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 A FEDERALLY MANDATED ENVIRONMENTAL COMPLIANCE PROJECT; (2) AUTHORITY TO RECOVER FEDERALLY MANDATED COSTS INCURRED IN CONNECTION WITH THE ENVIRONMENTAL COMPLIANCE PROJECT; (3) APPROVAL OF THE ESTIMATED FEDERALLY MANDATED COSTS ASSOCIATED WITH THE ENVIRONMENTAL COMPLIANCE PROJECT; (4) AUTHORITY FOR THE TIMELY RECOVERY OF 80% OF THE FEDERALLY MANDATED COSTS THROUGH RIDER 787 – ADJUSTMENT OF FEDERALLY MANDATED COSTS AND APPENDIX I – FEDERALLY MANDATED COST ADJUSTMENT FACTOR; (5) AUTHORITY TO DEFER 20% OF THE FEDERALLY MANDATED COSTS FOR RECOVERY IN NIPSCO’S NEXT GENERAL RATE CASE; (6) APPROVAL OF SPECIFIC RATEMAKING AND ACCOUNTING TREATMENT; (7) APPROVAL TO DEPRECIATE THE ENVIRONMENTAL COMPLIANCE PROJECT ACCORDING TO PREVIOUSLY APPROVED DEPRECIATION RATES; AND (8) APPROVAL OF ONGOING REVIEW OF THE ENVIRONMENTAL COMPLIANCE PROJECT; ALL PURSUANT TO IND. CODE § 8-1-8.4-1 ET SEQ., § 8-1-2-19, § 8-1-2-23, AND § 8-1-2-42.

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
David E. Veleta, Senior Administrative Law Judge

On November 1, 2016, Northern Indiana Public Service Company (“NIPSCO”) filed its Verified Petition in this Cause. On November 23, 2016, NIPSCO filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information, which was granted by Docket Entry.

On November 23, 2016, NIPSCO filed the verified direct testimony of the following: Timothy R. Caister, Vice President of Regulatory Policy for NIPSCO; Kelly R. Carmichael, Vice
President, Environmental for NiSource Corporate Services Company ("NCSC"); Greg Baacke, Manager of Generation Major Projects for NIPSCO; Kurt W. Sangster, Director of Operations and Maintenance for NIPSCO; Daniel L. Douglas, Vice President of Corporate Strategy and Development for NiSource, Inc.; and Derric J. Isensee, Executive Director of Rates and Regulatory Finance for NIPSCO.

On November 2, 2016, Citizens Action Coalition of Indiana, Inc. ("CAC") filed a petition to intervene, which was granted by Docket Entry dated July 6, 2017. On December 13, 2016, NIPSCO Industrial Group filed a petition to intervene, which was granted by Docket Entry dated January 4, 2017. On February 17, 2017, Sierra Club filed a petition to intervene, which was granted by Docket Entry dated February 28, 2017.

On April 3, 2017, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the direct testimony and exhibits of the following: Edward T. Rutter, Chief Technical Advisor in the Resource Planning and Communications Division of the OUCC; Cynthia M. Armstrong, Senior Utility Analyst in the Electric Division for the OUCC; Leon A. Golden, a Utility Analyst II for the Resource Planning and Communications Division of the OUCC; and Wes R. Blakley, a Senior Utility Analyst for the OUCC.

On April 3, 2017, CAC filed the direct testimony and exhibits of Elizabeth A. Stanton, Ph.D., Director of the Applied Economics Clinic and a Research Fellow at the Global Development and Environment Institute at Tufts University.

On April 3, 2017, NIPSCO Industrial Group filed the direct testimony and exhibits of Nicholas Phillips, Jr., a consultant in the field of public utility regulation and a Managing Principal of Brubaker & Associates, Inc.

On April 3, 2017, Sierra Club filed direct testimony and exhibits of Jeremy I. Fisher, Ph.D., a Principal Associate with Synapse Energy Economics, Inc.

On June 9, 2017, NIPSCO, the OUCC, NIPSCO Industrial Group and CAC (the "Settling Parties") filed a Stipulation and Settlement entered into as of the 9th day of June, 2017 (the "Settlement"). The Settlement primarily reflected modification of the scope of NIPSCO’s original certificate of public convenience and necessity ("CPCN") request, and accordingly addressed the costs of compliance with the federally mandated requirements of the U.S. Environmental Protection Agency ("EPA")’s Coal Combustion Residuals ("CCR") Rule, except as otherwise provided.

On June 22, 2017, the Settling Parties filed settlement testimony. Also on June 22, 2017, per Paragraph 6 of the Settlement, NIPSCO, the OUCC and NIPSCO Industrial Group all filed revised direct testimony.


On July 26, 2017, NIPSCO filed a motion for administrative notice of its 2016 Integrated
Resource Plan ("2016 IRP") as part of its case in chief, which was granted on August 2, 2017.

On August 1, 2017, Indiana Coal Council ("ICC") filed a petition to intervene and request to modify procedural schedule, or, in the alternative, to take administrative notice of ICC’s initial and supplemental comments submitted in response to NIPSCO’s 2016 IRP. On August 4, 2017, NIPSCO and the OUCC and NIPSCO Industrial Group filed their responses to ICC’s motion requesting the Commission deny the request to modify procedural schedule and ICC’s alternative request to take administrative notice of ICC’s 2016 IRP comments. ICC filed its reply on August 8, 2017, noting that if the Commission denies the ICC ability to present evidence but takes administrative notice of the ICC’s initial and supplemental comments to NIPSCO’s 2016 IRP, the ICC does not object to the Commission also taking administrative notice of all other comments filed in response to NIPSCO’s 2016 IRP and NIPSCO’s response to those comments. The Commission issued a Docket Entry on August 10, 2017, granting ICC’s petition to intervene, denying ICC’s request to modify procedural schedule and taking administrative notice of ICC’s initial and supplemental comments to NIPSCO’s 2016 IRP as well as other stakeholder comments submitted on NIPSCO’s 2016 IRP and NIPSCO’s response to those comments.

A public evidentiary hearing was held in this Cause on August 21, 2017, at 9:30 a.m., in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the prefilled evidence of the parties was admitted into the record without objection.

On November 6, 2017, the Sierra Club filed Sierra Club’s Motion to take Administrative Notice of Director’s Final Report for the 2016 Integrated Resource Plans and, in the alternative, to supplement the record with such Report ("Motion"). We grant the Motion and take administrative notice of the Director’s Final Report for the 2016 Integrated Resource Plans, dated November 2, 2017.

Having considered the evidence and applicable law, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published as required by law. NIPSCO is a public utility as that term is defined in Ind. Code § 8-1-2-1 and an energy utility as that term is defined in Ind. Code §§ 8-1-2.5-2 and 8-1-8.4-3. Under Ind. Code §§ 8-1-8.4-6 and 8-1-8.4-7, the Commission has authority to issue a certificate of public convenience and necessity ("CPCN") and to approve cost recovery for projects necessary to comply with federally mandated requirements. Under Ind. Code § 8-1-2-42, the Commission has authority over changes to NIPSCO’s rates and charges. Therefore, the Commission has jurisdiction over NIPSCO and the subject matter of this proceeding.

2. **NIPSCO’s Characteristics.** NIPSCO 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. NIPSCO is engaged in rendering electric 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.
3. **Background and Requested Relief.** The EPA finalized a rule regulating the disposal of CCR which became effective on October 19, 2015 ("CCR Rule").¹ The CCR Rule focuses on CCR storage, treatment, and disposal units and mandates that each unit be evaluated for structural integrity. It also requires that regulated entities provide proof that they are not contaminating groundwater, as well as other compliance criteria. The CCR Rule applies nationally to electric utilities and independent power producers.

NIPSCO requests the following relief: (1) a CPCN for numerous capital projects and ongoing activities at three (3) different locations, Bailly Generating Station ("Bailly"), Michigan City Generating Station ("Michigan City") and R. M. Schahfer Generating Station ("Schahfer"), within NIPSCO’s electric system (i.e., its three coal-fired generation stations) necessary to comply with the CCR Rule (the “Environmental Compliance Project”); (2) approval to recover 80% of the federally mandated project costs and ongoing expenses incurred in connection with the Environmental Compliance Project through NIPSCO’s Rider 787 – Adjustment of Charges for Federally Mandated Costs and Appendix I – Federally Mandated Cost Adjustment Factor (the “FMCA Mechanism”); (3) authority to defer 20% of the federally mandated project costs and ongoing expenses incurred in connection with the Environmental Compliance Project for recovery in NIPSCO’s next general rate case; and (4) approval of the specific ratemaking and accounting treatment discussed in evidence.

4. **Overview of NIPSCO’s Direct Evidence.**

A. **Direct Testimony of Timothy R. Caister.** Mr. Caister provided testimony to: (1) describe NIPSCO’s request for a CPCN for federally mandated projects associated with NIPSCO’s proposed Environmental Compliance Project to comply with the CCR Rule through NIPSCO’s FMCA Mechanism and associated ratemaking and accounting relief, (2) explain the statutory authority supporting NIPSCO’s requested relief, (3) explain why the CCR Rule is a federally mandated requirement under Ind. Code § 8-1-8.4-5, (4) explain why NIPSCO’s requested relief is appropriate and will serve the public interest, and (5) introduce NIPSCO’s witnesses providing testimony in this proceeding.

B. **Direct Testimony of Kelly R. Carmichael.** Mr. Carmichael provided testimony to explain (1) two environmental regulations recently promulgated by the EPA – the CCR Rule and the Effluent Limitation Guidelines for Steam Generating Units rule ("ELG Rule") (collectively referred to herein as the “Environmental Rules”), and (2) how the Environmental Rules apply to NIPSCO’s coal-fired electric generating units.

C. **Direct Testimony of Greg Baacke.** Mr. Baacke provided testimony to (1) discuss how and why NIPSCO chose Burns & McDonnell Engineering Company, Inc. (“Burns & McDonnell”) to conduct the analysis of the CCR Rule, and (2) discuss the process NIPSCO undertook to determine the compliance solutions for the CCR Rule.

D. **Direct Testimony of Kurt W. Sangster.** Mr. Sangster provided testimony to (1) discuss the CCR Rule Compliance Plan Cost Analysis (the “CCR Study”), which was

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¹ 40 CFR Parts 257 and 261, Published in the Federal Register on April 17, 2015.
prepared on behalf of NIPSCO by Burns & McDonnell, and (2) describe the alternatives available to NIPSCO to comply with the CCR Rule, as well as the compliance plan that NIPSCO has determined to be reasonable and necessary for compliance with this federal mandate.

E. **Direct Testimony of Daniel L. Douglas.** Mr. Douglas provided testimony to present the results of the analysis undertaken to evaluate NIPSCO’s options to comply with the Environmental Rules.

F. **Direct Testimony of Derric J. Isensee.** Mr. Isensee provided testimony to explain NIPSCO’s accounting and proposed ratemaking treatment to record and recover federally mandated costs associated with NIPSCO’s proposed Environmental Compliance Project to comply with the CCR Rule through NIPSCO’s FMCA Mechanism.

5. **Overview of the OUCC’s Evidence.**

A. **Direct Testimony of Edward T. Rutter.** Mr. Rutter provided a review of his analysis of the modeling results referred to by Mr. Douglas and explained whether the conclusions contained in that economic analysis are consistent with NIPSCO’s 2016 IRP, which includes an assessment of the business risks inherent in NIPSCO’s plan to comply with the Environmental Rules. He also discussed how that business risk is shifted to the ratepayer. Mr. Rutter testified that a least cost result should be viewed in light of the risks, uncertainties, availability of regional resources, existing and reasonably anticipated environmental regulations, projected fuel availability, changing economic factors, impact on reliability, and technological changes faced by each option modeled. He recommended that NIPSCO should be required to aggressively model in its next IRP submission in 2019, the replacement of the remaining 50% of NIPSCO’s coal generation with reasonable generation alternatives, giving consideration to alternative fuel choices, demand-side management (“DSM”) savings, distributed generation availability and a comprehensive analysis of renewable energy supply options. Mr. Rutter offered a review of past Commission decisions regarding the efficacy and quality of project cost estimates, and described the regulatory tenet of balancing ratepayer and utility risks. Mr. Rutter supported the recommendations of Ms. Armstrong and Mr. Golden.

B. **Direct Testimony of Cynthia M. Armstrong.** Ms. Armstrong presented her review of NIPSCO’s Environmental Compliance Project to meet the Environmental Rules. She discussed the CCR Rule and related requirements driving NIPSCO’s need for the projects to comply with the CCR Rule. Ms. Armstrong described her concerns with NIPSCO’s proposed Landfill-Pond Closure project, detailing why only those costs that are incremental to the costs embedded in NIPSCO’s base rates and connected to a new federal mandate that did not exist at the time of the utility’s last general rate case should be considered “federally mandated.” She provided four arguments supporting why the Landfill-Pond Closure project is not a federally mandated requirement if it contains costs to hold CCR material from closed surface impoundments. Ms. Armstrong also explained other environmental regulations and concerns that may impact NIPSCO’s generating facilities in the future. With the exception of the Landfill-Pond Closure project to comply with the CCR Rule, Ms. Armstrong recommended approval of NIPSCO’s Environmental Compliance Project. Ms. Armstrong also supported the testimonies of Mr. Rutter and Mr. Golden.
C. **Direct Testimony of Leon A. Golden.** Mr. Golden provided his analysis of the engineering support for NIPSCO’s Environmental Compliance Project. He also discussed the Burns & McDonnell and NIPSCO capital and operations and maintenance (“O&M”) cost estimates for the Environmental Compliance Project. Mr. Golden recommended the disallowance of NIPSCO’s proposed percentage of monetary allowance applied to the Environmental Compliance Project. He also recommended that certain other contingency-related costs in the Environmental Compliance Project be reduced. Finally, he recommended that NIPSCO’s actual costs for recovery for the Environmental Compliance Project be capped at the amount approved in this Cause. Mr. Golden’s recommendation as to the amount of capital cost recovery the Commission should approve included the removal of the Landfill-Pond Closure project as recommended by Ms. Armstrong.

D. **Direct Testimony of Wes R. Blakley.** Mr. Blakley addressed and made recommendations regarding NIPSCO’s proposed accounting and ratemaking treatment of the Environmental Compliance Project costs through the FMCA Mechanism, as well as its proposed depreciation rates. Mr. Blakley recommended the Commission approve NIPSCO’s methodology to recover its Environmental Compliance Project through its FMCA Mechanism. He also recommended the Commission (1) require NIPSCO to provide transparency of the different types of federally mandated compliance project costs in its FMCA semi-annual filings, including schedules that separately identify costs for each compliance project, (2) require NIPSCO to continue to update its capital structure in each FMCA semi-annual filing consistent with the Commission’s approved method used in NIPSCO’s current FMCA semi-annual filings to provide an appropriate basis for the Environmental Compliance Project cost recovery calculation, (3) require NIPSCO to finance its Environmental Compliance Project with at least 60% debt capital per Paragraph 7(c) of the Settlement in Cause No. 44688 (“44688 Settlement”), and (4) approve NIPSCO’s proposal to record, defer, and recover depreciation related to the Environmental Compliance Project according to the depreciation rates approved by the Commission in Cause No. 44688.

6. **Overview of the CAC’s Evidence.**

A. **Direct Testimony of Elizabeth A. Stanton, Ph.D.** Dr. Stanton assessed NIPSCO’s IRP analysis in support of its request. She stated that given the replacement capacity that may be needed in 2023, it is important for NIPSCO to do a proper analysis of all cost-effective DSM and renewable resource alternatives, rather than NIPSCO setting itself up for settling on a combined cycle gas turbine (“CCGT”) in 2023. She stated that even if NIPSCO finds, after addressing deficiencies in its analysis that some new gas capacity is needed, a better analysis or alternative may result in a smaller CCGT being proposed that would lower costs for ratepayers. She recommended that NIPSCO perform a better analysis of DSM and renewables now, rather than waiting until a future proceeding, because it could result in NIPSCO ramping up DSM and renewables more quickly, reducing long-term costs to ratepayers. Therefore, Dr. Stanton recommended the Commission deny NIPSCO’s request due to the deficient IRP analysis and that NIPSCO take the time to improve its analysis of DSM and renewables given the need for capacity that will result from its planned retirements.
7. **Overview of the NIPSCO Industrial Group’s Evidence.**

A. **Direct Testimony of Nicholas Phillips, Jr.** Mr. Phillips addressed NIPSCO’s requests for cost approval and cost recovery and made recommendations for reasonable ratepayer protections the Commission should implement with respect to the proposed Environmental Compliance Project. He recommended the Commission not approve NIPSCO’s cost estimates but instead wait until the Engineering, Procurement, and Construction (“EPC”) contracts are awarded for the major CCR projects, which will be a much firmer price of the expected costs for several of the costlier compliance projects, not estimates subject to significant adjustments. He also recommended the Commission make necessary adjustments to the requested allowance for funds used during construction (“AFUDC”), depreciation, taxes, and carrying costs to reflect a lower overall approved level of cost recovery. Mr. Phillips recommended the Commission require NIPSCO to present the final EPC contracts and responsive bids for the CCR projects and allow the parties a full opportunity to review the costs and then take the contract and bid prices into account before approving any requested cost recovery. Mr. Phillips had no concerns with NIPSCO’s proposal to allocate recovery of approved costs because, in his opinion, it is consistent with the terms of the 44688 Settlement and cost of service principles. Mr. Phillips also recommended, consistent with the 44688 Settlement, the Commission require NIPSCO to use at least 60% debt financing for any approved cost over $100 million, and to apply an adjusted Weighted Average Cost of Capital (“WACC”) reflecting that long term debt in calculating AFUDC or carrying charges applied to deferred costs. Mr. Phillips recommended the Commission consider reasonable ratepayer protections as follows: (1) a reasonable cost cap for costs that are subject to the tracker should be implemented to protect ratepayers from excessive cost add-ons and over-runs; (2) that financing costs should include at least 60% debt including AFUDC, and carrying costs on deferrals; and (3) that carrying costs on deferrals should be limited to a certain reasonable time period, such as three years after completion of the project.

