MATS Capital Projects set forth in Petitioner's Exhibit No. MH-1. The estimated costs for the MATS Capital Projects, excluding AFUDC, are as follows: Unit 7 ACI - $3,966,402; Unit 7 FA - $531,240; Unit 8 ACI - $7,932,918; Unit 8 FA - $1,064,760; Unit 12 ACI - $6,614,280; Unit 12 FA - $1,596,000; Unit 14 ACI - $6,614,850; Unit 14 FA - $1,596,000; Unit 14 TR Sets - $4,389,000; Unit 15 ACI - $6,614,850; Unit 15 FA - $1,596,000; Unit 15 TR Sets - $4,389,000; Unit 17 TR Sets - $6,187,350; and Unit 18 TR Sets - $6,187,350. The details of these cost estimates are set forth in Petitioner's Exhibit No. MH-4 (Confidential).

Mr. Hooper testified that the total estimated costs for the MATS Capital Projects is $59.28 million. He stated that this represents $52 million of direct capital, $7.28 million of indirect capital and excludes AFUDC. Mr. Hooper indicated that in accordance with the Association for the Advancement of Cost Engineering Cost Estimate Classification System, the cost estimate as a whole ranges from $44.46 million ($39 million direct capital and $5.46 million indirect capital) to $74.1 million ($65 million direct capital and $9.1 million indirect capital). He identified several factors that could drive actual capital costs towards the top end of the range: (1) escalation beyond what the Company has already estimated due to a crowded market as many utilities perform similar work at the same time in order to meet the MATS compliance deadline; (2) an untimely issuance of a CPCN order could compress installation schedules and costs could rise as a result of the need to expedite the work; (3) if the one-year Fuel Additives pilot is unsuccessful or is cancelled, the O&M costs associated with ACI would likely rise; (4) an increase in the commodity prices of the activated carbon and the fuel additive chemicals could affect the annual O&M expenses for ACI and Fuel Additives projects.

OUCC Witness Alvarez testified that the total project cost estimate in a multi-project plan typically represents the sum of all proposed projects approved by the Commission. He stated that cancelling any single project fundamentally changes the overall compliance plan from a regulatory standpoint. Mr. Alvarez testified that the OUCC expects that if Petitioner needs to modify the costs of any project that it will inform the Commission and interested parties of this need in one of the regularly docketed proceedings. He stated that if Petitioner decides to cancel a project or make material changes to the projects or cost of the projects, the OUCC recommends that the Commission require Petitioner to seek a modification to its CPCN so that all interested parties have an opportunity to review and comment on the requested change. Industrial Group Witness Dauphinais testified that NIPSCO's cost estimates for capital projects fall into a class that could have actual expenditures as much as 30% lower or as much as 50% higher than estimated and that NIPSCO identified a number of factors that could drive its actual capital expenditure amounts towards the 50% over estimate level.

The evidence presented sufficiently describes the projected costs associated with the MATS Capital Projects and demonstrates that the projects offer substantial potential to cost effectively reduce pollutants in a more efficient manner than alternative methods of complying with the MATS rule. Based on our review of the record evidence, we find that NIPSCO's cost estimates for the MATS Capital Projects of $59.28 Million, as depicted in Petitioner's Exhibit No. MH-1, are reasonable and should be approved. Consistent with the recommendations of OUCC Witness Alvarez and Industrial Group Witness Dauphinais, to the extent the MATS Capital Project costs exceed this amount, these increased costs and incremental AFUDC associated with project costs

above $59.28 Million are not approved at this time and would need to be addressed in a separate docketed proceeding.

B. **MATS O&M Project.** NIPSCO also requests approval of the cost estimates for the O&M Projects set forth in Petitioner's Exhibit No. MH-1. The estimated costs for the O&M Projects are: Unit 7 Precipitator & FGD Mist Eliminator Cleaning - $300,000 per year; Unit 8 Precipitator & FGD Mist Eliminator Cleaning - $600,000 per year; Unit 15 ESP Flow Modeling - $200,000 in 2013 and $100,000 in 2014; Units 14, 15, 17 and 18 Air and Water Testing - $500,000 total. In its Response to the Commission's May 30, 2013 Docket Entry, NIPSCO indicated that the Water Testing portion, which we have not approved for a CPCN, is estimated to cost $125,000.