8. **Overview of Sierra Club’s Evidence.**

A. **Direct Testimony of Jeremy I. Fisher, Ph.D.** Dr. Fisher assessed the economic analysis conducted by NIPSCO and examined if the installation of controls at this time is in the interest of the utility’s ratepayers. He also examined NIPSCO’s qualitative measures used to justify its preferred portfolio outcome. Dr. Fisher stated NIPSCO’s own analysis does not support the continued operation of any of its coal units after 2023. He stated the change required in the generation portfolio of NIPSCO is substantial, and should not be taken lightly. However, the costs expected to be incurred – not only to meet the Environmental Rules, but simply to keep NIPSCO’s coal fleet operational at its low current and projected capacity factors – are not justifiable at this time. He stated NIPSCO should begin now to assess low-cost options for the procurement of energy and capacity, and begin building towards a sustainable long-term, low-cost future. Dr. Fisher recommended the Commission (1) affirm the decision of the Company to retire Bailly Units 7 and 8; (2) affirm the decision to retire Schahfer Units 17 and 18; (3) deny NIPSCO’s request for a CPCN to construct incremental CCR and ELG controls at Schahfer Units 14 and 15, but provide for NIPSCO to comply with the Environmental Rules for long-term mitigation and monitoring, as required by law; (4) deny NIPSCO’s request for a CPCN to construct incremental CCR and ELG controls at Michigan City Unit 12, but provide for NIPSCO to comply with the Environmental Rules for long-term mitigation and monitoring, as required by law; (5) require
NIPSCO to file an updated IRP or equivalent, seeking cost-effective and long-term sustainable generation and capacity replacements between now and 2023 in the absence of its coal fleet.

9. The Settlement. The Settlement is attached to this Order and incorporated by reference. The Settlement is not unanimous because the Sierra Club and ICC did not join. The specific provisions agreed to by the Settling Parties and objectives addressed in the Settlement include:

- NIPSCO should be granted a CPCN in the amount of $168,460,171 for the Remote Bottom Ash Projects portion of the Environmental Compliance Project, which is based upon the amounts included in the EPC contract;

- NIPSCO should be granted a CPCN in the amount of $4,260,583 for incremental costs associated with the constructing and/or modifying NIPSCO’s landfill to comply with stricter landfill requirements of the CCR Rule;

- NIPSCO should be granted a CPCN for the CCR costs related to the (a) Groundwater Monitoring Project, (b) Material Management Area Project, and (c) Process Storm Water Pond Project in the amount of $15,750,000 which shall be the total amount applicable to all three projects;

- The amounts listed above, and only these amounts, shall be not-to-exceed amounts, except upon the occurrence of a force majeure event as further defined in the Settlement;

- The amounts listed above for compliance with the CCR Rule shall be approved and subject to the current, ongoing review process in NIPSCO’s FMCA proceedings (Cause No. 44340-FMCA-X);

- With respect to costs to comply with the ELG Rule for O&M and capital (i.e., the zero liquid discharge (“ZLD”) and Piping Bottom Ash to flue gas desulfurization (“FGD”) Projects), a certificate associated with these projects and such costs will be addressed in a later, related proceeding;

- NIPSCO will be authorized to defer for accounting purposes costs incurred by NIPSCO for compliance with the CCR and ELG Rules since the date of its petition in this Cause up to an agreed-upon limit as further explained in the Settlement;

- NIPSCO will be authorized to recover all reasonable and prudently incurred O&M costs related to the Environmental Compliance Project which in 2016 dollars are currently estimated to be $6,951,000 per year;

- Amounts included above are exclusive of AFUDC and post-in-service carrying charges as further explained in the Settlement;

- NIPSCO will finance the costs of the Environmental Compliance Project with at
least 60% debt capital;

- Based upon the approval NIPSCO received from the Midcontinent Independent System Operator, Inc. (“MISO”) in 2016, NIPSCO commits to the retirement of Units 7 and 8 of Bailly by May 31, 2018 as provided in its 2016 IRP;

- In addition to proposals responsive to the DSM requests for proposals received in May 2017, NIPSCO agrees to request responding bidders to provide a second set of proposals for consideration at the incremental savings levels specified in the Settlement;

- As part of its next IRP submission, due on or before November 1, 2019, NIPSCO will evaluate the replacement of the remaining 50% of its coal generation with reasonable alternatives giving consideration to alternative fuel choices, DSM savings, distributed generation availability, battery and other energy storage technology and renewable energy supply options;

- With respect to the 20% of the Environmental Compliance Project costs that will be deferred and recovered by NIPSCO as part of its next general rate case, NIPSCO shall apply its WACC to such costs as permitted under the FMCA Statute and agrees to compound carrying charges on such amounts on a semi-annual basis as further explained in the Settlement; and

- Consistent with the Commission’s Order in Cause No. 44688, NIPSCO shall allocate all demand-related federally mandated costs associated with the Environmental Compliance project based on the demand allocators for the FMCA Mechanism set forth in Joint Exhibit B to the 44688 Settlement.


A. **NIPSCO Settlement Testimony of Timothy R. Caister.** Mr. Caister testified that based on developments regarding the ELG Rule, the Settlement primarily addresses the projects necessary for compliance with the CCR Rule. Additionally, the term “Environmental Compliance Project,” as used in the Settlement and his supporting testimony, relates only to those projects necessary to comply with the CCR Rule, which includes the following projects: (1) Groundwater Monitoring, (2) Material Management Area, (3) Process and Storm Water Pond, (4) Landfill-Pond Closure, and (5) Remote Ash Conveying.

Mr. Caister testified that following the filing of its direct testimony in this Cause, the NIPSCO Major Projects group continued pre-construction work on the projects that were originally proposed. When the information became available, NIPSCO provided updated costs estimates to all parties to this proceeding, many of which included revised “class” estimates, as they became available. In his settlement testimony, NIPSCO witness Sangster provided a more in-depth discussion of this topic, including the pre-construction work that was done that led to the updated project cost estimates and the class level associated with the estimates that are now a part of the Settlement.
Mr. Caister explained changes to the construction process related to the Remote Ash Conveying projects since NIPSCO’s direct testimony was filed. He stated that NIPSCO chose to utilize an EPC contract strategy for the Units 12, 14, and 15 Remote Ash Conveying projects. He explained that an EPC contract is a method of contracting in which project execution risk is transferred to the EPC contractor. Under an EPC contract, the contractor is responsible for the detailed engineering and design, the procurement of all required equipment and materials, and the construction, which includes the start-up and commissioning and turnover of the completed system to the owner.

Mr. Caister testified that, with the execution of the EPC contract, NIPSCO has a cost estimate of approximately $168 million for the Remote Ash Conveying projects at Michigan City and R.M. Schahfer, exclusive of AFUDC. He stated that utilization of the EPC contract for the Remote Ash Conveying projects allowed NIPSCO to enter into negotiations with the other Settling Parties and eventually agreed to a not-to-exceed amount for this project of $168,460,171.

Mr. Caister provided a brief summary of the updates to NIPSCO’s cost estimates as follows:

- NIPSCO has refined its Landfill-Pond Closure Project costs to identify more clearly the incremental cost of $4,260,583 associated with constructing and/or modifying the landfill to comply with the stricter requirements of the CCR Rule.

- At this time, NIPSCO’s estimates related to the (1) Groundwater Monitoring Project, (2) Material Management Area Project, and (3) Process and Storm Water Pond Project are approximately $13.627 million. This amount is now based on a Class 2 estimate for the Groundwater Monitoring Project. Estimates remain at Class 4 for the other two projects.

He testified these revised estimates provide the basis for the Settlement. Specifically, the Settling Parties agreed to a not-to-exceed amount for the Landfill-Pond Closure Project in the amount of $4,260,583. For the (1) Groundwater Monitoring Project, (2) Material Management Area Project, and (3) Process and Storm Water Pond Project, the Settling Parties agreed to a not-to-exceed amount of $15.75 million, which is a total amount applicable to all three (3) of those projects. While this amount is slightly higher than NIPSCO’s current cost estimate, he explained that this amount is within the 20% accuracy range associated with a Class 2 estimate.

Mr. Caister testified the not-to-exceed amounts in the Settlement provide greater cost certainty for all parties involved. He stated that, for purposes of reaching settlement and with the exception of a force majeure event, NIPSCO has taken on the risk that its projects could exceed these amounts and has thereby lowered risk for its ratepayers.

Mr. Caister testified the costs agreed to in the Settlement are similar to or less than those initially proposed by NIPSCO for compliance with the CCR Rule. He stated that on this basis, NIPSCO’s IRP analysis still holds, as does NIPSCO’s conclusion from the IRP that pursuing compliance for Michigan City Unit 12 and Schahfer Units 14 and 15 is the prudent decision.
Mr. Caister testified the Settlement addresses specific points raised by the other parties with respect to NIPSCO’s resource planning. First, based upon the approval NIPSCO received from MISO in the fourth quarter of 2016, NIPSCO confirmed in the Settlement that it will retire Units 7 and 8 at Bailly by May 31, 2018. The Settling Parties were also able to reach an agreement with respect to requests for proposals for DSM program delivery for years 2019-2021, wherein NIPSCO committed to request responding bidders to provide a second set of proposals for consideration at the higher incremental DSM savings levels specified in the Settlement. Lastly, as part of the Settlement, NIPSCO committed to update its IRP analysis in the next IRP submission due by November 1, 2019 to review different resource options for replacing the remaining 50% of NIPSCO’s coal generation – including alternative fuel choices and various renewable and DSM savings.

Mr. Caister described the significant developments to the CCR Rule and ELG Rule since he filed his direct testimony. He stated that with respect to the ELG Rule, on April 13, 2017, Scott Pruitt, Administrator of the EPA, announced that the EPA was issuing an administrative stay of the ELG Rule and would be reviewing and reconsidering the ELG Rule. In his settlement testimony, NIPSCO witness Kelly R. Carmichael provided details of this action by the EPA, as well as its impact on NIPSCO’s proposed compliance plan for the ELG Rule. With respect to the CCR Rule, on May 12, 2017, an industry group submitted a Petition for Reconsideration of the CCR Rule to the EPA. As discussed in greater detail by NIPSCO witness Carmichael, the petition did not request reconsideration of the entire CCR Rule, but, rather, focused on those provisions that were established based on the self-implementing nature of the Rule. He also briefly described the impact of these developments on this proceeding, as well as the proposed path forward to which the Settling Parties agreed.

Mr. Caister testified that neither the petition for reconsideration on the CCR Rule nor the change to the ELG Rule impact NIPSCO’s proposed compliance project related to the CCR Rule. He also noted that the effective dates under the CCR Rule require that NIPSCO work diligently towards implementation of the Environmental Compliance Project to ensure it is able to timely comply with the relevant portions of the CCR Rule and continue to operate its generation facilities. Specifically, were NIPSCO to delay implementation of the Environmental Compliance Project even a few months, either NIPSCO would not be in a position of compliance on the relevant dates, or it would have to incur substantial, additional costs to timely achieve compliance.

Mr. Caister pointed out that to the extent the need for and/or the scope of any project (or portion of a project) covered by the Settlement is affected due to changes to the CCR Rule (as determined by a final (i.e., no longer subject to appeal or judicial challenge) rule change, administrative action, or judicial order), NIPSCO has agreed to file a petition to modify the CPCN stipulated to under the Settlement and, pending determination on such petition for modification, agreed not to incur any additional federally mandated compliance costs associated with the portion of the project(s) subject to the modification request, other than those costs necessary to ensure the operability of NIPSCO’s facilities. This commitment by NIPSCO is intended to provide reasonable assurance to the Settling Parties and the Commission that any potential change to the CCR Rule will be reflected in NIPSCO’s compliance plan and that unnecessary costs will not be incurred.
Mr. Caister testified that with respect to compliance with the ELG Rule, NIPSCO believes it would be prudent to pause review for the time being, at least until further action by the EPA better defines what actions EPA may take.

Mr. Caister stated that as part of the Settlement, the Settling Parties agreed that it would be most appropriate to move the review of the projects NIPSCO is considering for compliance with the ELG Rule (i.e., the Piping Bottom Ash to FGD and ZLD Projects) to the ongoing review in the FMCA proposed in this proceeding. As part of the Settlement, NIPSCO commits to provide updates on the administrative stay of the ELG Rule as part of those semi-annual filings. This will allow the Commission and all interested parties to continue to receive updates. At the point at which NIPSCO views there is a reasonable amount of certainty related to the ELG Rule (or successor or as potentially amended), then it will propose to the Commission to review and approve and issue a CPCN for the updated cost estimates for any associated, federally mandated projects.

Mr. Caister testified that because NIPSCO must continue pilot testing of projects and other work under the stayed ELG Rule, NIPSCO will still incur reasonable expenses and needs to account for the testing and other pre-construction activity. On this basis, the Settling Parties agreed that NIPSCO should be allowed to incur and defer up to $3.3 million in costs on and after April 1, 2017 through December 31, 2019. NIPSCO agreed to forego the collection of carrying costs on this portion, and only this portion, of costs.

With respect to NIPSCO’s financing of the Environmental Compliance Project, Mr. Caister testified NIPSCO has agreed to abide by the terms of the 44688 Settlement to finance the Environmental Compliance Project. In accordance with the Settlement, NIPSCO is required to fund the total project using 60% debt financing for approved costs over $100 million. To that end, in the financing authority approved in Cause No. 44796, this issue has already been addressed, and it is designed, under the proposed debt issuances, to satisfy the 60% settlement requirement.

Mr. Caister testified that with the exception of certain ongoing costs needed to ensure compliance with the ELG Rule, which will not have any carrying charges applied to them, NIPSCO will apply carrying charges to all other charges. For purposes of calculating all carrying charges associated with the Settlement, NIPSCO will apply its weighted average cost of capital to such costs as permitted under the FMCA Statute and agreed to compound carrying charges on these amounts on a semi-annual basis.

Mr. Caister testified that as part of the Settlement, NIPSCO agreed to continue to update its capital structure in each of its FMCA semi-annual filings to reflect the agreed upon use of debt capital to fund the Environmental Compliance Project and any other debt capital used to fund projects pursuant to the terms of the 44688 Settlement.

Mr. Caister testified that NIPSCO agreed to include schedules that separately identify costs for its NERC Compliance Project (which was pending in Cause No. 44889 at the time the Settlement was reached, but for which an order has now been issued) and the Environmental Compliance Project (Cause No. 44872) in its FMCA semi-annual filings. NIPSCO will look to separate the total estimated cost, total actual cost, construction start date(s) and in-service date(s) of the major capital projects in the schedules similar to previous breakdowns in other tracker.
proceedings (e.g., ECR). NIPSCO has also committed to work with the Settling Parties to provide schedules and work papers in each semi-annual filing in a mutually-agreeable format.

Mr. Caister also provided a background and procedural history of this Cause for purposes of explaining the public interest of the Settlement. He reiterated the relief that was requested in NIPSCO’s Verified Petition filed on November 1, 2016 with the Commission.

Mr. Caister testified the Settlement comprehensively addresses all issues related to the CCR Rule and proposes a path forward for compliance with the ELG Rule. Ultimately, the Settlement falls within the broader public interest by providing all customer segments with a reasonable outcome and providing NIPSCO a solid foundation from which it can invest in necessary environmental compliance projects, and possibly the higher incremental DSM savings levels identified in the Settlement, to ensure that it is prepared to serve its customers in the years ahead. As NIPSCO witness Douglas explains, the Settlement also remains consistent with NIPSCO’s 2016 IRP, and this presents the best path forward to satisfy the guiding principles illustrated therein.

Mr. Caister commended the efforts of all Settling Parties that led to the Settlement. He noted that the Sierra Club was invited to participate in settlement negotiations and attended and participated in several settlement meetings, although, in the end, the Settling Parties were not able to reach agreement with the Sierra Club.

Mr. Caister testified all of the provisions of the Settlement are interrelated. He stated the Settlement represents a diligent effort by all Settling Parties to reach a comprehensive result. The complexity of the issues and the diversity of the Settling Parties dictated the need for compromise on the part of everyone involved, and the Settlement reflects a delicate balance that accommodates the interests of all Settling Parties in a reasonable way.

Mr. Caister stated the Commission’s rules, 170 IAC 1-1.1-17, provide that it is the policy of the Commission to review and accept appropriate settlements. A settlement must be supported by probative evidence so that the Commission may make appropriate findings of fact in its decision and determine whether the evidence supports the Commission’s conclusion regarding the settlement. The Commission may reject, in whole or in part, any proposed settlement if the Commission determines the settlement is not in the public interest. The Commission’s policy is consistent with the general public policy favoring settlement. As the Commission has previously found, settlements are favored as a matter of policy because they help advance matters with far greater speed and certainty, and far less drain on public and private resources, than litigation or other adversarial proceedings. In a litigated context, the Commission is the sole entity involved in resolving disputes. In the settlement context, the parties are also involved with and satisfied by the resolution. This benefit, as well as the conservation of valuable Commission time and effort, is in the public interest.

Mr. Caister testified NIPSCO recognizes that the Commission will closely examine the Settlement and evidentiary record and must determine on its own whether it is reasonable and in the public interest. NIPSCO is aware that in other cases the Commission has modified settlement agreements when the Commission has found that modification is necessary in order to find the
settlement agreement is in the public interest. In reaching agreement in this case, the Settling Parties have attempted to take previous Commission decisions into account. This approach was taken not to gloss over the importance of Commission review, but in recognition of the request for expedited consideration and approval of the Settlement. The fact that the Settling Parties were able to negotiate a settlement in this proceeding representing various customer segments and diverse interests is strong additional evidence that the Settlement is in the public interest. Mr. Caister added that the ability to obtain a Commission decision in a more timely and cost effective manner, coupled with certainty about the terms and conditions which have been negotiated, is of the utmost importance in the settlement context. Without such certainty, settlements may not be reached. Therefore, the Settlement provides that if following its examination, the Commission finds the Settlement to be in the public interest, the Settlement should be approved in its entirety and without change or condition(s) unacceptable to any Settling Party.

Mr. Caister testified approval of the Settlement as it is written is consistent with the public interest because the Settlement represents a comprehensive resolution of all of the issues related to compliance with the CCR Rule (and ELG Rule in an interim respect) in this proceeding by NIPSCO and the other Settling Parties. As the evidence reflects, the Settlement resolves complex, controversial issues. The Settlement balances the interests of NIPSCO with those of its customers without the expense and risk of continued litigation and likely appeal. Moreover, the Settlement provides NIPSCO with the certainty it needs to serve the interests of NIPSCO’s customers in receiving reasonable service at a fair cost.

Mr. Caister testified time is of the essence to have the Settlement considered and approved by the Commission in order to ensure the path forward under the Settlement is the one that is approved and to therefore avoid undue delay or incurrence of costs in achieving compliance with the above-referenced mandates. While the Settling Parties appreciate that the Commission has a responsibility to carefully consider the evidence of record to determine whether the Settlement is in the public interest, NIPSCO requests the Commission do so as soon as possible. This is necessary so that NIPSCO can begin the procurement and other processes necessary to be assured of meeting its milestones for compliance with the CCR Rule in 2018.

Mr. Caister testified on cross-examination regarding NIPSCO’s agreement to retire Bailly Units 7 and 8. NIPSCO did not request approval to retire any coal units in its initial petition or direct evidence in this case. Tr. B-29. The retirement of Bailly Units 7 and 8 is not required for NIPSCO to obtain a CPCN and cost recovery under the FMCA Statute in this case. Id. Further, NIPSCO does not need the Commission’s approval under Ind. Code ch. 8-1-8.4 or any other statute to retire its coal units. Id. While Mr. Caister confirmed that NIPSCO is not seeking any cost recovery related to the retirement of Bailly Units 7 and 8 in this case, he was unable to say whether NIPSCO would seek such cost recovery in a future filing before the Commission. Id. at B-30. Mr. Caister also testified regarding the factors that may be considered by NIPSCO in developing a generation portfolio. With regard to state policies and goals, Mr. Caister testified that this factor would include consideration of Indiana coal as a fuel source that originates in Indiana, employs Indiana workers, and helps drive the state economy. Id. at B-34. Indiana coal is an available regional resource. Coal can be securely stored at the generation site. Id.
B. **NIPSCO Settlement Testimony of Kelly R. Carmichael.** Mr. Carmichael explained the changes that impact implementation of the ELG Rule since the filing of NIPSCO’s initial testimony. He explained that on April 25, 2017, the EPA published notice of an administrative stay for ELG deadlines in the Federal Register. The EPA stayed the compliance deadlines for the Best Available Technology (“BAT”) limitations and pretreatment standards for fly ash transport water, bottom ash transport water, FGD wastewater, flue gas mercury control wastewater, and gasification wastewater. During the time the deadlines are stayed, the EPA will review and reconsider the ELG Rule. Additionally, the Fifth Circuit Court of Appeals granted EPA’s motion to hold litigation related to the ELG Rule in abeyance for 120 days, until August 12, 2017. Because the April 25 action postponed the compliance dates pending judicial review, the EPA decided to take further action in the event that the litigation related to the ELG Rule ends. Accordingly, on June 6, 2017, the EPA also published notice of a proposed rulemaking to postpone the compliance dates until EPA completes reconsideration of the ELG Rule.

Mr. Carmichael testified the EPA’s administrative stay and reconsideration of portions of the ELG Rule do not change NIPSCO’s proposed Environmental Compliance Project. He explained that in its June 6, 2017 proposed rulemaking the EPA identified five wastewater streams with limitations that may be reconsidered. NIPSCO already complies with, or does not generate, three of the wastewater streams. The bottom ash transport water is addressed by the Environmental Compliance Project, while the FGD wastewater will be specifically addressed at a later time as part of NIPSCO’s compliance with the ELG Rule. He stated that NIPSCO’s Environmental Compliance Project, however, only includes components that address CCR Rule requirements. Thus, the Environmental Compliance Project will not be affected by the EPA’s actions toward the ELG Rule.

Mr. Carmichael testified that although the deadlines for the ELG Rule have been stayed and the rule is reconsidering the rule, the rule has not been rescinded. NIPSCO believes that the ELG Rule will eventually include requirements that NIPSCO will need to address. The EPA’s administrative stay has made those future requirements uncertain.

Mr. Carmichael stated that the EPA published the notice of an administrative stay of ELG deadlines and the notice of a proposed rulemaking to postpone the ELG deadlines in the Federal Register. Additionally, the Fifth Circuit Court of Appeals granted EPA’s motion to hold litigation related to the ELG Rule in abeyance for 120 days, until August 12, 2017. The agency intends to inform the Court of the portions of the rule, if any, that it seeks to have remanded to the agency for further rulemaking by August 12, 2017.

Mr. Carmichael testified the ELG Rule applies to all four of NIPSCO’s electric generating stations. Sugar Creek’s current operation and pollution control technology will be able to meet the ELG Rule with only minor changes, the costs for which NIPSCO is not seeking to recover in this proceeding. Bailly, Michigan City, and Schahfer do not currently meet the requirements of the ELG Rule. Because Bailly is scheduled to close in 2018, there are no known projects that will be required to be implemented at Bailly for compliance with the ELG Rule. At Michigan City, with the installation of Remote Ash Conveying facilities to comply with the CCR Rule, and the installation and startup of the dry FGD unit, NIPSCO also anticipates that there will be no projects required for ELG compliance. Thus, at this time, it appears NIPSCO’s only generating station with
Mr. Carmichael testified there are two types of projects being evaluated for ELG compliance: (1) a project that would result in having ZLD at R.M. Schahfer and (2) a project that moves bottom ash transport water into NIPSCO’s existing FGD system at R.M. Schahfer. The evaporator technology associated with the ZLD Project is intended to manage the ELG Rule requirements associated with FGD wastewater. These two projects are not necessary to meet the requirements of the CCR Rule. They are also not addressed by the Settlement. As NIPSCO witness Timothy R. Caister discusses, these types of projects, as well as compliance with the ELG Rule generally, will be addressed by NIPSCO at a later time.

Mr. Carmichael testified NIPSCO’s current treatment system for FGD wastewater at R.M. Schahfer does not meet the requirements of the ELG Rule. Under the ELG Rule, NIPSCO will be required to either upgrade its existing wastewater treatment plant and install biological treatment before discharge, or install ZLD technology. At this time, NIPSCO’s analysis indicates that installing ZLD technology may be the most appropriate technology to use at R.M. Schahfer, but NIPSCO’s technological evaluations are ongoing. These ongoing pre-construction activities began in late 2016 and will continue for several years (likely through the end of 2019).

Mr. Carmichael testified that NIPSCO proposes to move review of NIPSCO’s compliance with the ELG Rule, as well as the status of the ELG Rule, to the ongoing review in the FMCA proposed in this proceeding. When there is a reasonable amount of certainty related to the ELG Rule (or successor or as potentially amended), then NIPSCO will propose to the Commission to review and approve and issue a CPCN for the updated cost estimates for any associated, federally mandated projects for compliance with the ELG Rule.

With regard to the changes to the CCR Rule, Mr. Carmichael explained that on May 12, 2017, the Utility Solid Waste Activities Group (“USWAG”) submitted a Petition for Reconsideration of the CCR Rule. USWAG did not request reconsideration of the entire CCR Rule or question EPA’s authority to issue a rule, but focused on those provisions that were established based on the self-implementing nature of the Rule and now, as a result of the Water Infrastructure Improvements for the Nation Act (“WIIN Act”), will be enforced by states or the EPA. USWAG also requested that EPA extend the CCR Rule’s compliance deadlines. USWAG did not petition EPA to stay the CCR Rule, and, thus, the rule will almost certainly remain in effect without issuance of a stay during EPA review. EPA has no specific deadline to respond to the USWAG Petition for Reconsideration, and it is uncertain whether the EPA’s response to the Petition will change the requirements or the compliance timeline of the CCR Rule. NIPSCO must continue to implement the Environmental Compliance Project based on current regulatory requirements and impending compliance deadlines.

Mr. Carmichael testified the projects that make up NIPSCO’s Environmental Compliance Project include the following: (1) Groundwater Monitoring Project at the Bailly, the Michigan City, and the R.M. Schahfer; (2) the Material Management Area Project at the Michigan City and the R.M. Schahfer; (3) the Process and Storm Water Pond Project at the R.M. Schahfer; (4) the Landfill – Pond Closure Project at the R.M. Schahfer; and (5) the Remote Ash Conveying Projects at the Michigan City and the R.M. Schahfer. Each of these is very likely to still be required, no
matter the outcome of the EPA’s review of the industry petition.

Mr. Carmichael briefly described the requirements of the CCR Rule that are intended to be addressed by each project as follows:

- **Groundwater Monitoring Project:** This Project at all three (3) generating stations is intended to satisfy the requirements of the CCR Rule to evaluate groundwater quality relative to potential impact from the surface impoundments and landfills regulated by the CCR Rule. Surface impoundments and landfills regulated by the CCR Rule are required to install a groundwater well monitoring network and have eight (8) samples taken from each well no later than October 17, 2017. Once a groundwater monitoring system has been established, groundwater monitoring and, if necessary, corrective action must be conducted throughout the active life and post-closure care period of the CCR unit.

- **Material Management Area Project:** This Project at the Michigan City and the R.M. Schahfer is intended to allow for contained management and temporary storage of CCR materials. Placement of CCR material on the ground surface would meet the CCR Rule definition of a CCR Landfill. Constructing a Material Management Area will allow NIPSCO to conduct management and temporary storage of CCR materials, thereby avoiding the extensive and costly requirements associated with a CCR landfill.

- **Process and Storm Water Pond Project:** This Project at the R.M. Schahfer is intended to provide a non-CCR regulated pond to manage process and storm water at the station. This is necessary because NIPSCO expects that conditions at the station will not allow for continued use of existing CCR surface impoundments for this purpose.

- **Landfill – Pond Closure Project:** This Project at the R.M. Schahfer will allow NIPSCO to construct and/or modify the landfill to comply with the stricter landfill requirements of the CCR Rule. It includes only the incremental work and costs necessary to comply with the CCR Rule.

- **The Remote Ash Conveying Projects.** NIPSCO’s Environmental Compliance Project includes a submerged flight conveyer system ("SFCS") designed to manage bottom ash. (This SFCS is part of the Remote Ash Conveying Projects.) The SFCS meets the CCR Rule’s requirements by eliminating the need for surface impoundments. Although final determinations have not been made, NIPSCO’s preliminary findings indicate the CCR Rule will prohibit future use of the existing active CCR surface impoundments at the Michigan City and R.M. Schahfer. The SFCSs for both Michigan City and R.M. Schahfer were designed as closed loop recycle systems. NIPSCO has evaluated alternatives to manage bottom ash to comply with the CCR Rule and intends to install the SFCS at R.M. Schahfer. NIPSCO believes that the SFCS is the best alternative to comply with the CCR Rule requirements at the R.M. Schahfer. The SFCS will be flexible enough to be
adjusted to meet potential future environmental requirements. Although the EPA is reconsidering the ELG Rule’s prohibition on discharging bottom ash transport water, the existing ELG Rule currently includes a prohibition on discharge of bottom ash transport water. It is not certain that EPA will eliminate this requirement. Other options for managing the CCR Rule requirements for bottom ash do not provide similar flexibility to meet future environmental requirements. NIPSCO witness Sangster’s Revised Direct Testimony provides a further discussion on this point. NIPSCO has evaluated alternatives to manage bottom ash to comply with the CCR Rule and intends to install SFCS at the Michigan City. NIPSCO believes that the SFCS is the best alternative to comply with the CCR Rule at the Michigan City. NIPSCO witness Sangster’s Revised Direct Testimony provides a further discussion on this point. NIPSCO’s federally mandated National Pollution Discharge Elimination System (“NPDES”) permit for Michigan City prohibits the “discharge of pollutants in fly ash or bottom ash transport water” beginning on November 1, 2018. See NIPSCO Michigan City NPDES Permit Part I, section 4b. This is the best technological option to allow NIPSCO to comply with the prohibition of bottom ash transport water by both the CCR Rule and the Michigan City’s NPDES Permit.

Mr. Carmichael testified the CCR Rule contains varying deadlines for compliance obligations, some of which had to be met by the Rule’s effective date of October 19, 2015, while compliance with other more complex requirements is not required until years after the initial compliance date, such as the installation and initiation of a groundwater monitoring program, which is required by October 17, 2017. The CCR Rule timeline for ceasing receipt and initiating closure of a CCR unit is based on events and technical criteria (safety factors, groundwater standards, or location restrictions). NIPSCO has not identified safety issues that would cause NIPSCO to initiate closure of a CCR unit. With regard to groundwater standards and location criteria, the earliest date that an existing unlined CCR surface impoundment could be required to cease receipt of CCR material and initiate closure is approximately January 17, 2019.

Mr. Carmichael testified that if NIPSCO were to delay its work, it would likely not be able to meet all the compliance deadlines under the CCR Rule. First, EPA has not taken any action related to the CCR Rule, like it has for the ELG Rule, and no compliance deadlines have been stayed. Thus, the deadlines mentioned immediately above must be complied with. Mr. Carmichael testified that if NIPSCO were to delay work, even by a few months, it would risk being noncompliant with the CCR Rule. This would then necessitate that NIPSCO shut down generating units based on the requirement to cease receipt of CCRs to regulated units.

C. **NIPSCO Settlement Testimony of Kurt W. Sangster.** Mr. Sangster explained developments in the construction process since the filing of his initial testimony. He testified NIPSCO chose to utilize an EPC contract strategy for the Units 12, 14, and 15 Remote Ash Conveying projects and is considering an EPC contract strategy for the ZLD Project. CH2M Hill (“CH2M”) was selected to help NIPSCO create the conceptual design and Request for Proposal (“RFP”) package. On December 2, 2016 this package was sent out for the Remote Ash Conveying and ZLD Projects. This RFP package was used to solicit company information, plans for project execution, and indicative/non-binding pricing from the EPC bidders. Using the
information gathered during the RFP process, NIPSCO evaluated each RFP candidate. Based on this evaluation, a Time and Materials contract was issued on January 13, 2017 to one candidate to undertake an open book EPC engineering and proposal phase. During the open book phase a collaborative preliminary design effort occurred to create a vetted design on which the open book pricing would be based. The design was then estimated, and an executable EPC price to perform the Remote Ash Conveying projects was provided to NIPSCO for review along with an updated Class 3 cost estimate for the ZLD system. The pricing created for the Remote Ash Conveying projects was reviewed in detail and was compared to a third party estimate in order to ensure the pricing was fair and reasonable. The final contract terms and conditions were negotiated and finalized on April 28, 2017 for the Remote Ash Conveying projects.

Mr. Sangster explained that an EPC contract is a method of contracting in which project execution risk is transferred to the EPC contractor. Under an EPC contract, the contractor is responsible for the detailed engineering and design, the procurement of all required equipment and materials, and the construction, which includes the start-up and commissioning and turnover of the completed system to the owner. He stated NIPSCO chose to utilize an open book process for its EPC contracting methodology. The “open book” process provides NIPSCO the opportunity to review and validate the EPC scope and costs prior to finalizing the firm price EPC contract to execute the project. This process provides NIPSCO with greater cost certainty.

Mr. Sangster testified the EPC contract for the Michigan City and R.M. Schahfer Remote Ash Conveying projects was awarded on April 28, 2017. Since award of the EPC contract, the EPC contractor has started with the engineering scope for long lead time equipment and civil work, awarded the equipment supply contract for the Remote Ash Conveying systems, and has started the bidding and award process for other long lead time equipment and civil work. The EPC contractor plans to mobilize on site in late June or early July of 2017.

Mr. Sangster testified that with the EPC contract book now closed and the pricing known for the EPC contract, the two Remote Ash Conveying Projects, located at the Michigan City and R.M. Schahfer, have an estimated project cost of $168,460,171. This figure includes direct costs, including 10% contingency, and indirect costs, but excludes estimated AFUDC.

Mr. Sangster testified the scope of work for the EPC contract is limited to the Remote Ash Conveying Projects for the Michigan City and the R.M. Schahfer. The other CCR projects in the Environmental Compliance Project are not included in the EPC contract. Those projects include the Groundwater Monitoring Project at all three stations, the Material Management Area Project at the Michigan City and the R.M. Schahfer Generation Station, and the Process and Storm Water Pond and Landfill – Pond Closure Project at the R.M. Schahfer. Additionally, no ELG projects are included in the current EPC contract. Mr. Sangster sponsored NIPSCO’s most recent estimates for all of these projects in Attachment 4-S-A. He explained that the Settlement is based on these revised cost estimates, and the agreed-to amounts for all capital projects are not-to-exceed amounts.

Mr. Sangster testified that utilizing an EPC contract for the Remote Ash Conveying Projects at Michigan City and R.M. Schahfer Generation Station provided NIPSCO with the assurance it needed to enter into settlement negotiations with other parties to this proceeding. It
also allowed NIPSCO to agree to a not-to-exceed amount for the Remote Ash Conveying Projects, which accounts for nearly 90% of the total capital costs for the projects needed for compliance with the CCR Rule. He stated that the agreement by the Settling Parties to not-to-exceed amounts provides for greater cost certainty for NIPSCO customers.

Mr. Sangster outlined the updates with respect to the ZLD Project. He testified that as part of the EPC open book process, a Class 3 estimate was generated for the ZLD Project to update the Class 4 estimate NIPSCO previously received. The accuracy range of this Class 3 estimate was +25%, versus the Class 4 accuracy range of +40%. The resulting project estimate for ZLD was within $1 million of the original estimate. Therefore, the original capital estimate of $158,585,000 has not been changed at this time. He stated that, as identified in the Settlement, NIPSCO will be pilot testing ZLD technologies beginning in the summer of 2017. The estimated cost for the pilot testing is $1.1 million. Additional pre-construction work related to compliance with the ELG Rule will also continue through 2017 and into 2018 and 2019. It is this ongoing work that formed the basis for the Settling Parties agreeing to provide NIPSCO with $3.3 million for ongoing compliance work related to the ELG Rule.