Pursuant to Ind. Code 8-1-8.4-7(c), if the Commission approves a proposed compliance project and the projected federally mandated costs associated with the proposed compliance project, the following apply:

> (1) Eighty percent (80%) of the approved federally mandated costs shall be recovered by the energy utility through a periodic retail rate adjustment mechanism that allows the timely recovery of the approved federally mandated costs. The commission shall adjust the energy utility's authorized net operating income to reflect any approved earnings for purposes of IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).
>
> (2) Twenty percent (20%) of the approved federally mandated costs, including depreciation, allowance for funds used during construction, and post in service carrying costs, based on the overall cost of capital most recently approved by the commission, shall be deferred and recovered by the energy utility as part of the next general rate case filed by the energy utility with the commission.
>
> (3) Actual costs that exceed the projected federally mandated costs of the approved compliance project by more than twenty-five percent (25%) shall require specific justification by the energy utility and specific approval by the commission before being authorized in the next general rate case filed by the energy utility with the commission.

NIPSCO has demonstrated that the federally mandated MATS O&M Project costs (excluding Water Testing), as set forth above, are reasonable. Accordingly, we find the projected MATS O&M Project costs (excluding Water Testing) should be approved for purposes of Ind. Code 8-1-8.4-7(c).

C. **Ratemaking Treatment and Depreciation.**

i. **Ratemaking Treatment under Ind. Code § 8-1-2-6.8.** Petitioner requests a finding that the MATS Capital Projects constitute "qualified pollution control property" and are eligible for the ratemaking treatment described in Ind. Code § 8-1-2-6.8. Specifically, Petitioner requests authorization to utilize CWIP ratemaking treatment for CCT and QPCP (and clean energy projects) consistent with and through Petitioner's currently-effective ECRM. Petitioner also requests authorization to accrue AFUDC related to QPCP prior to CWIP ratemaking treatment or their reflection of such costs in NIPSCO's electric rates and a finding that

the MATS Capital Projects are deemed to be under construction until such time the Commission determines that the MATS Capital Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner. Petitioner also requests authorization to recover through rates pre-construction costs incurred prior to approval of a Final Order in this proceeding through Petitioner's currently-effective ECRM. We address preconstruction costs under the Chapter 8.8 financial incentives.

NIPSCO Witness Isensee testified that NIPSCO's proposed CWIP ratemaking treatment would include all capital expenditures related to QPCP and clean energy projects within NIPSCO's MATS Compliance Plan, in the semi-annual ECRM filings. Mr. Isensee stated that the ECRM, which was originally authorized by the Commission in its November 26, 2002 Order in Cause No. 42150, is a semi-annual recovery mechanism designed to recover a return on capital expenditures associated with approved environmental compliance projects. Specifically, he testified that NIPSCO proposes to add to the value of NIPSCO's property on which the Company is authorized to earn a return the value of the qualified pollution control property and clean energy projects after such project has been under construction for at least six months. He indicated that CWIP ratemaking treatment will be calculated based on NIPSCO's weighted average cost of capital used to calculate the return on capital expenditures and will use the return on common equity most recently approved by the 43969 Order.

We have already determined that the MATS Capital Projects constitute "qualified pollution control property" as defined in Ind. Code § 8-1-2-6.8. As a result, we find the MATS Capital Projects are eligible for the ratemaking treatment described in Ind. Code § 8-1-2-6.8. Indiana Code § 8-1-2-6.8(e) provides: "Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction." We therefore authorize NIPSCO to utilize CWIP ratemaking treatment and AFUDC treatment for the MATS Capital Projects consistent with and through Petitioner's currently-effective ECRM, and we hereby deem the MATS Capital Projects to be under construction until such time the Commission determines that the Projects are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner. We find that NIPSCO should be and hereby is authorized to accrue AFUDC on MATS Capital Projects costs up to the approved amounts set forth above.

ii. <u>Financial Incentives under Ind. Code § 8-1-8.8-11</u>. As discussed above, we find that the MATS Capital Projects constitute "clean energy projects" and are reasonable and necessary and are therefore eligible for financial incentives under Ind. Code Ch. 8-1-8.8-11. Petitioner requests, among other things, authorization to utilize CWIP ratemaking treatment for its clean energy projects (and CCT and QPCP) and to recover O&M expenses relating to the MATS Capital Projects, including depreciation expense, for its clean energy projects (and CCT and QPCP) consistent with and through Petitioner's currently-effective ECRM and EERM. Indiana Code § 8-1-8.8-11 provides:

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

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

* * * * *

(5) Other financial incentives the commission considers appropriate.