Mr. Sangster outlined the updates with respect to the other projects originally included in his Attachment 4-A. He testified there has been an update for one additional project. While the estimates associated with the Material Management Area, Process and Storm Water Pond, and Landfill-Pond Closure Projects remain Class 4 estimates, the costs associated with the Groundwater Monitoring Project at all three generating stations are now Class 2 estimates. The Class associated with each cost estimate is shown in the Revised Class of Estimate column of Attachment 4-S-B. These amounts are the basis for the not-to-exceed amounts that are contained in the Settlement. Specifically, the Settling Parties agreed to a not-to-exceed amount for the Remote Ash Conveying Projects of $168,460,171 and for the Landfill-Pond Closure Project of $4,260,583. The Settling Parties also agreed to a total not-to-exceed amount of $15,750,000 for the (1) Groundwater Monitoring Project, (2) Material Management Area Project, and (3) Process and Storm Water Pond Project. While this amount is slightly higher than NIPSCO’s current cost estimate, it was important to Mr. Sangster to note that this amount is within the 20% accuracy range associated with a Class 2 estimate.

Mr. Sangster testified the Settlement specifies that NIPSCO is authorized to recover all reasonable and prudently-incurred O&M costs related to the Environmental Compliance Project, which in 2016 dollars are currently estimated to be $6,951,000 per year. This will allow NIPSCO to continue with all work to operate and maintain the Environmental Compliance Project that is necessary to ensure compliance into the future.

Mr. Sangster testified that if NIPSCO were to delay work on the Environmental Compliance Project related to the CCR Rule, in all likelihood, NIPSCO would not be able to achieve timely compliance with the CCR Rule if it delayed work on these projects. It may be possible that NIPSCO could delay work a few months and still achieve compliance, but that would require NIPSCO to spend a significantly higher amount on the projects to ensure they could complete the projects within a shorter schedule. Thus, NIPSCO must continue under its current work schedule. The Settlement that was reached here will enable NIPSCO to do so, and it will ensure that NIPSCO will be able to achieve timely compliance in the most cost effective manner,
which is in the interest of all parties involved, including NIPSCO’s ratepayers.

D. NIPSCO Settlement Testimony of Daniel L. Douglas. Mr. Douglas testified the terms of the Settlement, including the projects agreed to therein, do not change the IRP analysis or conclusions. He stated looking at all the terms, including the agreed-to amounts for the Environmental Compliance Project, NIPSCO’s analysis and conclusions of the IRP remain the same.

Mr. Douglas testified the Settlement, including the projects agreed to therein, are consistent with what was run in the IRP. He stated the Settlement includes an agreement for all projects that NIPSCO has proposed for compliance with the CCR Rule. With the exception of some preconstruction costs related to the ELG Rule (which are described by NIPSCO witnesses Caister and Sangster), the Settlement does not address compliance with the ELG Rule, which will be considered at a later date. In fact, because the Settlement includes an agreement for project costs that are not-to-exceed amounts and, in total, less than the estimates originally proposed by NIPSCO in this proceeding, the conclusion reached in the IRP, that NIPSCO should invest in CCR compliance for Units 12, 14, and 15, is aligned with the Settlement. He stated the Settlement also allows NIPSCO to continue down a path that will allow NIPSCO to preserve portfolio diversity, which is an important consideration under the IRP.

Mr. Douglas testified diversity of a generation portfolio is important because it helps to insulate customers from market activity or policy decisions targeting any certain technologies. This importance is exemplified by the recent developments with the ELG Rule (as discussed by NIPSCO witnesses Carmichael and Caister). Changes to the regulatory regime in which NIPSCO operates, as well as potential changes to commodity prices, make it important not to be too dependent on one fuel source or to foreclose a particular technology from being utilized in the future. Under the terms of the Settlement, NIPSCO will be well-positioned to meet the needs of its customers and will be poised to do so with a portion of its generation continuing to be served by a diverse fleet of generation, which includes some amount of environmentally-compliant coal-fired generation.

Mr. Douglas testified that pursuing the Environmental Compliance Project at Units 12, 14, and 15 as proposed in the Settlement does not constrain any future supply- or demand-side solutions for future capacity needs. He stated all supply- and demand-side capacity options are still available and will be considered during the next IRP cycle. Beginning in 2018 through 2023 and consistent with the presentations during the 2016 IRP stakeholder process, NIPSCO’s capacity shortfall is forecasted to range from 50MW to 100MW, and NIPSCO intends to address this capacity need through short-term capacity purchases. Mr. Douglas said it is important to note that implementing the Environmental Compliance Project will allow Units 12, 14, and 15 to continue to operate from a compliance perspective, but NIPSCO will continue to evaluate the economics of all units across a broad set of future scenarios and sensitivities to ensure that NIPSCO maintains a portfolio that meets customers’ needs. Finally, NIPSCO will address capacity needs when they arise and will consider both supply- and demand-side resources to meet any needs. A commitment to do so is included in the Settlement, as NIPSCO has agreed to update its IRP analysis in the next

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2 The costs included in NIPSCO’s Verified Petition in this Cause, dated November 1, 2016, are the same costs included in NIPSCO’s IRP, which was submitted to the Commission on the same day.
IRP submission (due by November 1, 2019) to review the replacement of the remaining 50% of its coal-fired generation with different resource options – including alternative fuel choices and various renewable and demand-side management savings.

Mr. Douglas testified it continues to be the right call to invest the dollars in the Environmental Compliance Project included in the Settlement. He stated that actually the decision to invest in environmental compliance for Units 12, 14, and 15 is even more certain now because the Settlement provides for not-to-exceed dollar amounts for each project that makes up the Environmental Compliance Project, thereby reducing the risk and protecting customers.

Mr. Douglas testified on cross-examination regarding the fuel pricing assumptions that NIPSCO used in its IRP and in developing its compliance plan for this case. The fuel prices for coal and gas were directly correlated in most of the cases studied by NIPSCO. Tr. B-7. If natural gas prices increased, NIPSCO also assumed that coal prices would increase. Id. Historically, there has not been a perfect correlation between gas and coal prices. Id. In its modeling for the IRP and for this case, NIPSCO did not consider any scenarios where natural gas prices were assumed to be high, but coal prices were assumed to be low. Id. Mr. Douglas confirmed that going forward, NIPSCO intends to look more closely at the fuel pricing assumptions it uses and specifically at the correlative issue between gas and coal. Id. at B-8. Mr. Douglas also confirmed that NIPSCO will re-evaluate the value of developing compliance options versus retirement for Schahfer Units 17 and 18 as agreed to in the Settlement Agreement. Id. at B-10.

E. OUCC Settlement Testimony of Cynthia M. Armstrong. Ms. Armstrong testified the OUCC believes that approval of the Settlement is in the public interest and asks the Commission to find it to be reasonable and in the public interest, and enter an order approving the Settlement in its entirety. She stated that there have been two main regulatory developments that have influenced the Settlement (1) the EPA’s stay of implementing the ELG Rule and (2) the USWAG filing with the EPA of a petition for reconsideration of the CCR Rule, and described those developments in more detail. She testified the EPA’s stay of implementing the ELG Rule casts uncertainty on the present need for the projects to comply with the ELG Rule and, as a result, the Settling Parties have agreed to address these costs in a later proceeding, with the exception of costs NIPSCO has already incurred to date and some additional ongoing effluent and pilot technology testing and pre-engineering costs. She testified that EPA has yet to respond to the USWAG petition for reconsideration of the CCR Rule, but it is possible that the agency could issue a stay of the rule if it decides to reconsider the rule. She explained the Settlement takes this uncertainty into account by requiring NIPSCO to provide updates to the Commission and the parties to this Cause of any changes to relevant federal mandates, to modify its CPCN if any modification of the federal mandate alters the scope of the Environmental Compliance Project, and to stop incurring costs on projects subject to the modification until a final determination is made in the CPCN modification request.

Ms. Armstrong testified the OUCC believes the Settlement is in the public interest for the following reasons:

The Settlement saves ratepayers over $33.3 million by reducing the $221,835,000 project cost estimate for the Environmental Compliance Project down to $188,470,754 exclusive of
AFUDC. The Environment Compliance Project costs set forth in the Settlement address the OUCC’s concerns regarding the project contingencies NIPSCO included in its original project estimate request and the costs allowed for the Landfill-Pond Closure project reflects the incremental cost of expanding the landfill due to the CCR Rule.

The Settlement caps the project costs and provides more cost certainty for ratepayers. She stated that while these caps would not apply if a force majeure event occurred, the cap incents NIPSCO to manage and control project costs effectively.

The Settlement attempts to minimize the risk to ratepayers if the Environmental Rules change. If a regulatory or legal development impacts the need for any of the Environmental Compliance Project costs, NIPSCO agrees that it will not incur further costs for projects impacted by the change to a federally-mandated requirement, other than those necessary to continue operating its facilities. She stated NIPSCO will also be required to notify and confer with the Settling parties on the nature and expected impact of the change to the relevant federally-mandated requirement. She stated the Settlement also has minimized the risk of uncertainty of the ELG Rule by delaying a significant portion of the ELG project costs to a later proceeding.

Public policy supports the Settlement. By collaborating to resolve all issues in this proceeding, the Settlement also serves the public interest by avoiding contentious and costly litigation. Each Settling Party is invested in the development, operation and evaluation process of the entire project and all parties, including the Commission, are able to stay on top of all issues with detailed information obtained through the ongoing review requirements established. She stated that given the agreement reached on the ratepayer benefits as outlined in the Settlement, the OUCC believes the Settling Parties struck a fair resolution of the divergent positions initially taken by the Settling parties. The OUCC therefore believes the Settlement is support by substantial evidence, is in the public interest and should be approved.

F. CAC Settlement Testimony of Kerwin L. Olson. Kerwin L. Olson, Executive Director of CAC, testified CAC was able to resolve its issues with NIPSCO in the Settlement. He stated that, although Paragraph 10 of the Settlement does not provide for an earlier retirement of the Bailly units, confirming NIPSCO’s commitment to retire those costly units is an important step. He testified that Paragraph 11 of the Settlement is of particular importance to the CAC. He stated that by capitalizing on the fact that NIPSCO’s DSM RFP was pending during settlement discussions, they were able to negotiate this term to provide parties, including NIPSCO, with more information as to the potential of savings in NIPSCO’s service territory. He stated that after the rollback of Indiana’s first Energy Efficiency Resource Standard in 2014, the CAC has seen a precipitous drop of investment into energy efficiency, despite the fact that it is the least-cost resource for consumers. Mr. Olson stated that because the RFP process is time-sensitive and NIPSCO must prepare for its Senate Enrolled Act 412 filing, NIPSCO already released the supplemental request for bids to the responding bidders at the higher amount of incremental savings identified in the Settlement, and are awaiting bidders’ responses. He stated the CAC is hopeful that this will lead to far greater investment in energy efficiency in NIPSCO’s service territory and will bring about all the benefits that come along with energy efficiency, such as avoiding the cost of and need for producing energy, building new power plants, or installing and upgrading transmission and distribution equipment.
Mr. Olson stated NIPSCO plans to retire Schahfer Units 17 and 18 by 2023. He testified that Paragraph 12 of the Settlement contemplates that the replacement of the remaining 50% of its goal generation, i.e., replacement capacity for the retirement of Bailly Units 7 and 8 and Schahfer Units 17 and 18, will be evaluated with resources that CAC believes have been under-evaluated in the IRP process heretofore. He stated the CAC is also pleased that the stakeholder dialogue for NIPSCO’s IRP will begin earlier than what has been done in the past.

Mr. Olson testified the Settlement is reasonable and in the public interest and should be adopted by the Commission. He stated that every party to this proceeding has litigation risk in this case. By coming together, engaging in difficult arms-length negotiations that addressed the principal concerns of the parties, and ultimately reaching a result that each party could find acceptable, the Settling Parties have fashioned an outcome that manages the risks as each perceived them and achieves a reasonable balance between NIPSCO’s preferred route for resource decisions and CAC’s criticisms of NIPSCO’s resource evaluation in this case and its underlying IRP. He testified that a negotiated settlement that resolves the important and complex technical issues and which eliminates the large uncertainties associated with litigation risk is an appropriate way for the parties and the Commission to achieve a just and reasonable result.

Mr. Olson supports the Settlement as a reasonable overall resolution of the range of issues at dispute in the proceeding and, from CAC’s perspective, the Settlement represents a substantive improvement over that which was originally presented by NIPSCO. He testified the Settlement incorporates a number of provisions which are of particular interest and importance to CAC and that, overall, CAC is satisfied with the Settlement and recommends it be adopted by the Commission.

G. **NIPSCO Industrial Group Nicholas Phillips, Jr.** Mr. Phillips provided testimony to support the Settlement terms as they relate to cost certainty and ratepayer protections. He stated the Settlement is a comprehensive agreement, negotiated at arms-length that resolves a range of issues addressed by the Settling Parties in their respective cases in chief. He stated that from the NIPSCO Industrial Group’s perspective, the Settlement addresses concerns related to ratepayer protection by, in part, limiting the potential for cost escalation. He also stated the Settlement incorporates ratemaking and allocation provisions from the 44688 Settlement.

Mr. Phillips described the ratepayer protections included in the Settlement. He testified that NIPSCO has agreed that the capital investment related to compliance with the CCR Rule will, except in the event of a force majeure event, be subject to “not to exceed” caps, and in the case of the Remote Bottom Ash Projects, will be handled through an EPC Contract. He stated this is significant because (1) it creates cost certainty by ensuring that capital investment will not exceed pre-established amounts or allow recovery of costs that exceed the agreed-upon amounts; (2) the use of “not to exceed” caps shift risk from ratepayers to NIPSCO, and in the case of the Remote Bottom Ash project, to the contractor, thus incentivizing NIPSCO and the contractor to control costs; and (3) the overall cost estimate has declined from NIPSCO’s original filing. He also stated that subjecting the Remote Bottom Ash project to the competitive bidding process provided greater confidence the agreed upon recovery in the Settlement is reasonable.
Mr. Phillips described the ratemaking and allocation provisions in the Settlement. First, he stated NIPSCO expressly incorporated certain key provisions of the 44688 Settlement into the Settlement. One of those provisions was to fund the capital investment that requires a CPCN over $100 million with 60% debt financing, which is an important step towards producing a more balanced capital structure for NIPSCO by increasing the ratio of long term debt to equity. He stated that all else being equal, over time this will alter NIPSCO’s WACC and, consequently, lower the required rate of return and lessen the burden on all ratepayers.

Second, NIPSCO has agreed to adjust its WACC in its semi-annual FMCA filings to reflect not only issuances of debt to fund the capital investment at issue in this Cause, but other debt issuances made pursuant to the 44688 Settlement, ensuring ratepayers see the benefits of that provision applied to the authorized recovery of costs in this Cause.

Third, NIPSCO has agreed to compound carrying charges on a semi-annual, rather than monthly, basis, ensuring that carrying charges do not grow at a faster rate than is reasonably necessary.

Last, NIPSCO has agreed, expressly, to use the demand allocators set forth in the 44688 Settlement to allocate demand-related federally mandated costs, subject to significant customer migration among rate classes, ensuring that the previously negotiated allocation factors will continue to apply. Mr. Phillips opined that this promotes the reasonable allocation of costs by allowing for modifications necessary to reflect potential changes to the demand of various rate classes due to customer migration. In this way, classes that “lose” load due to migration will not be over allocated their share of costs and classes that “gain” load due to migration will not be under allocated their share of costs. He testified this approach is consistent with the principles of cost of service ratemaking.

Mr. Phillips discussed how the Settlement attempts to address the uncertainty surrounding the Environmental Rules. He stated the Settling Parties have agreed to address compliance with the ELG Rule, if necessary, at a later date. With regard to the uncertainty surrounding the EPA’s review of portions of the CCR Rule, he stated the Settling Parties have attempted to address those concerns by requiring NIPSCO to provide updates to the Commission and the Settling Parties of any changes in the CCR Rule and to seek to modify its CPCN if any modification alters the scope of the Environmental Compliance Project, and to stop incurring costs on projects subject to the modification until a final determination is made on the CPCN modification.

Mr. Phillips testified the Settlement, viewed as a complete package, reasonably resolves the NIPSCO Industrial Group’s issues with the cost recovery, ratemaking, allocation and public policy. He stated the Settlement reasonably balances NIPSCO’s need for cost recovery with the interests of ratepayers in having cost controls and proper cost allocation methodologies in place. Mr. Phillips testified the Settlement is a comprehensive agreement and each term is essential to its overall reasonableness and recommended the Commission approve the Settlement without material change.
11. **Overview of Sierra Club’s Evidence Opposing the Settlement.**

A. **Testimony of Jeremy I. Fisher, Ph.D. Opposing Settlement.** Dr. Fisher testified that the analysis conducted by NIPSCO and presented by NIPSCO witness Douglas does not support NIPSCO’s decision to retain units at Schahfer. Instead, NIPSCO’s Initial Analysis (relied on by NIPSCO in revised direct testimony) indicated that ratepayers benefit from the retirement of both Bailly and Schahfer – including Schahfer Units 14 and 15. Dr. Fisher testified about assessments he performed of the economics of NIPSCO’s generation fleet. He stated that the Schahfer had a low capacity factor in recent years and estimated that the plant likely lost around $140 million in 2016. He further stated that the benefit accrued to NIPSCO’s ratepayers if all of Schahfer is retired (Portfolio 5 in NIPSCO’s analysis) is significant. According to NIPSCO’s Initial Analysis, in terms of net present value in 2016 dollars, up to $326 million could be lost by following NIPSCO’s preferred Portfolio 4 instead of the lower cost options. He, therefore, stated that NIPSCO should fully retire the Schahfer. According to Dr. Fisher, the Revised Analysis by NIPSCO indicated that even with reduced capital costs, NIPSCO anticipated that the cost could be $291 million (in 2016 dollars) more than retiring all coal-fired generation stations. Thus, Dr. Fisher stated that the settlement proposed by the parties is not a meaningful cost savings to NIPSCO ratepayers.

Dr. Fisher also took issue with NIPSCO’s core modeling analysis, stating that while conducted using a generally sound methodology, it has shortcomings that indicate the difference in Portfolio 4 and Portfolio 6 is likely larger than $291 million if only two of the four Schahfer units are retired. First, he stated that NIPSCO failed to assess reasonable alternatives, such as a portfolio of low cost resources that included wind, capacity, and expanded DSM, thus overstating the benefit of the existing fleet. Second, he claimed that NIPSCO relied on arbitrary and non-plausible capacity prices, well above those claimed in NIPSCO’s 2016 IRP. Dr. Fisher believed that NIPSCO should not have used MISO’s cost of new entry (“CONE”) for pricing replacement generation capacity but should have used a capacity price provided by PIRA Energy Group (“PIRA”) which was provided to NIPSCO for its 2016 IRP. Dr. Fisher’s analysis, which substituted the PIRA capacity price forecast for NIPSCO’s chosen value, led him to conclude that NIPSCO’s proposal could cost up to $724 million more than an option that includes retiring Schahfer Units 14 and 15 and Michigan City. He also noted that NIPSCO’s analysis starts from 2015, including two historic years, and discounts costs back to 2014, thereby making the retirement of all coal-fired generation stations look less cost effective.

Dr. Fisher concluded NIPSCO should retire all of its coal plants, but testified that his conclusion is not entirely driven by the environmental regulations facing Bailly, Schahfer, and Michigan City. Dr. Fisher’s re-analysis indicated that there could be up to a $310 million savings from the retirement of the full coal fleet even if no ELG or CCR capital investments were required at Schahfer or Michigan City.

Dr. Fisher also criticized the scorecard NIPSCO used to make decisions in its 2016 IRP. He stated that NIPSCO based its decision on a poorly formulated qualitative assessment, which was largely focused on preventing NIPSCO job losses and maintaining tax payments to local counties. He claimed that NIPSCO’s scorecard was misleading and incomplete. He also testified that NIPSCO failed to usefully quantify the implication of any of its scorecard’s components,
including its most prominent concerns: the loss of NIPSCO jobs and reduced property tax payments. Under his analysis, Dr. Fisher found that NIPSCO could continue to pay—in full—all local taxes and a full compensation package to its existing generation employees (including those no longer required after the plant retirements) and still produce substantial savings to ratepayers by retiring its entire coal fleet.

Dr. Fisher testified that if you took the majority of NIPSCO’s assumptions but changed the CONE price NIPSCO used to the PIRA capacity price for which he advocated, then NIPSCO’s preferred Portfolio 4 (installing compliance controls at Schahfer Units 14 and 15 and Michigan City Unit 12) would result in average residential bills approximately $35 per year higher (in 2016 dollars) compared to Portfolio 6 (retiring all coal-fired generation).

Finally, Dr. Fisher recommended that the Commission: (1) affirm the decision of NIPSCO to retire Bailly Units 7 and 8; (2) affirm no incremental CCR spending at Schahfer Units 17 and 18; (3) approve $17.9 million for non-avoidable CCR compliance at Bailly, Michigan City, and Schahfer; (4) deny the application for CPCN to construct remote ash handling at Schahfer Units 14 and 15; (5) deny the application for CPCN to construct remote ash handling at Michigan City Unit 12; and (6) require that NIPSCO file an updated IRP or equivalent, seeking cost effective and long-term sustainable generation and capacity replacements between now and 2023 in the absence of NIPSCO’s coal fleet. This would require the Commission to reject the settlement reached among NIPSCO, the OUCC, the NIPSCO Industrial Group, and the CAC.

12. Overview of NIPSCO’s Responsive Testimony.

A. Responsive Testimony of Timothy R. Caister. Mr. Caister testified that the Commission’s focus in this proceeding should be on the specific CPCN request NIPSCO has made and reiterated that the appropriate standard for review of this request is the FMCA Statute, laying out the evidence NIPSCO had presented in direct testimony that demonstrated the Environmental Compliance Project met the statutory requirements.

According to Mr. Caister, NIPSCO already provided evidence that the CCR Rule is a federally mandated requirement, has described the costs associated with the Environmental Compliance Project, and demonstrated that the Environmental Compliance Project is reasonable and necessary for compliance with the CCR Rule under the FMCA Statute. He also noted that no party disputed that the CCR Rule is a federally mandated requirement or that the Environmental Compliance Project will allow NIPSCO to achieve compliance with a federally mandated requirement. He also reminded the Commission that, as required under the FMCA Statute, NIPSCO had discussed alternatives and demonstrated that (a) the Environmental Compliance Project is reasonable and necessary for compliance and (b) issuance of a CPCN will extend the useful life of NIPSCO’s coal-fired generating units, as NIPSCO would be forced to retire these units in the next few years if the Environmental Compliance Project were not approved and implemented.

Mr. Caister expounded on his belief that the Sierra Club was attempting to modify the standard of approval in this proceeding by replacing the appropriate standard laid out in the FMCA Statute with a least cost standard that is not anywhere set forth in the FMCA Statute. He noted that
the Sierra Club had focused its objections to the Settlement on the overall decision to select a different option evaluated in NIPSCO’s 2016 IRP and had not addressed the requirements of the FMCA Statute.

Mr. Caister stated that it would be inappropriate for NIPSCO, or any regulated utility, to focus solely on economics in generation retirement decisions or decisions as to whether a project like the Environmental Compliance Project should be approved. He said that the FMCA Statute does not limit considerations to economics, as urged by the Sierra Club. Citing to the FMCA Statute, he said it is important that the statute does not require a demonstration that the compliance option sought by a utility is the least cost option and reiterated that the Environmental Compliance Project will extend the useful life of NIPSCO’s generation facilities, and so the Commission must consider the value of those extensions.

In addition to the local economic effects NIPSCO had discussed in previous testimony, he noted that NIPSCO and its customers would be exposed to significant risk with respect to the reliability of its system, and the risks of a completely non-diverse portfolio. He believed that this would not be prudent, as the OUCC expressed in its testimony as well, and that NIPSCO appropriately considered other factors and that the chosen plan is reasonable, even though it is not least-cost. Mr. Caister also noted that, while Dr. Fisher had repeatedly over-emphasized economics in his testimony, in response to discovery requests from NIPSCO, the Sierra Club did admit that in resource planning additional factors may be considered such as reliability, state policies and goals, economic development, health and wellbeing, and environmental impacts.

Mr. Caister stated that, in resource decisions, the Commission should apply the guiding principles of affordability, reliability, compliance, diversity, and flexibility, which are the same principles NIPSCO applied in its IRP process. While different parties may weigh these factors differently, Mr. Caister noted that it would not be appropriate to eliminate any of them and that the Sierra Club’s least cost concept may be effectively doing so. He noted that Mr. Rutter, testifying on behalf of the OUCC, agreed on this point.

Mr. Caister also specifically took issue with Dr. Fisher’s assertion that NIPSCO is required to seek a least-cost plan in Indiana. Acknowledging that cost and customer impact are factors to be considered in resource planning, Mr. Caister detailed that it was inaccurate to state that the Commission is constrained to a least cost standard or that NIPSCO is required to seek a least cost plan. Citing to 170 IAC 4-7-8, he noted that NIPSCO is required to select a mix of resources consistent with the objectives of its IRP, as NIPSCO has done in its 2016 IRP. He also reiterated that the FMCA Statute lays out several factors that must be considered by the Commission in this proceeding, but it does not require a demonstration that the option sought by a utility is the least cost option.

Mr. Caister testified that much of the discussion from the Sierra Club involves resource planning principles but is only indirectly related to the relief requested in this proceeding, as it is primarily focused on NIPSCO’s decision to select a different option evaluated in its IRP rather than approval of the Environmental Compliance Project under the proposed Settlement. He noted that, in the Settlement, NIPSCO committed to updating the analysis in its next IRP submission, due on or before November 1, 2019, to address many of the comments and observations of the
Sierra Club, including specifically to evaluate the replacement of the remaining 50% of its coal generation with reasonable generation alternatives, giving consideration to, among other things, alternative fuel choices, DSM savings, distributed generation availability, battery and other energy storage technology, and a comprehensive analysis of renewable energy supply options.

Mr. Caister stated that NIPSCO has reasonably accounted for impacts on customers. While such impacts should be considered, he again reiterated that the FMCA Statute’s framework is what should guide the Commission and that NIPSCO had met the statute’s requirements. He noted that NIPSCO had considered the impact on its customers in developing what it believes to be the most effective and reasonable resource and environmental compliance strategy that will enable it to comply with the federally mandated requirements of the CCR Rule.

Mr. Caister opined that the Sierra Club attempted to muddy the waters with its alleged rate and bill savings, as it compared NIPSCO’s chosen Portfolio 4 to retiring all coal-fired generation in Portfolio 6, rather than looking at the cost of the Environmental Compliance Project. He then provided NIPSCO’s estimate of the rate impact of the projects proposed under the Settlement. In the estimate he provided, implementing the Environmental Compliance Project would raise the average customer rate by no more than one-and-a-half percent. That is, in the year that bills are anticipated to be impacted most, customer rates would rise no more than one-and-a-half percent, and the impact on the average customer would be less than this amount in every other year. He concluded by reiterating how NIPSCO had addressed each requirement under the FMCA Statute.

B. Responsive Testimony of Daniel L. Douglas. Mr. Douglas first clarified what NIPSCO’s analysis, as presented in his prior testimony, had concluded. He noted that (1) the analysis NIPSCO performed and he explained is the balanced scorecard approach that is discussed extensively in his revised direct testimony and further explained in his responsive testimony and (2) the results of this analysis led to NIPSCO’s decision to pursue Portfolio 4. Mr. Douglas next clarified that, despite claims from Dr. Fisher to the contrary, he clearly stated in his prior testimony that retiring 80% or 100% of NIPSCO’s coal-fired generation had lower anticipated costs than NIPSCO’s preferred portfolio, Portfolio 4.

Mr. Douglas next cited to Mr. Caister’s testimony and noted that NIPSCO is not, in fact, required to engage in least-cost resource planning, which may explain why the Sierra Club takes issue with the IRP analysis NIPSCO engaged in. With respect to the balanced scorecard NIPSCO utilized in its IRP analysis, he noted that the qualitative and quantitative measures that were evaluated included: (1) cost to customer, (2) portfolio diversity, (3) employees, (4) environmental/compliance, and (5) communities & local economy. He explained how the scoring of the different portfolios worked and reminded the Commission that NIPSCO’s chosen Portfolio 4, which is the third-lowest cost portfolio, retires Bailly in 2018; retires Schahfer Units 17 and 18 in 2023; and, after investing in the necessary environmental upgrades, runs all other coal units to end of life. He noted that choosing Portfolio 5 or 6, which would both retire more coal-fired generation, would result in lower costs to customers but would also result in NIPSCO having a non-diverse generation portfolio, with nearly 70% of its capacity fueled by natural gas.

Mr. Douglas also clarified that NIPSCO did not primarily focus on protection of jobs or tax payments to local counties, as this would have been inappropriate. Rather, NIPSCO strived to
design an evaluation framework that included the key factors with minimal complexity to communicate with the broadest set of stakeholders, regardless of technical understanding. This evaluation approach, illustrated in his revised direct testimony, included a balanced and thoughtful analysis of cost to customer, diversity, employee impacts, environmental impacts, and local economy impacts.

With respect to portfolio diversity, Mr. Douglas noted that NIPSCO’s current generation portfolio is weighted heavily towards a single fuel. It is generally accepted that having a diverse set of fuels and technologies is a cost effective way to manage and reduce the inherent production cost risks of an electric resource portfolio. This is primarily due to the inherent uncertainty in fuel costs, regulatory requirements, and environmental policies that make being over-exposed to any given fuel or technology risky for the customers. He continued by explaining that this is precisely why NIPSCO included a metric that evaluated fuel technologies as a percentage of total capacity and that NIPSCO wanted to transition from being more than roughly 50% reliant on any single fuel source, no matter what that source might be. He further stated that if NIPSCO were to choose to retire all its coal-fired generation under Portfolio 6, as advocated for by the Sierra Club, it would lead to NIPSCO being heavily-dependent on natural gas, thereby negatively impacting fuel diversity. He also stated that each proposed portfolio was evaluated for environmental compliance, including for compliance with potential Clean Power Plan regulations.

Mr. Douglas continued by explaining that the analysis presented by Dr. Fisher did not undermine NIPSCO’s decision to choose Portfolio 4 but actually reaffirmed the relative rankings of the various portfolios and cost to customer conclusions presented in the 2016 IRP. Ultimately, he stated, long-term modeling and forecasting includes some level of judgment by the modeler as to the methodology and assumptions to include. NIPSCO and Dr. Fisher used similar methodologies, but in some cases different assumptions, to complete their analyses. According to Mr. Douglas, the different assumptions are likely attributable to Dr. Fisher’s overemphasis on pursuing the lowest cost portfolio while NIPSCO took a more balanced approach focused on all relevant requirements under the FMCA Statute. However, even with varying assumptions, he reiterated that the rankings of the portfolios by NIPSCO and the Sierra Club were the same, which reinforces the overall methodology NIPSCO utilized.

Mr. Douglas next addressed NIPSCO’s decision to utilize the MISO CONE, rather than the capacity price provided by PIRA, for replacement capacity that NIPSCO would need after retiring coal-fired generators. He explained that retiring generation is a significant and generally irreversible decision for any utility. As such, NIPSCO elected to use the more conservative CONE that would provide a clear price for capacity in any market conditions. Mr. Douglas stated that CONE, by definition, is a proxy for capacity that could be built or purchased through the market, while PIRA’s forecast implies reliance on the market for all future purchases. Because NIPSCO will likely get some, but not all, of its capacity needs from market purchases, he noted that it would have been inappropriate to use the PIRA capacity price, especially since new, non-market-procured capacity will provide some percentage of NIPSCO’s replacement resources and will likely be procured at prices higher than the capacity price forecasted by PIRA.

A. Settlement Agreement. The Settling Parties reached a negotiated agreement resolving all issues between them. A copy of the Settlement Agreement is attached to this Order, the terms and conditions of which are incorporated into and made a part of this Order by reference.

In evaluating the Settlement Agreement, we note that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind., Inc. v. Public Service Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, consistent with the purpose of Ind. Code ch. 8-1-2, and serves the public interest.

(1) Certificate of Public Convenience and Necessity. Before approving the Settlement Agreement, and thus granting NIPSCO a CPCN under Ind. Code ch. 8-1-8.4, we must: (1) find that public convenience and necessity will be served by the proposed Compliance Projects; (2) approve the projected costs associated with those Compliance Projects; and (3) make a finding on each of the factors in Ind. Code § 8-1-8.4-6(b). Those factors include:

(A) A description of the federally mandated requirements ... that 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 ...
(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.

Ind. Code § 8-1-8.4-6(b)(1).
a. **Public Convenience and Necessity.** Ind. Code § 8-1-8.4-7(b)(1) requires a finding that the public convenience and necessity will be served by the proposed compliance project before a CPCN may be issued. The proposed Environmental Compliance Project will ensure that NIPSCO is positioned to serve its customers through a generation portfolio that is diverse, flexible, reliable, affordable, and compliant with applicable environmental rules. Further, the Settlement reached here among the Settling Parties includes provisions, such as the use of an EPC contract and not-to-exceed cost caps, which will ensure customer protection as the project is implemented. As further discussed below, the Commission finds that the public convenience and necessity will be served by NIPSCO’s Environmental Compliance Project.

b. **Projected Federally Mandated Costs.** Ind. Code § 8-1-8.4-7(b)(2) likewise requires approval of the projected federally mandated costs associated with the proposed compliance project. For the reasons discussed in detail below, the Commission has considered and approves the projected costs for NIPSCO’s Environmental Compliance Project.

c. **Factors under Ind. Code § 8-1-8.4-6(b).** Last, Ind. Code § 8-1-8.4-7(b)(3) requires findings on each of the factors set forth in Ind. Code § 8-1-8.4-6(b). We discuss the five (5) factors under Ind. Code § 8-1-8.4-6(b)(1) and “other factors” under Ind. Code § 8-1-8.4-6(b)(2) immediately below. While this discussion focuses primarily on the factors in Ind. Code § 8-1-8.4-6(b)(1) and (b)(2), we note that the evidence discussed and findings made below are also relevant to our determinations under Ind. Code § 8-1-8.4-7(b)(1) and (b)(2) that we made above.

i. **Federally Mandated Requirements.** Ind. Code § 8-1-8.4-5 defines a federally mandated requirement to include “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.

Mr. Carmichael testified the CCR Rule is a federal rule promulgated by EPA under the federal Resource Conservation and Recovery Act (“RCRA”) on April 19, 2015, with an effective date of October 19, 2015. The CCR Rule regulates disposal of CCRs, which are the materials generated from the combustion of coal to produce steam to power a generator, which in turn produces electricity. CCRs consist of fly ash, bottom ash, boiler slag, and FGD materials. Under the CCR Rule, CCRs are regulated as solid waste under Subtitle D of RCRA. He testified the CCR Rule sets out nationally applicable minimum requirements for new and existing CCR landfills and surface impoundments and that the CCR Rule is federally mandated.

Mr. Caister testified that the CCR Rule is a federally mandated requirement under Ind. Code § 8-1-8.4-5. He testified that the CCR Rule is developed and approved by the EPA and is imposed on NIPSCO and other electric utility companies.

No party has disputed that the CCR Rule is a federally mandated requirement as defined in the FMCA Statute. Based on our review of the evidence, we find that the CCR Rule is a federally
mandated requirement under Ind. Code § 8-1-8.4-5 and NIPSCO has satisfied the requirement of Ind. Code § 8-1-8.4-6(b)(1)(A).

ii. Projected Costs. The Settlement reflects agreement amongst the Settling Parties regarding the not-to-exceed amounts for the Remote Ash Conveying Projects in the amount of $168,460,171 and for the Landfill-Pond Closure Project in the amount of $4,260,583. The Settling Parties also agreed to a total not-to-exceed amount of $15,750,000 for the (1) Groundwater Monitoring Project, (2) Material Management Area Project, and (3) Process and Storm Water Pond Project. The Settlement also specifies that NIPSCO is authorized to recover all reasonable and prudently incurred O&M costs related to the Environmental Compliance Project, which in 2016 dollars are currently estimated to be $6,951,000 per year.