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

The OUCC and Industrial Group opposed NIPSCO's recovery of preconstruction costs under Ind. Code § 8-1-2-6.8 because that section does not reference preconstruction costs. The consumer parties note that preconstruction costs are referenced in other law applicable to CCT that are solely for nitrogen or sulfur-based pollutant reduction, which as previously discussed, do not apply to the MATS Compliance Projects.

While we agree with the consumer parties with respect to the silence on preconstruction costs under Section 6.8, preconstruction costs were included in the cost estimates of the CEP that the Commission has approved in this Order. Given the legislative mandate to encourage CEP, we see no reason that preconstruction costs should not be timely recovered in connection with the recovery of other "post-construction" costs subject to Ind. Code § 8-1-8.8-11(a)(1). We further note that no party challenged the reasonableness of NIPSCO's preconstruction costs. To the extent that recovery of preconstruction costs would constitute "other" financial incentives under Ind. Code 8-1-8.8-11(a)(5), we find that timely recovery of costs and expenses incurred in the preconstruction phase, as set forth in NIPSCO's cost estimate, is appropriate.

iii. Ratemaking Treatment for Incremental O&M Projects. NIPSCO Witness Hooper testified that NIPSCO's MATS Compliance Plan includes several incremental O&M projects necessary to reduce emissions of mercury and PM to levels required by the MATS rule. The O&M Projects include: Precipitator and FGD Mist Eliminator Cleaning (Units 7 and 8), ESP Flow Modeling (Unit 15), and Air and Water Testing (Units 14, 15, 17 and 18).

NIPSCO Witness Camp testified that NIPSCO proposes to recover 80% of the actual O&M Project expenses through the currently-effective EERM. She testified that NIPSCO proposes to defer 20% of the actual O&M expenses associated with its federally mandated O&M Projects as a regulatory asset for recovery as part of NIPSCO's next general rate case. NIPSCO witness Isensee testified that rather than creating a new tracking mechanism, NIPSCO is proposing to include 80% of all O&M Project expenses in the annual EERM filings in order to recover such project expenses in a timely manner. He stated these expenses would be treated consistently with O&M expenses recovered as part of NIPSCO's NOx Compliance Plan, CAIR/CAMR Compliance Plan and Multi-Pollutant Compliance Plan.

We have found that the O&M Projects, with the exception of the Water Testing project, constitute federally mandated compliance projects under Ind. Code Ch. 8-1-8.4, and that these projects should receive a CPCN and their projected costs should be approved. Based on our review

of the record evidence, we find that NIPSCO's proposed "80/20" ratemaking treatment of the approved O&M Projects is consistent with Ind. Code § 8-1-8.4-7 and that it is reasonable for NIPSCO to include these costs for recovery in its currently-effective EERM rather than creating a new tracking mechanism for this subset of MATS Compliance Plan Projects.

iv. Cost Allocation. NIPSCO Witness Isensee testified that NIPSCO proposes ratemaking treatment for the MATS Compliance Plan Projects identified in Petitioner's Exhibit No. MH-1 consistent with and through its existing ECRM and EERM tracking mechanisms. Although Mr. Isensee did not specifically address a proposed method to allocate costs relating to its MATS Compliance Plan Projects, we assume NIPSCO's proposal to treat the MATS Compliance Plan Projects consistently with projects approved as part of NIPSCO's NOx Compliance Plan, CAIR/CAMR Compliance Plan and Multi-Pollutant Compliance Plan includes using the same cost allocation method as is currently used for the ECRM and EERM. We note that in ECR 19, the Commission approved the 12 coincident peak method ("12 CP") to allocate costs of environmental projects among the various customer classes, and that decision was ultimately affirmed on appeal.

Industrial Group Witness Phillips testified that NIPSCO had allocated QPCP fixed costs to classes on the basis of firm load of the four summer coincident peaks ("4 CP") method for many years and deducted interruptible load. He testified that the 4 CP method was changed to the 12 CP method without subtracting interruptible load in ECR 19. He disagrees with allocating new costs associated with the MATS Compliance Plan projects using the 12 CP method because the current approved base rates for NIPSCO are not a result of the 12 CP method and no cost of service study or cost of service allocation method was approved in the 43969 Order. Mr. Phillips testified that the settling parties in Cause No. 43969 utilized an across-the-board approach modified for residential mitigation and other considerations to achieve the revenue allocation for cost responsibility under the new rates and resulting rate increase to classes. Mr. Phillips testified that Joint Exhibit C to the Settlement approved in the 43969 Order—the revenue requirement allocation is the most reasonable method to allocate fixed MATS costs to customer classes. Mr. Phillips testified that one way to address his concern is a new rider separate from the existing ECRM and EERM for recovery of approved MATS costs. He testified another possibility is that NIPSCO could continue to use the existing ECRM and EERM tracking mechanisms and prepare a separate schedule for the allocation of the MATS project costs using the Industrial Group's recommended allocation method.

NIPSCO Witness Caister testified that NIPSCO believes the ECRM and EERM are well-established rate adjustment mechanisms for environmental compliance project costs. They provide an opportunity to review all of the QPCP, CCT and CEP costs in one set of mechanisms. NIPSCO does not believe it is necessary to create a new tracking mechanism for the MATS Compliance Plan Projects.

Based on our review of the record evidence, we find that NIPSCO's proposal to treat the MATS Compliance Plan Projects consistently with projects approved as part of NIPSCO's NOx Compliance Plan, CAIR/CAMR Compliance Plan and Multi-Pollutant Compliance Plan through its existing ECRM and EERM is reasonable and appropriate. We find this approach necessarily includes using the same cost allocation method as is currently used for the ECRM and EERM, and the Commission previously addressed the allocation issues in ECR 19. We therefore decline to adopt the Industrial Group's recommendation that approved MATS costs be allocated using the

negotiated revenue allocations from the 43969 Settlement, or that MATS costs be tracked in a separate rider.

v. **Depreciation Treatment.** NIPSCO requests authority to depreciate the MATS Capital Projects according to the composite remaining life approved in the 43969 Order once each project is placed in service. Ind. Code § 8-1-2-19 gives us authority to "ascertain and determine the proper and adequate rates of depreciation" and gives us authority to "make changes in such rates of depreciation, from time to time, as it may find necessary." We find that NIPSCO's proposal to depreciate the MATS Capital Projects based on the depreciation rates established in NIPSCO's most recent electric base rate case is reasonable and should be approved.

D. Ongoing Review, Semi-Annual Progress Reports and Reporting Requirements. NIPSCO requests ongoing review of the MATS Capital Projects as part of the semi-annual progress reports filed as part of each ECRM filing in Cause No. 42150-ECR-XX. We note that NIPSCO has regularly reported to the Commission on the progress of its approved CCT, QPCP, and CEP by its annual progress reports in Cause Nos. 42515, 42737, 42935, 43144, 43371, 43593, 43840 and semi-annual progress reports in 42150-ECR-19 through 42150-ECR-21.

The Commission noted in Cause No. 44242 that under Chapter 8.8, there is no explicit provision for ongoing review. *See* 44242 Order at 37. However, the Commission found that ongoing review was reasonable in order to provide timely recovery of costs pursuant to Ind. Code § 8-1-8.8-11. We further noted that such review would be limited to approving costs and expenses up to the approved cost estimate. *Id.* Accordingly, we find that NIPSCO shall provide updates to the MATS Capital Projects through its semi-annual ECRM proceedings.

OUCC Witness Alvarez included several other recommendations for ongoing reporting relating to: (1) Bailly Unit 7 injected activated carbon residence time; (2) the Pure Air Flue Gas Processing Agreement for the Bailly wet FGD; (3) changes in the operating status of the Bailly wet FGD bypass smokestack under the compliance provisions of the MATS rule; and (4) corrosion mitigation and control plan for Bailly Unit 8 ESP high voltage compartment decks. NIPSCO agreed to provide updates and/or further information regarding the Bailly Unit 7 activated carbon project and the Bailly Unit 8 ESP high voltage compartment decks (as well as others) through its semi-annual progress reports filed in its Cause No. 42150 ECR X filings to the extent that any of these items or subjects cause a change in the scope, schedule or cost estimate for any of the MATS Compliance Plan Projects. This would include any changes due to the Pure Air Flue Gas Processing Agreement for the Bailly wet FGD. We agree that NIPSCO should include updates and/or further information regarding these matters in its semi-annual progress reports filed in its Cause No. 42150 ECR X filings to the extent that any of these items or subjects may impact the scope, schedule or cost estimate for any of the MATS Compliance Plan Projects. We find that NIPSCO Witness Carmichael adequately addressed Mr. Alvarez's question regarding changes in the operating status of the Bailly wet FGD bypass smokestack in his rebuttal testimony. He testified that NIPSCO does not believe the MATS rule will result in any changes in the operating status and condition of the wet FGD bypass stack.