Petitioner’s Exhibit No. 4-S, Attachment 4-S-A provides, among other things, a description of the Environmental Compliance Project, including estimated capital costs (direct and indirect), annual O&M, construction start dates, and estimated in-service dates associated with the Environmental Compliance Project. Mr. Sangster testified that NIPSCO chose to utilize an EPC contract strategy for the Units 12, 14, and 15 Remote Ash Conveying projects. He stated the pricing created for the Remote Ash Conveying projects was reviewed in detail and was compared to a third party estimate in order to ensure the pricing was fair and reasonable. The final contract terms and conditions were negotiated and finalized on April 28, 2017 for the Remote Ash Conveying projects. Under NIPSCO’s EPC contract, the contractor will be responsible for the detailed engineering and design, the procurement of all required equipment and materials, and the construction, which includes the start-up and commissioning and turnover of the completed system to the owner.

Mr. Sangster further testified the scope of work for the EPC contract is limited to the Remote Ash Conveying Projects for the Michigan City and the R.M. Schahfer and that all other CCR projects in the Environmental Compliance Project are not included in the EPC contract.

Mr. Sangster testified the Settlement specifies that NIPSCO is authorized to recover all reasonable and prudently-incurred O&M costs related to the Environmental Compliance Project, which in 2016 dollars are currently estimated to be $6,951,000 per year. He stated this will allow NIPSCO to continue with all work to operate and maintain the Environmental Compliance Project that is necessary to ensure compliance into the future.

While the Sierra Club did question NIPSCO’s decision under its 2016 IRP to choose a generation portfolio that is not the least cost under the assumptions used in the IRP, which is further discussed below, no party disputed the reasonableness of the costs of the projects contained in the Settlement and supported in the Settling Parties’ settlement testimony.

The evidence presented describes the projected federally mandated costs associated with the Environmental Compliance Project and demonstrates that the cost estimates are based on multiple sources of information. Based on our review of the record evidence, we find that NIPSCO’s cost estimates for the Environmental Compliance Project, as modified by the Settlement and depicted in Petitioner’s Exhibit No. 4-S, Attachment 4-S-A, are reasonable. Therefore, we approve the projected federally mandated costs associated with the Environmental
Compliance Project as required by Ind. Code § 8-1-8.4-7(b)(2). In addition, we find that NIPSCO has satisfied the requirement of Ind. Code § 8-1-8.4-6(b)(1)(B).

iii. Environmental Compliance Project. Mr. Carmichael listed the CCR units subject to the CCR Rule at NIPSCO’s generation as follows:

- Schahfer: (1) landfill, (2) material storage runoff basin, (3) metal cleaning waste basin, (4) waste disposal area, and (5) waste runoff area;
- Michigan City: (1) boiler slag pond and (2) primary settling pond 2; and
- Bailly: (1) boiler slag pond, (2) primary settling pond 1, (3) primary settling pond 2, and (4) secondary settling Pond 1.

Mr. Carmichael testified the Environmental Compliance Project includes the following: (1) Groundwater Monitoring Project at the Bailly, the Michigan City, and the R.M. Schahfer; (2) the Material Management Area Project at the Michigan City and the R.M. Schahfer; (3) the Process and Storm Water Pond Project at the R.M. Schahfer; (4) the Landfill – Pond Closure Project at the R.M. Schahfer; and (5) the Remote Ash Conveying Projects at the Michigan City and the R.M. Schahfer. Mr. Carmichael also specified in his settlement testimony which requirements of the CCR Rule relate to each of the projects that make up the Environmental Compliance Project.

Mr. Carmichael testified that, as of the date NIPSCO filed its Verified Petition in this Cause, all NIPSCO generating stations have completed the compliance tasks due thus far under the CCR Rule. Completion of these tasks was funded through NIPSCO’s capital and O&M programs. He testified all of NIPSCO’s CCR surface impoundments subject to the structural integrity criteria have met the applicable standards.

Mr. Carmichael further testified that, going forward, NIPSCO will be required to engineer future landfill expansions at Schahfer to comply with the locational (aquifer, wetlands, fault areas, seismic impact zones, unstable areas, floodplains and endangered species), design (liner and leachate systems), groundwater monitoring, corrective action, inspections, fugitive dust control, run-on and run-off controls, surface water protection, closure requirements, post-closure care, recordkeeping, notifications, and internet site requirements of the CCR Rule.

Mr. Carmichael also testified that other necessary changes are dependent on the determination of CCR unit placement relative to locational restrictions and assessment of groundwater quality at Michigan City and Schahfer. Although final locational and groundwater quality determinations have not been made, NIPSCO’s preliminary findings indicate the CCR Rule will prohibit future use of the existing active CCR surface impoundments at both of these NIPSCO facilities. NIPSCO’s proposed Environmental Compliance Project will allow NIPSCO to continue to provide affordable and reliable service to its customers regardless of the rule’s requirement that receipt of CCR cease six months after failing a locational restriction or exceeding a groundwater quality standard.

No party disputes that the Environmental Compliance Project addressed in the Settlement and supported in the settlement testimony of the Settling Parties will allow NIPSCO to achieve compliance with a federally mandated requirement (i.e., the CCR Rule).
Based on the evidence presented, we find that NIPSCO’s Environmental Compliance Project, as reflected in the Settlement, will allow the utility to comply with the CCR Rule. Therefore, we find that NIPSCO has satisfied the requirements of Ind. Code § 8-1-8.4-6(b)(1)(C).

iv. Alternative Plans. Ind. Code § 8-1-8.4-6(b)(1)(D) requires the Commission to examine “[a]lternative plans that demonstrate that the proposed compliance project is reasonable and necessary.” We examine this factor below.

Mr. Sangster testified the CCR Rule applies to each of NIPSCO’s three (3) active coal-fired electric generating stations: Bailly, Michigan City, and R. M. Schahfer. The alternatives NIPSCO evaluated for each CCR unit were: groundwater monitoring of the unit, retrofit, clean close, and close in place.

Mr. Sangster testified that during the engineering study several options were evaluated to replace the current method of bottom ash handling, which are specified and discussed in detail in Attachment 4-B (Confidential). He stated the existing ash handling systems will be affected by the closure of the Boiler Slag Storage Area at Michigan City and the Waste Disposal Area at Schahfer. The bottom ash handling options considered were (1) under the Boiler Ash Conveying (wet to dry ash and fully dry), (2) Remote Ash Conveying, (3) Dewatering Bin System, and (4) Retrofit of Ponds. He testified NIPSCO chose Remote Ash Conveying systems as the preferred solution for both Michigan City and Schahfer for safety, feasibility of project execution, proven reliability, and ability to compliment compliance with ELG.

The Sierra Club’s proposed alternative plan is not a plan to install environmental controls in order to achieve compliance with the federally mandated requirements; rather, it is a plan to retire generating units that would otherwise fail to comply with federally mandated requirements if the units were to remain in service. We heard considerable evidence on this alternative compliance plan, and we address it in Section 13A(1)(c)(vi) below.

While the Commission gives significant weight to cost-effective planning and decision-making when considering alternatives, the FMCA Statute does not require that a utility demonstrate that the chosen compliance plan is the least cost option. Consistent with the Commission’s finding in IPL’s recent proceeding, Cause No. 44794, that “it is important that the Petersburg Station is able to continue to operate on coal and protect customers from potential price volatility in the gas markets”, a reasonable alternative can be, and often is, a solution that includes risk balancing through a diversified portfolio. Based on the evidence presented, which is discussed immediately above and below, we find that NIPSCO considered alternative plans for compliance with the CCR Rule. The evidence shows that the Environmental Compliance Project, as modified by the Settlement, is reasonable and necessary. Therefore, we find that NIPSCO has satisfied the requirements of Ind. Code § 8-1-8.4-6(b)(1)(D).

v. Useful Life of the Facility. Mr. Caister testified that issuance of a CPCN will extend the useful life of NIPSCO’s coal-fired generating units, as it would be forced to retire these units in the next few years if the Environmental Compliance Project, as modified by the Settlement, were not approved and implemented.
No party disputes that issuance of a CPCN will extend the useful life of NIPSCO’s coal-fired generating units or that its coal-fired generating units would be required to retire in the near future if environmental compliance controls are not installed. Specifically, the Environmental Compliance Project will extend the useful life of Michigan City Unit 12 and Schahfer Units 14 and 15. The value of these extensions relates to the consideration of the Sierra Club’s proposed alternative compliance plan, which would be to retire the units rather than retrofit with environmental controls. Again, we heard considerable evidence on this subject, which we address in Section 13A(1)(c)(vi) below.

Based on the evidence presented, we find that NIPSCO has satisfied the requirements of Ind. Code § 8-1.8.4-6(b)(1)(E).

vi. Other Relevant Factors. The Commission concluded above that the FMCA Statute must guide the Commission’s analysis. The FMCA Statute does not require a utility demonstrate that the chosen compliance plan is the lowest cost option. However, Ind. Code § 8-1.8.4-6(b)(2) does provide that the Commission examine “[a]ny other factors the commission considers relevant[,]” which reasonably include relative costs and benefits of a proposed compliance plan as compared to other options including retirement of the affected units.

The Sierra Club primarily focused its evidentiary submission on the question of whether NIPSCO’s portfolio selection represents a least cost portfolio.

As Mr. Caister’s testimony notes, while cost is an appropriate factor for the Commission to consider in approving a request under the FMCA Statute, the statute itself does not mandate the Commission to find that a proposed compliance plan is a least cost plan. In this instance, accordingly, the fact that NIPSCO chose a compliance plan that does not fall within a least cost portfolio is not, itself, determinative. Rather, we must focus on the reasonableness of the compliance plan in its entirety. Even considering the Sierra Club’s objections to the IRP portfolio selection process, we find there is sufficient evidence to conclude NIPSCO’s selected portfolio, which requires execution of the Environmental Compliance Plan, is reasonable. This is illustrated through a review of the key disagreements with the portfolio selection raised by the Sierra Club.

First, Mr. Caister and Mr. Douglas explained the principles that guided NIPSCO’s balanced scorecard analysis underlying its IRP analysis. The Sierra Club admits that employment impacts are a factor the Commission may consider but states NIPSCO’s IRP analysis focused too heavily on, and potentially overestimated, losses of employment opportunities and tax revenues in the NIPSCO service territory if coal-fired plants units are retired, leading NIPSCO to its current plans to retain 50% of its coal-fired generation. Mr. Douglas responds that these were not the primary factors that undergird its IRP analysis but were part of a reasonable analysis it undertook as part of its balanced scorecard approach. As more fully described above, Mr. Douglas and Mr. Caister further explained that the recommendation from the 2016 IRP to retain some percentage of coal-fired generation is based on the importance of diversity in the fuel sources of a generation portfolio.

Second, NIPSCO and the Sierra Club disagreed on what cost or price should be used for
replacement capacity for the portion of NIPSCO’s generation that will be retired. Dr. Fisher advocated for use of the capacity price provided by PIRA, which would result in a much greater difference between NIPSCO’s Portfolios 4 and 6 than what was presented by NIPSCO. Mr. Douglas, on the other hand, explained NIPSCO’s decision to use the MISO CONE and noted that NIPSCO made an intentional decision to use the more conservative of the two figures, (1) as retirement decisions like NIPSCO faces here are significant and generally irreversible and (2) because new, non-market-procured capacity will provide some percentage of NIPSCO’s replacement resources, which will likely be procured at prices higher than the capacity price forecasted by PIRA. Ultimately, the evidence presented does not impact the ordering or ranking of the Portfolios from a lowest-to-highest cost perspective. Because the FMCA Statute does not mandate selection or approval of the lowest cost compliance plan or approval of the 2016 IRP, but rather requires consideration of the reasonableness of the alternative presented, the Commission concludes that it need not make a definitive determination on which of these prices NIPSCO should have selected in its 2016 IRP.

There are many factors other than cost that can be appropriate considerations in resource planning decisions, and nothing in the record indicates NIPSCO’s reliance on such factors in its IRP portfolio selection process was inappropriate or unreasonable. For example, diversity of a utility’s generation portfolio is an important factor appropriately considered in planning decisions for a number of reasons, including avoiding ratepayer exposure to the risk of high fuel costs in a generation portfolio that relies primarily on a single fuel source. As noted above, the Commission finds a diversified portfolio and the extension of an existing assets useful life is a supported by NIPSCO’s proposed alternative. Despite the Sierra Club’s objections, as discussed above, the record indicates that NIPSCO considered a number of appropriate factors in making its decision to select a non-least cost portfolio; and in this instance, the Sierra Club has not demonstrated that the portfolio selection was unreasonable, nor that the compliance plan itself or its costs are unreasonable.

**d. Conclusion.** The evidence presented demonstrates that the Environmental Compliance Project will allow NIPSCO to comply with the requirements of the CCR Rule. We have made a finding on each of the factors described in Ind. Code § 8-1-8.4-6(b) and approved the projected federally mandated costs as reflected in the Settlement associated with the Environmental Compliance Project. Therefore, we approve the Environmental Compliance Project, as modified by the Settlement, and issue NIPSCO a CPCN for the project under Ind. Code § 8-1-8.4-7(b).

(2) **Cost Recovery.** Ind. Code § 8-1-8.4-7(c) states:

If the commission approves under subsection (b) 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.

a. **FMCA Mechanism.** NIPSCO requests authority to utilize its currently-approved semi-annual FMCA Mechanism pursuant to Ind. Code § 8-1-8.4-7 for the timely and periodic recovery of 80% of the federally mandated costs. Ind. Code § 8-1-8.4-7 provides that an energy utility may, in a timely manner, recover 80% of all federally mandated costs through a periodic rate adjustment mechanism. Ind. Code §§ 8-1-8.4-4 and 8-1-8.4-7 provide that such costs include capital, AFUDC, O&M, depreciation, tax, and financing costs.

Mr. Isensee described how the capital costs associated with the Environmental Compliance Project will be incorporated into the FMCA Mechanism. He testified the revenue requirement for capital costs included in the FMCA Mechanism will be calculated by multiplying the net book value of the associated eligible projects by NIPSCO’s current overall WACC, which incorporates the return on common equity and capital structure most recently approved by the Commission in its 44688 Order. These capital costs will be grossed-up for all applicable taxes.

Mr. Isensee described how all other federally mandated costs, including O&M, depreciation expenses, property tax expenses and other incurred tax expenses, associated with the Environmental Compliance Project will be incorporated into the FMCA Mechanism. He testified that NIPSCO’s accounting practice related to these costs is to defer on the balance sheet, as a regulatory asset, all costs incurred until such amounts are included and recovered in rates through the FMCA Mechanism. As amounts are recovered through rates, NIPSCO reduces the regulatory asset and records expense in the income statement in order to appropriately match the revenues being recorded with the expenses. These expenses would be treated consistently with expenses approved as part of the Environmental Compliance Project approved in the Commission’s 44340 Order.

Mr. Isensee described how the FMCA Mechanism revenue requirement is calculated in general. He stated that in each semi-annual filing, NIPSCO calculates a revenue requirement which consists of two components: (1) a return of capital costs including AFUDC and post in-service carrying charges (“PISCC”), and (2) recovery of all federally mandated expenses associated with the projects. Then NIPSCO multiplies the total revenue requirement by 80% to establish the FMCA Mechanism revenue requirement.
In the Settlement, the Settling Parties agreed that all amounts for the projects addressed therein are exclusive of AFUDC and PISCC and that, upon approval, NIPSCO will be authorized to accrue and to recover all AFUDC on the construction costs associated with the Environmental Compliance Project until such costs receive either CWIP ratemaking treatment through the FMCA Mechanism, are placed in service, or are otherwise reflected in NIPSCO’s base electric rates. The Settlement also specifies that NIPSCO will apply its WACC (as calculated under the Settlement) to all PISCC.

b. Accounting and Ratemaking Treatment for the FMCA.

Mr. Isensee testified that pursuant to Ind. Code § 8-1-8.4-7, NIPSCO seeks ratemaking treatment for the Environmental Compliance Project consistent with and through NIPSCO’s currently-approved FMCA Mechanism. Specifically, NIPSCO seeks timely recovery of all federally mandated costs associated with the Environmental Compliance Project, including capital costs, AFUDC, PISCC, O&M, depreciation expense, property tax expense, and other taxes, for recovery in NIPSCO’s next rate case.

Mr. Isensee testified that in order to recover all capital costs associated with these projects, NIPSCO seeks authority to (a) implement CWIP ratemaking treatment associated with the Environmental Compliance Project until such costs receive either CWIP ratemaking treatment through the FMCA Mechanism, are placed in service, or are otherwise reflected in NIPSCO’s base electric rates, and (b) defer as a regulatory asset and recover through the FMCA Mechanism PISCC associated with capital expenditures that are in service yet nor receiving ratemaking treatment.

Mr. Isensee testified that in addition to the recovery of these capital costs, NIPSCO requests the timely recovery through the FMCA Mechanism of reasonably incurred O&M, depreciation expenses, property tax expenses, and other incurred tax expenses associated with each approved project included in the Environmental Compliance Project. He stated this ratemaking treatment is consistent with the ratemaking treatment authorized by the Commission in its 44340 Order.

With respect to cost allocation, Mr. Isensee testified consistent with the 44688 Order, NIPSCO proposes to allocate all demand-related federally mandated costs associated with these projects based on the demand allocators for the FMCA Mechanism set forth in Joint Exhibit B to the Stipulation and Settlement approved in the 44688 Order. All energy-related federally mandated costs will be allocated based upon the energy attributable to each of NIPSCO’s rate schedules based upon amounts included in NIPSCO’s most recent general electric rate case. The Settling Parties further agreed that in the event NIPSCO seeks to modify the allocation percentages to reflect the significant migration of customers amongst the various rate classes in order to prevent any unintended consequences of the migration of customers between rates and to properly allocate their share of the revenue requirement, NIPSCO agrees to identify such modifications in pre-filed testimony and provide supporting testimony, and the Settling Parties reserve the right to conduct discovery and raise issues with any proposed modification.

It was also agreed that, for purposes of calculating all carrying charges associated with the Settlement, NIPSCO shall apply its WACC to such costs as permitted under the FMCA Statute, but NIPSCO also agreed to compound carrying charges on such amounts on a semi-annual basis.
For purposes of NIPSCO’s FMCA Mechanism, NIPSCO further agreed to update the WACC in each semi-annual FCMA filing to reflect the agreed-upon use of debt capital to fund the Environmental Compliance Project and any other debt capital used to fund projects pursuant to the terms of the settlement approved in Cause No. 44688.

With respect to the treatment of operating income, Mr. Isensee testified NIPSCO proposes to include the operating income associated with the Environmental Compliance Project in the total electric operating income for purposes of the Ind. Code § 8-1-2-42(d)(3) test. He stated this is consistent with the way earnings associated with NIPSCO’s Environmental Compliance Project were approved to be treated by the Commission in its 44340 Order. There are also provisions of the Settlement that address accounting and ratemaking treatment issues which will also be implemented by NIPSCO.

No party opposed NIPSCO’s proposed ratemaking treatment contained in the Settlement and supported by Settlement testimony of the Settling Parties for the Environmental Compliance Project through NIPSCO’s currently-approved FMCA Mechanism.

Based on the evidence presented, the Commission finds that NIPSCO is authorized to defer (until captured within the FMCA tracker) and recover 80% of the approved federally mandated costs incurred in connection with the Environmental Compliance Project through the currently-approved FMCA Mechanism pursuant to Ind. Code § 8-1-8.4-7, including capital, O&M, depreciation, taxes, financing, and carrying costs based on the current overall WACC and AFUDC. NIPSCO is authorized to utilize CWIP ratemaking treatment for the Environmental Compliance Project through the currently-approved FMCA Mechanism. NIPSCO is authorized to accrue AFUDC and PISCC relating to the Environmental Compliance Project until such time as all of the projects included in the Environmental Compliance Project are placed into service or receive ratemaking treatment. As specified in the Settlement, NIPSCO must apply its WACC (as calculated under the Settlement) to all PISCC. NIPSCO is authorized to defer post-in service costs of the Environmental Compliance Project, including carrying costs based on the current overall WACC, depreciation, taxes and operating and maintenance expenses on an interim basis until such costs are recognized for ratemaking purposes through NIPSCO’s currently-approved FMCA Mechanism or otherwise included for recovery in NIPSCO’s base rates in its next general rate case. NIPSCO is authorized to defer and recover through NIPSCO’s currently-approved FMCA Mechanism any federally mandated costs, including but not limited to federally mandated 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 Environmental Compliance Project described in NIPSCO’s evidence. For purposes of calculating all carrying charges associated with the Settlement, NIPSCO must apply its WACC to such costs, but NIPSCO must compound carrying charges on such amounts on a semi-annual basis, as agreed in the Settlement. Further, we will require NIPSCO to update the WACC in each semi-annual FCMA filing to reflect the agreed-upon use of debt capital to fund the Environmental Compliance Project, as well as any other debt capital used to fund projects pursuant to the terms of the 44688 Settlement. NIPSCO’s proposed cost allocation factors are also approved.

c. Accounting and Ratemaking Treatment for Deferred Costs. Ind. Code § 8-1-8.4-7 provides that 20% of the approved federally mandated costs,
including depreciation, AFUDC, and PISCC, 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. Mr. Isensee testified NIPSCO proposes to defer as a regulatory asset 20% of all federally mandated costs incurred in connection with these projects. He testified NIPSCO also proposes to record carrying charges on such amounts based on NIPSCO’s WACC, which incorporates the return on common equity most recently approved by the Commission in its 44688 Order until such amounts are recovered through rates. In the Settlement, NIPSCO agreed to compound carrying charges on such amounts on a semi-annual basis. The Settling Parties also agreed that, with respect to the 20% of the Environmental Compliance Project costs that will be deferred and recovered by NIPSCO as part of its next general rate case, NIPSCO shall apply its WACC to such costs as permitted under the FMCA Statute and as provided in the Settlement.

No party opposed NIPSCO’s proposed accounting and ratemaking treatment for deferred costs in connection with the Environmental Compliance Project that is contained in the Settlement and supported by the Settling Parties’ testimony.

Based on the evidence presented, the Commission finds NIPSCO is authorized to defer 20% of the federally mandated costs incurred in connection with the Environmental Compliance Project, and NIPSCO may recover the deferred costs in its next general rate case as allowed by Ind. Code § 8-1-8.4-7(c)(2). As provided in the Settlement, NIPSCO must now compound all applicable carrying charges on a semi-annual basis. NIPSCO is authorized to record ongoing carrying charges based on the current overall WACC on all deferred federally mandated costs including deferred depreciation and O&M expenses until the deferred federally mandated costs are included for recovery in NIPSCO’s base rates in its next general rate case.

d. **Depreciation Treatment.** NIPSCO requests authority to depreciate the individual projects included in the Environmental Compliance Project according to the depreciation rates approved by the 44688 Order. Mr. Isensee testified in this proceeding that NIPSCO is proposing to record, defer, and recover depreciation related to the Environmental Compliance Project according to those depreciation rates approved by the Commission in its 44688 Order.

No party opposed NIPSCO’s proposal to depreciate the individual projects included in the Environmental Compliance Project according to the depreciation rates approved by the 44688 Order.

Based on the evidence presented, we find that NIPSCO’s proposal to depreciate the individual projects included in the Environmental Compliance Project based on the depreciation rates approved by the Commission in its 44688 Order is reasonable and is approved.

(3) **Ongoing Review.** NIPSCO requests ongoing review of the Environmental Compliance Project as part of its FMCA Mechanism semi-annual filings. In its current semi-annual filings, NIPSCO includes (1) information supporting proposed revised FMCA Mechanism factors including actual capital expenditures and forecast expenses during the relevant period, and a reconciliation of prior period revenues and costs; and (2) updated information
regarding project list or scope, schedules, and costs for the individual projects, for purposes of explaining the progress of its Environmental Compliance Project. In the Settlement, NIPSCO agreed to provide updates to the Commission and intervenors in these semi-annual FMCA proceedings regarding any changes to the federally mandated requirements precipitating the Environmental Compliance Project approved by the Commission. NIPSCO also committed to include schedules in semi-annual FMCA filings that separately identify the costs for the compliance projects associated with NIPSCO’s NERC Compliance Plan (which was pending in Cause No. 44889 at the time the settlement was reached, but for which an order has now been issued) and the Environmental Compliance Plan in this Cause. In advance of its next FMCA filing, NIPSCO will also work with the other Settling Parties and the Commission to provide schedules and work papers in a mutually-agreeable format.

As noted above, NIPSCO agreed in the Settlement to update the Commission and intervenors in its semi-annual FMCA proceedings regarding any changes to the federally mandated requirements precipitating the Environmental Compliance Project. Further, if the need for and/or the scope of any project or portion of a project ultimately approved by the Commission is affected due to final changes to the CCR Rule, NIPSCO has also committed to file a petition to modify the CPCN and, pending determination on such petition for modification, agreed not to incur any additional federally mandated costs associated with the portion of the project(s) subject to the modification request, with some reasonable exceptions.

We approve NIPSCO’s request for ongoing review of the Environmental Compliance Project as part of its FMCA Mechanism semi-annual filings.

(4) Additional Terms of the Settlement Agreement. Having addressed the Environmental Compliance Project components of the Settlement we move to a discussion of its key terms which address other disputed items. We note that while such terms do not directly impact our previous findings and are in effect agreements among and between the Settling Parties, the Commission must consider whether the public interest will be served by accepting the Settlement with their inclusion in it.

A key term of the Settlement which enhances the public interest is the inclusion of not-to-exceed amounts, or cost caps, on the components of the Environmental Compliance Project. These cost caps provide a measure of assurance regarding the overall costs to customers and the risks associated with cost overruns which are beyond the statutory protections. Notably, the caps are approximately $33 million less than the estimates NIPSCO provided in its Verified Petition.

The evidence presented demonstrates that NIPSCO must move forward with a CCR Rule compliance plan; otherwise, its ability to become compliant would be jeopardized both in regard to time and costs. Significantly, the Settlement provides reasonable protections to NIPSCO customers if there are changes to the CCR Rule. Thus, a reasonable balance has been reached between the need for NIPSCO to proceed with a plan to comply with the effective CCR Rule while protecting the interests of ratepayers. Specifically, NIPSCO agreed in the Settlement to provide updates to the Commission and intervenors in NIPSCO’s semi-annual FMCA proceedings regarding any changes to the federally mandated requirements precipitating the Environmental Compliance Project.
The Settling Parties through the Settlement create a path forward for NIPSCO to continue the necessary work for ELG Rule compliance, which is required by December 31, 2023, while deferring consideration of specific projects that may be necessary for such compliance. In support of this provision in the Settlement related to certain costs for compliance with the ELG Rule that will be deferred by NIPSCO, Mr. Sangster testified NIPSCO will be pilot testing ZLD technologies beginning in the summer of 2017. The estimated cost for the pilot testing is $1.1 million. Additional pre-construction work related to compliance with the ELG Rule will also continue through 2017 and into 2018 and 2019. He stated it is this ongoing work that formed the basis for the Settling Parties agreeing to provide NIPSCO with $3.3 million for ongoing compliance work related to the ELG Rule. In addition, an estimated $353,580 incurred between November 1, 2016, and March 31, 2017, is recognized in the Settlement as appropriate to be deferred for accounting purposes. The Commission approves these provisions as outlined in the Settlement for deferral for accounting purposes.

The Settling Parties further agreed that the financing approved in Cause No. 44796 satisfies the terms of the settlement recently approved in Cause No. 44688, which requires NIPSCO to finance any projects with estimated costs of $100 million or more with at least 60% debt capital. NIPSCO, therefore, agreed to finance the costs of the Environmental Compliance Project with at least 60% debt capital.

The Settlement also enhances a key interest of the Commission and stakeholders regarding information and transparency in NIPSCO’s resource portfolio. The Settling Parties agreements regarding updated and enhanced demand-side management requests for proposals and NIPSCO’s analyses in its 2019 IRP encourage dialogue on this shared interest.

The Settling Parties agreement that NIPSCO will retire Bailly Units 7 and 8 in 2018 is consistent with NIPSCO’s 2016 IRP and MISO’s approval in the context of its need for system reliability. As Mr. Caister testified, Commission approval is not required to retire a generation unit unless the utility seeks to recover costs associated with a retirement. Mr. Caister testified that NIPSCO is not seeking any cost recovery related to the retirement of Bailly Units 7 and 8 in this proceeding. Notwithstanding the Settling Parties agreement, the Commission maintains its ability to fully consider the appropriateness of the retirement when NIPSCO seeks recovery of the associated costs in a future proceeding. The inclusion of this term in the Settlement does not drive an action that would not have occurred without it, nor does it bind the Commission in any future proceedings. Accordingly, its impact on the public interest is limited if it has any at all.

(5) Conclusion on the Settlement Agreement. Based on all of the foregoing discussions, the Commission also concludes that the proposed Settlement is reasonable, in the public interest, and should be approved. The Settlement will provide NIPSCO with the certainty it needs to pursue the installation of environmental controls and projects at three of its coal-fired generation stations. The continued operations of a diverse, environmentally-compliant generation fleet is an important result of the Settlement, and one that will protect customers from risks associated with over-reliance on a single primary fuel source. We also note that the Environmental Compliance Project addressed by the Settlement is consistent when viewed in the context of NIPSCO’s 2016 IRP. Therefore, we find that the compromises embodied in the
Settlement are consistent with the applicable statutory provisions, reasonable and in the public interest.

The Settling Parties agree that the Settlement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement, we find our approval herein should be construed in a manner consistent with our finding in Richmond Power & Light, Cause No. 40434, 1997 Ind. PUC LEXIS 459 at *19-22 (IURC March 19, 1997).

B. Confidentiality. NIPSCO filed a motion for protective order which was supported by affidavit showing documents to be submitted to the Commission were confidential and trade secret information within the meaning of Ind. Code §§ 5-14-3-4(a) as defined in Ind. Code § 24-2-3-2. The Presiding Officers issued a Docket Entry on March 30, 2017 finding such information to be preliminarily confidential, and the confidential information was submitted under seal.

CAC filed a motion for confidential treatment which was supported by affidavit showing documents to be submitted to the Commission were confidential and trade secret information within the meaning of Ind. Code §§ 5-14-3-4(a) as defined in Ind. Code § 24-2-3-2. The Presiding Officers issued a Docket Entry on May 19, 2017 finding such information to be preliminarily confidential, and the confidential information was submitted under seal.

NIPSCO Industrial Group filed a motion for confidential treatment which was supported by affidavit showing documents to be submitted to the Commission were confidential and trade secret information within the meaning of Ind. Code §§ 5-14-3-4(a) as defined in Ind. Code § 24-2-3-2. The Presiding Officers issued a Docket Entry on May 19, 2017 finding such information to be preliminarily confidential, and the confidential information was submitted under seal.

We find all such information is confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. The Settlement is approved in its entirety.

2. NIPSCO is issued a CPCN for the Environmental Compliance Project pursuant to Ind. Code ch. 8-1-8.4. This Order constitutes the Certificate.

3. The CCR Rule constitutes a federally mandated requirement as defined by Ind. Code § 8-1-8.4-5.

4. The Environmental Compliance Project constitutes a compliance project as that term is defined in Ind. Code § 8-1-8.4-2, and the costs incurred in connection with the Environmental Compliance Project are federally mandated costs as that term is defined in Ind.
Code § 8-1-8.4-4. The federally mandated costs are eligible for ratemaking treatment described in Ind. Code § 8-1-8.4-7.

5. NIPSCO’s cost estimates for the Environmental Compliance Project set forth above are approved.

6. NIPSCO is authorized to defer (until captured within the FMCA tracker) and recover 80% of the approved federally mandated costs incurred in connection with the Environmental Compliance Project through the currently-approved FMCA Mechanism pursuant to Ind. Code § 8-1-8.4-7 including capital, O&M, depreciation, taxes, financing and carrying costs based on its WACC and AFUDC rate.

7. NIPSCO is authorized to utilize CWIP ratemaking treatment for the Environmental Compliance Project through the currently-approved FMCA Mechanism.

8. NIPSCO is authorized to accrue AFUDC relating to the Environmental Compliance Project until such time as the projects included in the Environmental Compliance Project are placed into service or receive ratemaking treatment.

9. NIPSCO is authorized to defer PISCC related to the Environmental Compliance Project, including carrying costs based on its WACC, depreciation, taxes and O&M expenses on an interim basis until such costs are recognized for ratemaking purposes through NIPSCO’s currently-approved FMCA Mechanism or otherwise included for recovery in NIPSCO’s base rates in its next general rate case.

10. NIPSCO is authorized to defer and recover through NIPSCO’s currently-approved FMCA Mechanism any federally mandated costs, including but not limited to federally mandated 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 Environmental Compliance Project described in NIPSCO’s evidence.

11. NIPSCO is authorized to adjust its authorized net operating income to reflect any approved earnings associated with the Environmental Compliance Project for purposes of Ind. Code § 8-1-2-42(d)(3) as allowed under Ind. Code § 8-1-8.4-7(c)(1).

12. NIPSCO’s proposed cost allocation factors are approved.

13. NIPSCO is authorized to defer 20% of the federally mandated costs incurred in connection with the Environmental Compliance Project for recovery in its next general rate case.

14. NIPSCO is authorized to record ongoing carrying charges based on its current overall weighted average cost of capital on all deferred federally mandated costs including deferred depreciation and O&M expenses until the deferred federally mandated costs are included for recovery in NIPSCO’s base rates in its next general rate case.

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15. NIPSCO is authorized to depreciate the individual projects included in the Environmental Compliance Project according to depreciation rates set forth above.

16. NIPSCO's request for ongoing review of the Environmental Compliance Project as part of NIPSCO's FMCA Mechanism semi-annual filings is approved.

17. The information filed by NIPSCO, CAC and NIPSCO Industrial Group in this Cause pursuant to their motions for protective order is deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: DEC 13 2017

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

Mary M. Beerrra
Secretary of the Commission
STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Agreement") is entered into as of the 9th day of June, 2017, by and among the Northern Indiana Public Service Company ("NIPSCO" or "Petitioner"), the Indiana Office of Utility Consumer Counselor, the
NIPSCO Industrial Group\(^1\), and the Citizens Action Coalition of Indiana, Inc. (collectively, the “Settling Parties”), who stipulate and agree for purposes of settling the issues in this Cause relating to the costs of compliance with the federally mandated requirements of the Environmental Protection Agency’s Coal Combustion Residuals (“CCR”) Rule. The term “Environmental Compliance Project” as used in the Settlement Terms set out herein shall only refer to those costs related to compliance with the CCR Rule. The Settling Parties do not intend for the Settlement Terms to address the projects or costs proposed to comply with the Environmental Protection Agency’s Effluent Limitations Guidelines (“ELG”) Rule, except as further described in Paragraph 6 below. Except as described herein the Settling Parties expressly reserve all rights in any proceeding addressing NIPSCO’s compliance with the ELG Rule. The terms and conditions set forth below represent a fair and reasonable resolution of all issues subject to incorporation into a Final Order of the Indiana Utility Regulatory Commission (“Commission”) without any modification or condition that is not acceptable to the Settling Parties.

\(^1\) The companies that comprise the NIPSCO Industrial Group are Arcelor Mittal USA, Jupiter Aluminum Corporation, Marathon Petroleum Company LP, NLMK Indiana, Praxair, Inc., United States Steel Corporation, and USG Corporation.
A. Background.

On November 1, 2016, NIPSCO filed with the Commission its Verified Petition for (1) approval of and a certificate of public convenience and necessity ("CPCN") for a federally mandated Environmental Compliance Project; (2) authority to recover federally mandated costs incurred in connection with the Environmental Compliance Project; (3) approval of the estimated federally mandated costs associated with the Environmental Compliance Project; (4) authority for the timely recovery of 80% of the federally mandated costs incurred in connection with the Environmental Compliance Project through Rider 787 – Adjustment of Charges for Federally Mandated Costs and Appendix I – Federally Mandated Cost Adjustment Factor (the "FMCA Mechanism"); (5) authority to defer 20% of the federally mandated costs incurred in connection with the Environmental Compliance Project for recovery in NIPSCO’s next general rate case; (6) approval of the specific ratemaking and accounting treatment described herein; (7) approval to depreciate the Environmental Compliance Project according to the depreciation rates approved by the Commission in Cause No. 44688; and (8) approval of ongoing review of the Environmental Compliance Project; all pursuant to Ind. Code § 8-1-8.4-1 et seq., § 8-1-2-19, § 8-1-2-23 and § 8-1-2-42. NIPSCO filed its prepared testimony.

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2 In its Verified Petition, NIPSCO sought a CPCN for projects related to the Environmental Protection Agency’s CCR Rule and ELG Rule. As noted above, the Settlement Terms address only projects for compliance with the CCR Rule, and the term “Environmental Compliance Project,” as used in Paragraphs 1-25 below, refer only to such projects.
and exhibits constituting its case-in-chief on November 23, 2016. The parties filed a Joint
Motion for Agreed Procedural Schedule, which was granted by Docket Entry on
December 13, 2016. NIPSCO Industrial Group, the Indiana Office of Utility Consumer
Counselor, the Citizens Action Coalition of Indiana, Inc., and the Sierra Club all filed their
respective testimony and exhibits on April 3, 2017.

B. Settlement Terms

1. Unless otherwise described in the Settlement Terms set out below, the
Settling Parties agree to the following relief requested by NIPSCO in Cause No. 44872:

(a) Finding that the public convenience and necessity will be served and
issuing to Petitioner a certificate of public convenience and necessity
("CPCN") for a federally mandated compliance project pursuant to Ind.
Code §§ 8-1-8.4-6 and -7;

(b) Determining that the CCR Rule that became effective October 19, 2015 is a
federally mandated requirement as defined by Ind. Code § 8-1-8.4-5;

(c) Finding that NIPSCO is an energy utility as defined by Ind. Code § 8-1-8.4-
3;

(d) Finding that the Environmental Compliance Project is a compliance project
under Ind. Code § 8-1-8.4-2;
(e) Finding that the Environmental Compliance Project will allow NIPSCO to comply directly with the CCR Rule;

(f) Authorizing Petitioner to recover federally mandated costs incurred in connection with the Environmental Compliance Project pursuant to Ind. Code § 8-1-8.4-7 including capital, operation and maintenance ("O&M"), depreciation, taxes, financing and carrying costs, and Allowance for Funds Used During Construction ("AFUDC"), as further described below;

(g) Finding that the costs incurred in connection with the Environmental Compliance Project are federally mandated costs under Ind. Code § 8-1-8.4-4;

(h) Approving the projected federally mandated costs associated with the Environmental Compliance Project pursuant to Ind. Code § 8-1-8.4-7, as further described below;

(i) Authorizing the timely recovery of 80% of the federally mandated costs incurred in connection with the Environmental Compliance Project through the FMCA Mechanism pursuant to Ind. Code § 8-1-8.4-7 as further described below;
(j) Authorizing Petitioner to utilize construction work in progress ("CWIP") ratemaking treatment for the Environmental Compliance Project through the FMCA Mechanism as further described below;

(k) Authorizing Petitioner to accrue AFUDC relating to the Environmental Compliance Project until such time as the individual projects comprising the Environmental Compliance Project are placed into service or receive ratemaking treatment as further described below;

(l) Authorizing NIPSCO to defer post-in service costs of the Environmental Compliance Project, including O&M, depreciation, taxes, financing and carrying costs, and AFUDC until such costs are recognized for ratemaking purposes through the FMCA Mechanism or included for recovery in NIPSCO's base rates in its next general rate case pursuant to Ind. Code § 8-1-8.4-7 as further described below;

(m) Authorizing Petitioner to defer and recover through the FMCA Mechanism any federally mandated costs, including but not limited to, pre-construction costs and all other costs incurred on or after November 1, 2016 (the date of NIPSCO's Verified Petition in this cause) to the extent that such costs are reasonable and consistent with the scope of the Environmental Compliance Project as further described below;
(n) Authorizing Petitioner to defer 20% of the federally mandated costs incurred in connection with the Environmental Compliance Project and authorizing Petitioner to recover in Petitioner’s next general rate case the deferred federally mandated costs pursuant to Ind. Code § 8-1-8.4-7 as further described below;

(o) Authorizing Petitioner to record ongoing carrying charges based on the current overall weighted average cost of capital on the deferred federally mandated costs until the deferred federally mandated costs are included for recovery in Petitioner’s base rates in its next general rate case as further described below;

(p) Approving use of the depreciation rates approved by the Commission in Cause No. 44688 for the assets comprising the Environmental Compliance Project;

(q) Approval to adjust Petitioner’s authorized net operating income to reflect any approved earnings associated with the Environmental Compliance Project for purposes of Ind. Code § 8-1-2-42(d)(3); and

(r) Approval of ongoing review of the Environmental Compliance Project as part of Petitioner’s semi-annual FMCA filings.
2. The Settling Parties agree that NIPSCO should be granted a CPCN in the amount of $168,460,171 for the Remote Bottom Ash Projects portion of the Environmental Compliance Project, which is based upon the amounts included in the Engineering, Procurement, and Construction ("EPC") contract. Additionally, the Settling Parties agree that NIPSCO should be granted a CPCN for the amount of $4,260,583 for incremental costs associated with constructing and/or modifying NIPSCO's landfill to comply with the stricter landfill requirements of the CCR Rule.

3. The Settling Parties agree that NIPSCO should be granted a CPCN for the CCR costs related to the (1) Ground Water Monitoring Project, (2) Material Management Area Project, and (3) Process and Storm Water Pond Project in the amount of $15,750,000, which shall be a total amount applicable to all three (3) projects.

4. The Settling Parties agree that the amounts listed in Paragraphs 2 and 3 above, and only these amounts, shall be not-to-exceed amounts, except upon the occurrence of a Force Majeure Event. To the extent the Commission makes a finding that

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3 For purposes of this Agreement, the term "Force Majeure Event" is defined as including, but not limited to, the following: acts of God; acts of war or terrorism; extended labor dispute resulting in a work stoppage; orders by a government official, government agency, other regulatory authority, or a regional transmission organization, acting under and authorized by applicable law, that directs NIPSCO to halt work on the Environmental Compliance Project or materially change the scope of the Environmental Compliance Project; failure of a permitting authority to issue a necessary permit in a timely fashion where the failure of the permitting authority to act is beyond the control of NIPSCO and NIPSCO has taken all steps available to it to obtain the necessary permit, including, but not limited to: submitting a complete permit application; responding to requests for additional information by the permitting authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the permitting authority; or any causes which are not
NIPSCO has proven a Force Majeure Event has occurred, the Settling Parties waive the right to argue that this Agreement or the not-to-exceed amounts contained herein bar recovery of costs attributable to the Force Majeure Event. However, the Settling Parties expressly reserve all other rights to take positions, including positions related to appropriate cost recovery, in any proceeding related to a petition for recovery of additional costs attributable to the Force Majeure Event.

5. The amounts listed in Paragraphs 2 and 3 above for compliance with the CCR Rule shall be approved subject to the current, ongoing review process in NIPSCO's FMCA proceedings (Cause No. 44340-FMCA-X).

6. With respect to costs to comply with the ELG Rule for operations and maintenance ("O&M") and capital (i.e., the ZLD and Piping Bottom Ash to FGD Projects), the Settling Parties agree that a certificate associated with these projects and such costs will be addressed in a later, related proceeding. Each Settling Party agrees to review the testimony and exhibits of each of its witnesses to identify the portions of testimony and exhibits related to compliance with the ELG Rule. After review and consultation between

within the control of NIPSCO, and which by the exercise of reasonable diligence, NIPSCO is unable to prevent. Upon occurrence of a Force Majeure Event, NIPSCO shall notify the Settling Parties of such occurrence within fourteen (14) business days. Within fourteen (14) business days after the receipt of such notice, the Settling Parties shall confer to discuss, among other things, the nature and expected impact of the Force Majeure Event. If the Settling Parties are unable in good faith to agree that a Force Majeure Event has occurred, NIPSCO shall have the burden of proof as to whether such event constitutes a Force Majeure Event.
and among the Settling Parties, each Settling Party will file with the Commission a request to withdraw, without prejudice, all portions of testimony and exhibits related to compliance with the ELG Rule. NIPSCO agrees to provide updates on the status of the ELG Rule and NIPSCO's project estimates proposed for compliance therewith to the Commission and all interested parties in its semi-annual FMCA filings. Consistent with NIPSCO's request in its Verified Petition in this Cause, the Settling Parties agree that costs incurred by NIPSCO for compliance with the ELG Rule between November 1, 2016 and March 31, 2017 (which are currently estimated to be $353,850) should be deferred for accounting purposes. With respect to the costs incurred between November 1, 2016 and March 31, 2017, NIPSCO shall be authorized to apply carrying costs to these deferred amounts as provided in Paragraph 15 below. The Settling Parties further agree that up to $3.3 million of costs incurred by NIPSCO for compliance with the ELG Rule (including, but not limited to, costs related to pilot testing of technological options and other pre-construction engineering costs) on and after April 1, 2017 through December 31, 2019 should be deferred for accounting purposes. NIPSCO shall not apply any carrying charges to the portion of deferred costs incurred April 1, 2017 through December 31, 2019.

7. The Settling Parties agree that NIPSCO will be authorized to recover all reasonable and prudently-incurred O&M costs related to the Environmental Compliance Project, which in 2016 dollars are currently estimated to be $6,951,000 per year.
8. The Settling Parties agree that the amounts included above are exclusive of AFUDC and post-in-service carrying charges. The Settling Parties further agree that NIPSCO will be authorized to accrue and to recover all AFUDC on the construction costs associated with the Environmental Compliance Project until such costs receive either CWIP ratemaking treatment through the FMCA Mechanism, are placed in service, or are otherwise reflected in NIPSCO's base electric rates. AFUDC will be calculated and recorded in accordance with Generally Accepted Accounting Principles. The Settling Parties further agree that NIPSCO will be permitted to accrue and recover post-in-service carrying charges on construction costs associated with the Environmental Compliance Project after the portion of the project associated with those costs is placed in service and until such costs are recognized for ratemaking purposes through the FMCA Mechanism or included for recovery in NIPSCO's base rates in its next general rate case pursuant to Ind. Code § 8-1-8.4-7. With respect to this portion of post-in-service carrying charges, NIPSCO shall apply its weighted average cost of capital to such costs, as provided in Paragraph 15 below.

9. The Settling Parties agree that the financing approved in the Commission's November 30, 2016 Order in Cause No. 44796 satisfies the terms of the settlement recently-approved in Cause No. 44688, which requires NIPSCO to finance any projects with estimated costs of $100 million or more with at least 60% debt capital. NIPSCO agrees to finance the costs of the Environmental Compliance Project with at least 60%
10. Based upon the approval NIPSCO received from the Midcontinent Independent System Operator, Inc. in the fourth quarter of 2016, NIPSCO commits to the retirement of Units 7 and 8 of the Bailly Generating Station by May 31, 2018, as provided in its 2016 Integrated Resource Plan.

11. In addition to proposals responsive to the demand-side management ("DSM") requests for proposals ("RFPs") received in May of 2017, NIPSCO agrees to request responding bidders to provide a second set of proposals for consideration at the following incremental savings levels: 168 GWh (gross) for program delivery year 2019, 180 GWh (gross) for program delivery year 2020, and 198 GWh (gross) for program delivery year 2021. Vendor responses, meaning the responses received in May of 2017 and the responses to the second set of proposals, will be evaluated by NIPSCO’s Oversight Board. Excluding low-income program(s), programs responsive to the DSM RFPs, including these second set of proposals, shall be cost-effective. This Paragraph is not intended to and shall not foreclose any Settling Party’s, or any other party’s, rights otherwise available in any future proceeding or filing, or otherwise commit a Settling Party, or any other party, to pursue or approve these, or any other, particular savings levels.
12. As part of its next IRP submission, due on or before November 1, 2019, NIPSCO will evaluate the replacement of the remaining 50% of its coal generation with reasonable generation alternatives, giving consideration to, among other things, alternative fuel choices, demand-side management savings, distributed generation availability, battery and other energy storage technology, and a comprehensive analysis of renewable energy supply options. NIPSCO intends to begin stakeholder dialogue on this IRP by November 1, 2018.

13. NIPSCO agrees to provide updates to the Commission and intervenors in NIPSCO’s semi-annual FMCA proceedings regarding any changes to the federally mandated requirements precipitating the Environmental Compliance Project approved herein. To the extent the need for and/or the scope of any project (or portion of a project) approved in Cause No. 44872 is affected due to changes to the CCR Rule (as determined by a final (i.e., no longer subject to appeal or judicial challenge) rule change, administrative action, or judicial order), NIPSCO shall file a petition to modify the CPCN stipulated hereunder and, pending determination on such petition for modification, agrees not to incur any additional federally mandated costs associated with the portion of the project(s) subject to the modification request, other than those costs necessary to ensure the operability of NIPSCO’s facilities. The Settling Parties expressly reserve all rights to take positions, including positions related to appropriate cost recovery, in any proceeding related to a petition for modification as described in this paragraph. Upon
occurrence of any change to the federally mandated requirements precipitating the Environmental Compliance Project approved herein, NIPSCO shall notify the Settling Parties of such occurrence within fourteen (14) business days. Within fourteen (14) business days after the receipt of such notice, the Settling Parties shall confer to discuss, among other things, the nature and expected impact of the change to the federally mandated requirements.

14. With respect to the twenty percent (20%) of the Environmental Compliance Project costs that will be deferred and recovered by NIPSCO as part of its next general rate case, NIPSCO shall apply its weighted average cost of capital to such costs as permitted under the FMCA Statute as provided in Paragraph 15 below.

15. For purposes of calculating all carrying charges associated with this Agreement, NIPSCO shall apply its weighted average cost of capital to such costs as permitted under the FMCA Statute and agrees to compound carrying charges on such amounts on a semi-annual basis. For purposes of NIPSCO’s FMCA Mechanism, NIPSCO agrees to update the weighted average cost of capital in each FCMA filing to reflect the agreed upon use of debt capital to fund the Environmental Compliance Project and any other debt capital used to fund projects pursuant to the terms of the settlement approved in Cause No. 44688. NIPSCO will also include schedules in such semi-annual FMCA filing that separately identify the costs for the compliance projects associated with
NIPSCO's NERC Compliance Plan (currently pending in Cause No. 44889) and Environmental Compliance Plan (Cause No. 44872) and will, in advance of its next FMCA filing, work with the other Settling Parties and the Commission to provide schedules and work papers in a mutually-agreeable format.

16. The Settling Parties agree that the information filed by NIPSCO in this Cause pursuant to its Motion for Protective Order should be 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 should be held confidential and protected from public access and disclosure by the Commission.

17. Consistent with the Commission's Order in Cause No. 44688, NIPSCO shall allocate all demand-related federally mandated costs associated with the Environmental Compliance Project based on the demand allocators for the FMCA Mechanism set forth in Joint Exhibit B to the Stipulation and Settlement Agreement approved in Cause No. 44688. All energy-related federally mandated costs will be allocated based upon the energy attributable to each of the Company's rate schedules based upon amounts included in NIPSCO's most recent general electric rate case. In the event NIPSCO seeks to modify the allocations percentages to reflect significant migrations of customers amongst the various rate classes in order to prevent any unintended consequences of the migration of customers and to reasonably allocate their estimated share of the revenue
requirement, NIPSCO agrees to identify such modifications in pre-filed testimony and provide supporting testimony, and the Settling Parties reserve the right to conduct discovery and raise issues with any proposed modification.

C. **Procedural Aspects and Presentation of the Agreement.**

18. The Settling Parties agree to jointly present this Agreement to the Commission for its approval in this proceeding, and agree to assist and cooperate in the preparation and presentation of supplemental testimony as necessary to provide an appropriate factual basis for such approval.

19. If the Agreement is not approved in its entirety by the Commission, the Settling Parties agree that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding. Moreover, the concurrence of the Settling Parties with the terms of this Agreement is expressly predicated upon the Commission's approval of the Agreement in its entirety without any material modification or any material condition deemed unacceptable by any Party. If the Commission does not approve the Agreement in its entirety, the Agreement shall be null and void and deemed withdrawn, upon notice in writing by any Settling Party within fifteen (15) business days after the date of the Final Order that any modifications made by the Commission are unacceptable to such party. In the event that the Agreement is withdrawn, the Settling Parties will request that an Attorneys' Conference be convened.
to establish a procedural schedule for the continued litigation of this proceeding.

20. The Settling Parties agree that this Agreement and each term, condition, amount, methodology and exclusion contained herein reflects a fair, just and reasonable resolution and compromise for the purpose of settlement, and is agreed upon without prejudice to the ability of any party to propose a different term, condition, amount, methodology or exclusion in future proceedings. As set forth in the Order in Re Petition of Richmond Power & Light, Cause No. 40434, p. 10, the Settling Parties agree and ask the Commission to incorporate as part of its Final Order that this Agreement, or the Order approving it, not be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues. This Agreement is solely the result of compromise in the settlement process. Each of the Settling Parties hereto has entered into this Agreement solely to avoid further disputes and litigation with the attendant inconvenience and expenses.

21. The Settling Parties stipulate that the evidence of record presented in this Cause constitutes substantial evidence sufficient to support this Agreement and provide an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed. The Settling Parties agree to the admission into the evidentiary record of this Agreement,
along with testimony supporting it, without objection.

22. The undersigned represent and agree that they are fully authorized to execute this Agreement on behalf of their designated clients who will be bound thereby.

23. The Settling Parties shall not appeal the agreed Final Order or any subsequent Commission order as to any portion of such order that is specifically implementing, without modification, the provisions of this Agreement, and the Settling Parties shall not support any appeal of the portion of such order by a person not a party to this Agreement.

24. The provisions of this Agreement shall be enforceable by any Settling Party before the Commission or in any court of competent jurisdiction.

25. The communications and discussions during the negotiations and conferences which produced this Agreement have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be privileged.

ACCEPTED AND AGREED this 9th day of June, 2017.
Northern Indiana Public Service Company.

[Signature]

Timothy R. Caister
Vice President, Regulatory Policy
Indiana Office of Utility Consumer Counselor

[Signature]

-20-
NIPSCO Industrial Group

[Signature]

Joseph P. Rompola
Citizens Action Coalition of Indiana, Inc.

[Signature]

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