Industrial Group Witness Dauphinais recommended that NIPSCO be required to adhere to the same stakeholder reporting and meeting requirements that were imposed on it in Section 5.E of the Commission's December 28, 2011 Phase I Order in Cause No. 44012 (the "Phase I Order"). In

its proposed order, NIPSCO indicated that because the MATS Compliance Plan Projects involve less cost and much shorter construction schedules than the Unit 14 and 15 FGD projects approved in Phase I Order, NIPSCO's internal meeting and reporting will not be the same for the MATS Compliance Plan Projects. However, NIPSCO proposed the following reporting and meeting obligations:

1. On a quarterly basis, NIPSCO will provide a status report for the TR Set projects until the TR Set projects are placed in service.

2. On a quarterly basis, NIPSCO will provide a status report for the ACI projects until the ACI projects are placed in service.

3. The quarterly TR Set and ACI reports will, at a minimum, contain information regarding: (1) whether the in-service date for the project has been delayed and a detailed explanation of the reason for any delay that has developed since the last previously reported scheduled completion date; (2) whether the total cost estimate for the project has changed and a detailed explanation of any deviations that have developed since the last previously reported projected total cost for the project; and (3) an update with regard to the risks associated with the project.

4. Once the Fuel Additive projects are in service, NIPSCO will include detailed testimony in its ongoing review proceedings providing updates regarding: (1) the results of air and water testing during the one-year pilot periods; and (2) NIPSCO's MATS compliance plan based on the results of the air and water testing.

5. NIPSCO will meet upon request by the OUCC, Industrial Group, and other interested stakeholders that have executed a non-disclosure agreement to discuss the MATS Compliance Plan Projects until the last of the projects goes into service subject to the understanding that some NIPSCO personnel may need to conduct some of the meetings via conference call, video conference, or other remote means to reduce travel time and accommodate project management staff schedules.

Mr. Dauphinais also recommended that NIPSCO be required to make a compliance filing with the Commission with regard to establishing a plan to manage the price risk associated with its activated carbon and fuel additive purchase costs associated with its MATS Compliance Plan. NIPSCO indicated that it is too early to know whether a formal "plan" to manage the price risk associated with activated carbon and fuel additive purchase costs is necessary or possible. However, NIPSCO agreed to provide an update and detailed explanation of the market for activated carbon and fuel additives and the options NIPSCO is reviewing to manage the price risk associated with its activated carbon and fuel additive purchase costs in its direct testimony in Cause No. 42150 ECR 25 (to be filed in February 2015). NIPSCO indicated that it will be closer to making procurement decisions at that time. NIPSCO also noted that the Industrial Group will be free to make the same recommendation at that point if it is still concerned about price risk. We find that the extra meeting and reporting obligations to which NIPSCO has agreed are reasonable. We therefore find that NIPSCO should comply with the five ongoing reporting and meeting requirements enumerated herein and provide an update regarding the options NIPSCO is reviewing to manage the price risk associated with its activated carbon and fuel additive purchase costs in its direct testimony in Cause No. 42150 ECR 25.

E. Dispatching priority for the facilities utilizing CCT, QPCP, and clean energy projects. By its Verified Petition, NIPSCO requested authority to perform dispatch of its generation units in a manner necessary to comply with the MATS requirements or other environmental regulations or requirements and that the Commission declare such procedures to be in compliance with current and future dispatch parameters relating to the recovery of fuel costs. NIPSCO Witness Hooper testified that to the extent that the operation of any of these projects increases the variable operating costs to run a unit, it is possible that the units' dispatching priority may change.

Industrial Group challenged NIPSCO's request, stating that the relief was not appropriate as part of this proceeding, but should be addressed as part of the Commission's review of fuel costs under Indiana Code 8-1-2-42. As previously noted, dispatch priority is an element we must consider for a CPCN under Chapter 8.7. *See also Northern Ind. Public Serv. Co.*, Cause No. 44012 Phase III Order at 23-24 (addressing dispatch priority as part of CPCN approval for CCT). Although Chapter 8.8 contains no similar requirement, we recognize that NIPSCO must comply with the emissions limits set forth in MATS, and NIPSCO may need to change priority of dispatch, short term generation levels, or take an outage to maintain compliance with emission limitations. NIPSCO's request is consistent with the Commission's recognition that Indiana utilities may sometimes need to change their priority of dispatch or short term generation levels for environmental purposes such as environmental derates. *See id.* at 24 (listing numerous cases). NIPSCO, as a responsible generating plant operator, must comply and should be supported in its pursuit to comply with the state and federal environmental regulations. Therefore, we find that NIPSCO's request to perform dispatch of its generation units in a manner necessary to comply with MATS is reasonable.

F. Confidentiality. Petitioner filed a motion for protective order on February 22, 2013 which was supported by affidavit showing documents to be submitted to the Commission were trade secret information within the scope of Ind. Code §§ 5-14-3-4(a)(4) and (9) and Ind. Code § 24-2-3-2. The Presiding Officers issued a Docket Entry on April 26, 2013 finding such information to be preliminarily confidential, after which such information was submitted under seal. We find all such information is confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. Petitioner shall be and is hereby issued an approval for the MATS Capital Projects pursuant to Ind. Code ch. 8-1-8.8, and a CPCN for the O&M Projects, with the exception of the Water Testing project, pursuant to Ind. Code ch. 8-1-8.4. This Order constitutes the Certificate.

2. The cost estimates for the MATS Compliance Plan Projects set forth in Para. 5B above shall be and are hereby approved.

3. The MATS Capital Projects shall be and hereby are determined to constitute "qualified pollution control property" and "clean coal technology" and are eligible for the ratemaking treatment described in Ind. Code § 8-1-2-6.8.

4. The MATS Capital Projects shall be and hereby are determined to constitute "clean energy projects" under Ind. Code ch. 8-1-8.8-1, and are hereby approved as reasonable and necessary and therefore eligible for the financial incentives set forth in Ind. Code § 8-1-8.8-11.

5. The MATS O&M Projects approved herein shall be and hereby are determined to constitute "federally mandated compliance projects," and the costs incurred in connection with the O&M Projects shall be and hereby are determined to be "federally mandated costs" under Ind. Code ch. 8-1-8.4-1, and are therefore eligible for the ratemaking treatment described in Ind. Code § 8-1-8.4-7.

6. Petitioner shall be and hereby is authorized to utilize construction work in progress ratemaking treatment for qualified pollution control property and clean energy projects consistent with and through Petitioner's currently-effective ECRM tracking mechanism and the MATS Capital Projects shall be deemed to be under construction until such time the Commission determines that they are used and useful in a proceeding that involves the establishment of new electric basic rates and charges for Petitioner.

7. Petitioner shall be and hereby is authorized to accrue allowance for funds used during construction relating to the MATS Capital Projects.

8. Petitioner shall be and hereby is authorized to depreciate the MATS Capital Projects according to depreciation rates approved in Cause No. 43969.

9. Petitioner shall be and hereby is authorized to recover reasonably incurred O&M expenses and depreciation expenses relating to the MATS Capital Projects consistent with and through Petitioner's currently-effective EERM tracking mechanism pursuant to Ind. Code § 8-1-8.8-11.

10. Petitioner shall be and hereby is authorized to recover 80% of the approved federally mandated costs incurred in connection with the O&M Projects through Petitioner's currently-effective EERM tracking mechanism pursuant to Ind. Code § 8-1-8.4-7.

11. Petitioner shall be and hereby is authorized to defer depreciation and O&M expenses relating to the MATS Capital Projects until such expenses are recovered through Petitioner's currently-effective EERM tracking mechanism.

12. Petitioner shall be and hereby is authorized to defer 20% of the approved federally mandated costs incurred in connection with the O&M Projects which the Petitioner will be authorized to recover in Petitioner's next general rate case pursuant to Ind. Code § 8-1-8.4-7.

13. Petitioner shall be and hereby is authorized to recover through Petitioner's currently effective ECRM mechanism pre-construction costs for its Capital Projects incurred prior to and after approval of a Final Order in this proceeding to the extent that such costs are described in Petitioner's cost estimate approved herein.

14. Petitioner is authorized to seek timely recovery of the MATS Compliance Plan Projects as part of Petitioner's semi-annual progress reports filed in Cause No. 42150-ECR-XX, as set forth herein.

15. Petitioner shall be and hereby is authorized to perform dispatch of its generation units in a manner necessary to comply with the requirements of the MATS and declaring such procedures to be in compliance with current and future dispatch parameters relating to the recovery of fuel costs.

16. Petitioner shall comply with the ongoing reporting and meeting requirements enumerated in Para. 5D.

17. The information filed by Petitioner in this Cause pursuant to its Motion for Protective Order is deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: OCT 10 2013

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission