ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC FOR APPROVAL OF ITS PROPOSED 2022-2023 ENERGY EFFICIENCY PLAN FOR ELECTRIC SERVICE AND ASSOCIATED RATEMAKING AND ACCOUNTING TREATMENT, INCLUDING TIMELY RECOVERY THROUGH NIPSCO'S DEMAND SIDE MANAGEMENT ADJUSTMENT MECHANISM OF ASSOCIATED COSTS (INCLUDING PROGRAM OPERATING COSTS, LOST REVENUES, AND FINANCIAL INCENTIVES), IN ACCORDANCE WITH INDIANA CODE SECTION 8-1-8.5-10, AND FOR AUTHORITY TO DEFER PROGRAM COSTS.	)	CAUSE NO. 45456 APPROVED: SEP 01 2021

ORDER OF THE COMMISSION

Presiding Officers:
Stefanie N. Krevda, Commissioner
David E. Ziegner, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On November 18, 2020, Northern Indiana Public Service Company LLC ("Petitioner" or "NIPSCO") filed a Verified Petition and its supporting direct testimony and attachments with the Indiana Utility Regulatory Commission ("Commission") seeking approval of its 2022–2023 Electric Energy Efficiency ("EE") Plan ("2022–2023 Plan" or "Plan"). NIPSCO filed certain corrections to its direct testimony on January 8, 2021.

On November 20, 2020, Citizens Action Coalition of Indiana, Inc. ("CAC") filed a Petition to Intervene, which was granted by docket entry on December 3, 2020.

On April 16, 2021, NIPSCO filed a Notice of Settlement and Request to Convert Evidentiary Hearing to Settlement Hearing with the Commission, notifying the Commission that NIPSCO, the Indiana Office of Utility Consumer Counselor ("OUCC"), and the CAC (collectively, "the Parties") had reached a settlement in principle of all issues in this Cause.

On May 12, 2021, NIPSCO filed the Stipulation and Settlement Agreement ("Settlement Agreement") reached among the Parties. On June 2, 2021, NIPSCO filed testimony in support of the Settlement Agreement and on June 3, 2021, both the OUCC and CAC filed testimony in support of the Settlement Agreement.

On June 22, 2021, NIPSCO filed its response to a July 18, 2021 Docket Entry requesting additional information.

The Commission set this matter for an evidentiary hearing to be held on June 24, 2021, at 1:30 p.m. in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. On June 18, 2021, a docket entry was issued advising that due to the ongoing COVID-19 related public health emergency, and with the agreement of the parties, the hearing would be conducted via WebEx videoconferencing and providing related participation information. NIPSCO, the OUCC, and CAC each appeared by counsel and participated in the hearing, and the testimony and exhibits of the Parties were admitted into the record without objection.

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

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given as required by law. NIPSCO is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and an "electricity supplier" within the meaning of Ind. Code § 8-1-8.5-10. Under Ind. Code §§ 8-1-8.5-10, 8-1-2-42(a), and 170 IAC 4-6, the Commission has jurisdiction over NIPSCO's electric EE programs and associated cost recovery. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Organization and Business. NIPSCO is a limited liability company organized and existing under the laws of the state of Indiana with its principal office and place of business in Merrillville, Indiana. Petitioner has both a gas division and an electric division. NIPSCO provides electric utility service to approximately 473,000 customers in 20 counties in northern Indiana. NIPSCO renders such electric utility service by means of utility plant, property, equipment, and related facilities owned, leased, operated, managed, and controlled by it, which are used and useful for the convenience of the public in the production, treatment, transmission, distribution, and sale of electricity.

3. Recent Background. On September 12, 2018, the Commission issued an Order in Cause No. 45011 ("45011 Order") approving a Stipulation and Settlement Agreement among the Parties for approval of NIPSCO's proposed EE programs for the period January 1, 2019 through December 31, 2021 ("Current Plan") for electric service. The 45011 Order approved: (1) EE goals, (2) programs to achieve those goals, (3) program budgets and costs, (4) evaluation, measurement, and verification ("EM&V") procedures for the programs, and (5) associated ratemaking and accounting treatment. The ratemaking and accounting treatment included: (1) timely recovery through NIPSCO's Rider 783 of program operating costs, (2) recovery of lost revenues for the earlier of the life of the measure, four years, or a new base rate order, (3) financial incentives, and (4) authority to defer costs and subsequently recover the over- and under-recoveries of projected program operating costs and lost revenues pending reconciliation in subsequent periods until such costs are reflected in Petitioner's retail electric rates.

On December 4, 2019, the Commission issued an Order in NIPSCO's general rate case, Cause No. 45159, approving, among other things, NIPSCO's Rider 883 – Demand Side Management Adjustment Mechanism and Appendix G – Demand Side Management Adjustment Mechanism (DSMA) Factor ("DSMA Mechanism"). The Order also approved new allocators and NIPSCO's proposal to reset lost revenues in its DSMA Mechanism, effective upon the implementation of new base rates (January 2020), and to eliminate lost revenues attributable to all EE measures installed on or before December 31, 2017.

4. **Relief Requested.** NIPSCO requests Commission approval of its 2022–2023 Plan as provided for in the Settlement Agreement, which includes: (1) EE goals, (2) EE programs to achieve the EE goals, (3) program budgets and costs, (4) procedures for independent EM&V of EE programs included in the Plan, (5) allocation and recovery of all associated program costs on a timely basis through NIPSCO's DSMA Mechanism, including recovery of financial incentives and lost revenues as provided for in the Settlement Agreement; and (6) authority to defer and recover any over- and under-recoveries of costs associated with the Plan. Petitioner also requests Commission approval to begin implementation of the Plan as of January 1, 2022. Additionally, Petitioner requests Commission approval to continue using its existing Oversight Board ("OSB") to assist in the administration of the Plan, including certain budget, design, and implementation flexibility as provided for in the Settlement Agreement.

5. **The Settlement Agreement.** The Settlement Agreement entered into among the Parties addresses all aspects of NIPSCO's proposed 2022–2023 Plan. Regarding the EE programs, the Settlement Agreement states that NIPSCO should be authorized to implement the various electric EE programs described in NIPSCO's case-in-chief testimony, specifically:

Residential Programs:

- Home Rebates
- Lighting Products
- Home Energy Analysis
- Appliance Recycling
- School Education
- Multifamily Direct Install
- Home Energy Report
- Residential New Construction
- Home Life EE Calculator
- Income Qualified Weatherization ("IQW")
- Residential Online Marketplace

Commercial & Industrial ("C&I") Programs:

- Prescriptive
- Custom
- C&I New Construction
- Small Business Direct Install
- C&I Online Marketplace
- Smart Energy Engagement

The Settlement Agreement also provides that the program budgets and program costs for the 2022–2023 Plan are estimated to be as set forth in Petitioner's case-in-chief testimony and the chart below:

	Residential	C&I	Total
Vendor Implementation Cost	$17,485,735	$25,950,767	$43,436,502
NIPSCO Administration	$874,288	$1,297,539	$2,171,827
NIPSCO Marketing	$437,145	$648,767	$1,085,912
EM&V	$874,288	$1,297,539	$2,171,827
Total Program Budget	$19,671,456	$29,194,612	$48,866,068
Lost Revenues	$7,169,356	$10,643,611	$17,812,967
Financial Incentives	$1,661,389	$7,773,210	$9,434,599
Total Program Costs	$28,502,201	$47,611,433	$76,113,634

Per the Settlement Agreement, these program budgets are subject to certain budget flexibility. Specifically, the Parties have agreed that NIPSCO, with OSB approval, should be allowed to increase any individual program funding by up to 20% of the total program budget, even if this exceeds the overall 2022–2023 Plan budget approved by the Commission ("flex funding"). Additionally, the Settlement Agreement provides that NIPSCO may roll over unspent budget amounts from one program year to the next within the 2022–2023 Plan, with a corresponding increase to the savings goal. Also, to the extent NIPSCO has unspent budget amounts available at the conclusion of the 2021 program year, NIPSCO may use those unspent budget amounts in the 2022 program year, for the purpose of paying program expenses related to the 2021 program year. The savings goal for the 2022 program year will be increased accordingly. Finally, the Settlement Agreement provides that NIPSCO will continue to work with its OSB and its vendor(s) to use the flex funding to increase savings as available, appropriate, and cost effective.

Under the Settlement Agreement, the savings goals for the agreed upon 2022–2023 Plan are those contained in Petitioner's case-in-chief testimony as follows:

*Savings goals in megawatt-hours	2022	2023	2022–2023
Residential Programs	46,239	46,887	93,126
C&I Programs	92,146	93,761	185,907
Total Programs	**138,385**	**140,648**	**279,033**

The Parties agree these programs, budgets, and savings goals are cost effective, reasonably achievable, and consistent with NIPSCO's 2018 Integrated Resource Plan ("IRP"). Further, the Parties agree these programs are designed to achieve an optimal balance of energy resources in NIPSCO's service territory.

Per the Settlement Agreement and Petitioner's case-in-chief testimony, NIPSCO will implement its proposed independent EM&V procedures, which consist of planning, identifying gross and net savings, conducting process and impact evaluations, and benchmarking, all as summarized in more detail in Petitioner's Exhibit 2, Attachment 2-F.

The Settlement Agreement and Petitioner's case-in-chief testimony provide that the OSB shall continue to function in its current capacity. This includes implementing the increased budget flexibility described above, as well as designing and implementing new programs so long as they are cost effective and consistent with the overall 2022–2023 Plan. The Settlement Agreement states that to the extent measures are added to an existing program to achieve additional savings, those measures, as a group, must be cost effective outside of the total program.

Regarding program design, the Settlement Agreement provides that NIPSCO will reduce the expected useful life ("EUL") for non-general service lamps ("GSLs") to 10 years. Additionally, should the Indiana Technical Resource Manual or other guidance/regulations be updated to take effect during the term of the 2022–2023 Plan, the baseline for the Residential Lighting program will be updated on a going-forward basis as of the effective date for EM&V and planning purposes.

The Settlement Agreement states that in addition to other programs identified by the OSB in working with the program vendor, the OSB will work in good faith to explore new programs and initiatives and expand existing programs and initiatives to achieve greater savings levels. NIPSCO and the OSB agree to specifically explore and work to implement: (1) a strategic energy management program targeted at kindergarten through twelfth grade schools; (2) additional measures, marketing, and/or other initiatives targeted to agricultural customers, either through an existing program or a standalone program; and (3) distributor midstream incentive mechanisms for EE programs, including residential measures such as heating, ventilation, and air conditioning. Further, NIPSCO will make a good faith effort to expand other measures and programs, with a focus on residential measures and programs. NIPSCO agreed to not increase spending on Residential Behavioral beyond the budget proposed in its case-in-chief, or the revised Behavioral program vendor budget, whichever is less. However, the Settlement Agreement provided that NIPSCO will still count additional Residential Behavioral savings achieved by the vendor.

The Settlement Agreement further provides that NIPSCO and its vendor will continue to evaluate the costs of the current program design, and NIPSCO will provide an accounting of such cost savings to the OSB and indicate plans to direct those cost savings toward procurement of more energy savings. To the extent savings are identified, the Parties agree a portion of those funds may be used for marketing and start-up of new programs to improve the uptake of those new programs by customers. Further, any costs associated with the initial marketing and start-up of new programs will not be included in the cost-benefit test.

Regarding financial incentives, the Settlement Agreement provides that NIPSCO should be authorized to recover a financial incentive for each of its programs (except the IQW program) as shown below. The financial incentive will be calculated as a shared savings incentive based on the net present value ("NPV") of the Utility Cost Test ("UCT") net benefits at the program level, to be recovered on a timely basis through NIPSCO's DSMA Mechanism, as follows:

Achievement (% of Gross Energy Savings Target (MWh) – Program)	Incentive Level (NPV of net benefits of UCT)
110%	9%
100 – 109.99%	7%
90 – 99.99%	6%
80 – 89.99%	5%
0 – 79.99%	0%

The Settlement Agreement states that for purposes of determining financial incentives, NIPSCO will use an avoided generation capacity cost rate of $75/ kilowatt-year ("kW-year") grossed up for the reserve margin, which is in line with the statewide average and an avoided transmission and distribution ("T&D") cost rate of $20/kW-year. However, for purposes of program design, NIPSCO will continue to use its avoided generation capacity cost rate of $121.07/kW-year and the avoided T&D cost of $33.16/kW-year consistent with its case-in-chief. The Settlement Agreement further provides that NIPSCO will reduce the power price forecast used for the avoided energy cost in calculating financial incentives beginning in 2026 by $4.00/megawatt hour ("MWh") but will continue to use the original numbers contained in its case-in-chief for program design. For purposes of calculating financial incentives, the Settlement Agreement states that NIPSCO will reduce the EUL for non-GSLs to seven years.

The Settlement Agreement provides that all other aspects of NIPSCO's Verified Petition and case-in-chief testimony remains the same as proposed by NIPSCO. For example, regarding recovery of program operating costs, the case-in-chief provides for NIPSCO's recovery of its program operating costs—including EM&V costs, administrative costs, and marketing costs—on a timely basis through NIPSCO's existing DSMA Mechanism.

NIPSCO's case-in-chief provides for recovery of lost revenues resulting from the Plan on a timely basis through NIPSCO's DSMA Mechanism, for the lesser of the life of the measure or four years. However, should NIPSCO's base rates be modified in such a manner that the lost revenues associated with measures installed pursuant to the relief granted in this Cause are considered when establishing base rates, then NIPSCO's collection of lost revenues related to those specific measures will no longer be recovered through the DSMA Mechanism.

NIPSCO's case-in-chief provides that program operating costs and the financial incentives should be allocated on a per kilowatt-hour basis based on the 12-month kilowatt-hour sales forecast for each Rate Schedule. Additionally, lost revenues will be forecast and allocated based on projected energy savings in NIPSCO's energy forecast (with the exception of the Home Energy Report Program, which is forecast based on customer count).

NIPSCO's case-in-chief provides for the deferral and subsequent recovery of the over- and under-recoveries of projected program operating costs and lost revenues as well as actual financial incentives through the DSMA Mechanism, pending reconciliation in subsequent periods. Further, NIPSCO may defer any program operating costs incurred in implementing the 2022–2023 Plan prior to the date of the Commission's Order in this Cause.

NIPSCO's case-in-chief provides that NIPSCO's existing DSMA Mechanism should be used on an annual basis for the recovery of program operating costs, lost revenues, and financial incentives, on a forecasted and reconciled basis, except for financial incentives, which will be collected after earned rather than collected on a forecasted basis.

Finally, NIPSCO will submit the following reports to the Commission with respect to the 2022–2023 Plan: (1) quarterly scorecards within 60 days of the end of each relevant period, with the fourth quarter scorecard to include information for the full year; and (2) annual EM&V results no later than July 15 of each year.

6. <u>Evidence in Support of the Settlement Agreement</u>.

A. <u>Petitioner's Case-in-Chief Testimony and Testimony in Support of the Settlement Agreement</u>. Alison Becker, Manager of Regulatory Policy for NIPSCO, addressed NIPSCO's proposed EE goals, programs to achieve those goals, program budgets and costs, and EM&V procedures for the programs. In addition, she generally addressed the issues of lost revenue recovery and financial incentives, described the cost recovery mechanism for the Plan costs, and summarized the reasonableness of the proposed Plan.

Ms. Becker described NIPSCO's 2022–2023 gross EE goals and explained that they were based on the cost-effective program savings potential as determined in NIPSCO's 2018 DSM Savings Update Report ("DSM Savings Update"), in conjunction with NIPSCO's 2018 IRP. She reviewed the detailed process and objectives of NIPSCO's DSM Savings Update, and noted the goals were based on the cost-effective program savings potential identified in NIPSCO's 2018 IRP. Ms. Becker testified that, in addition to the DSM Savings Update, NIPSCO completed its own analysis that indicated the goals are achievable in a cost-effective manner. She concluded that all the bundles selected by the model in NIPSCO's 2018 IRP are included in the 2022–2023 Plan. In addition, while NIPSCO ultimately elected to include additional bundles and EE goals to offer a robust portfolio of customer options, she testified the Plan is consistent with the findings of the 2018 IRP, with programs designed to aid NIPSCO in achieving an optimal balance of energy resources in NIPSCO's service territory.

Ms. Becker also testified that NIPSCO has taken steps to allocate and assign costs associated with a specific EE program to the class or classes of customers that are eligible to participate in that program.

According to Ms. Becker, NIPSCO proposes to maintain its current EM&V process as most recently approved in the 45011 Order. She testified that, to provide the Commission with the ability to monitor the Plan's progress, NIPSCO proposes to file its annual EM&V results no later than July 15 of each year. Additionally, consistent with the 45011 Order and current practices, NIPSCO proposes to continue filing scorecards quarterly within 60 days of the end of each relevant period, with the fourth quarter scorecard including information for the full year as well as being updated to include information related to the EM&V of the programs.

Ms. Becker testified that NIPSCO's proposed Plan is consistent with both the 2019 State Utility Forecasting Group ("SUFG") report and NIPSCO's 2018 IRP. Regarding NIPSCO's IRP, Ms. Becker explained that NIPSCO evaluated potential demand-side resources on a consistent and comparable basis with supply-side resources to provide safe, reliable, and cost-effective service to customers. Similar to developing assumptions for supply-side resources, NIPSCO developed assumptions for operating characteristics and associated costs for each of the demand-side resource options. Both the supply-side and demand-side resources were modeled as options available to the optimization model. Ms. Becker testified that, for purposes of modeling EE programs in the 2018 IRP, EE measures were grouped into bundles according to each measure's cost per lifetime kilowatt-hour saved. She stated all the bundles selected by the 2018 IRP were included in the 2022–2023 Plan.

Ms. Becker testified that no undue or unreasonable preference to any customer class will result from the implementation of the Plan because the Plan is specifically designed and implemented to ensure that each class pays for programs they benefit from, and all customers receive benefits from decreased energy usage. Ms. Becker also discussed the estimated monthly bill impact of the Plan on residential rates, stating that the typical rate impact for a residential customer using 1,000 kilowatt hours of energy monthly would be $4.66.

Ms. Becker also testified that NIPSCO sought comments from customers and other stakeholders concerning the adequacy and reasonableness of the Plan. She pointed to the involvement of the OSB as well as the fact that NIPSCO provided the proposed Plan on its website for public review and comment.

Ms. Becker addressed the appropriateness of recovering lost revenues and financial incentives. She stated that recovery of lost revenues encourages EE programs, keeps the utility whole from a fixed-cost recovery perspective, and avoids imposing a penalty on the utility in exchange for the pursuit of state energy policy goals. She noted that Indiana law allows a utility to receive reasonable financial incentives that encourage implementation of cost-effective EE programs or that eliminate or offset the regulatory or financial bias against EE programs or in favor of supply-side resources. Ms. Becker testified that the 2022–2023 Plan is consistent with the settlement leading to approval of the Current Plan in the 45011 Order. She also confirmed that free-riders are excluded from the calculations of both financial incentives and lost revenues.

Ms. Becker also testified that the Plan will not have an adverse impact on small businesses engaged in the design, sale, supply, installation, or servicing of demand side management ("DSM") measures. If anything, Ms. Becker testified, the Plan will positively impact vendors and small businesses in these areas.

As for the Settlement Agreement, Ms. Becker testified that, in many respects, the Settlement Agreement is consistent with NIPSCO's proposed 2022–2023 Plan. However, she noted three material areas where the Settlement Agreement differs from NIPSCO's original proposed Plan: (1) program design; (2) budget flexibility; and (3) financial incentives. With respect to program design, the Settlement Agreement reduced the EUL for non-GSLs from 15 to 10 years and describes efforts to explore new programs and initiatives in certain areas. With respect to budget flexibility, the Settlement Agreement authorizes NIPSCO to increase individual program budget flexibility up to 20% (up from 10%). Finally, regarding financial incentives, the Settlement Agreement authorizes NIPSCO to use modified avoided capacity costs and reduced EULs for certain lighting measures. Specifically, NIPSCO has agreed to use an avoided generation capacity cost rate of $75/kW-year grossed up for the reserve margin and an avoided T&D cost rate of $20/kW-year. NIPSCO also agreed to reduce the power price forecast used for the avoided energy cost in calculating financial incentives beginning in 2026 by $4.00/MWh. Ms. Becker also stated that for purposes of calculating financial incentives, NIPSCO agreed to reduce the EUL for non-GSLs to seven years.

Ms. Becker testified that the Settlement Agreement contains EE goals, programs to achieve those goals, program budgets, program operating costs, and independent EM&V procedures as required by Ind. Code § 8-1-8.5-10. Further, the Settlement Agreement is supported by NIPSCO's case-in-chief testimony and attachments which address: projected changes in consumption; a cost and benefit analysis of the Plan (including the likelihood of achieving the goals); an explanation of how the Plan is consistent with NIPSCO's 2018 IRP; proposed procedures to independently evaluate, measure, and verify the results of the programs; a demonstration of no undue or unreasonable preference to any customer class; customer and stakeholder comments; and the potential effect of the Plan on customer electric rates and bills. Additionally, the Settlement Agreement addresses and provides for the opportunity to recover lost revenues and receive financial incentives to encourage implementation of the programs and mitigate financial bias against DSM programs as compared to supply-side options.

Ms. Becker concluded the 2022–2023 Plan envisioned by the Settlement Agreement is reasonable because it provides for implementation of cost-effective programs for all major customer classes, and it will provide benefits to customers who participate as well as to those who do not. The Plan also includes programs selected by NIPSCO's 2018 IRP as well as additional cost-effective bundles to provide a robust portfolio of cost-effective programs.

Robert Sears, Director of Regulatory Policy for NIPSCO, testified about NIPSCO's current electric EE programs and the proposed 2022–2023 Plan, specifically: EE goals, programs to achieve those goals, program budgets and program costs, and EM&V procedures. Mr. Sears provided information about the Plan's EE goals and detailed descriptions of the proposed programs in the Plan. He identified NIPSCO's proposed program budgets and costs and explained how they were determined based on the DSM Savings Update. He also provided more detail about NIPSCO's proposal for lost revenue recovery and its initial proposal for the opportunity to earn financial incentives. Regarding EM&V, Mr. Sears provided a detailed description of the EM&V process and discussed NIPSCO's vendor selection process for independent EM&V.

Richard Morgan, President of Morgan Marketing Partners, LLC, testified concerning the cost benefit analyses of the proposed programs included in the 2022–2023 Plan. Mr. Morgan testified that his analysis considered the UCT, the Total Resource Cost ("TRC") test, the Ratepayer Impact Measure ("RIM") test, and the Participant test. He explained that the proposed programs, both individually and as analyzed in residential and C&I portfolios, passed both the UCT and the TRC tests. He stated that the DSMore cost analysis tool was used to calculate cost effectiveness for the programs.

Mr. Morgan opined that NIPSCO is likely to achieve the EE goals of the programs included in the Plan given NIPSCO's history of successful programs and the similarity to other successful utility programs. He also testified that the Plan considers the change in customer consumption of electricity resulting from the Plan in two ways. The first is the savings the participant sees from making the efficiency improvements, as shown in the Participant test scores. The results show that in all cases the participant saves more than they invest in the efficiency improvements. The second way NIPSCO considers the projected change in consumption is through consideration of savings from the program in the IRP modeling. He noted that the Plan is cost effective and will result in a gross energy savings of approximately 279,033 MWh and a demand reduction of approximately 103 megawatts over the 2-year period.

Mr. Morgan also testified concerning the bill impact. He noted that, because all the programs passed the Participant test, participants will see direct savings in bill reductions from the EE changes they perform due to the program. Additionally, he noted that the potential impact of the Plan on non-participants, as shown by the RIM test, is less than 1.0, which indicates that rates may increase over the analysis period. However, he noted this is typical for EE programs. In addition, as demonstrated by the 2018 IRP, he stated EE is often a least cost option, which reduces customer rates over the long term. Accordingly, he concluded the proposed Plan is both cost effective and achievable.

B. <u>The OUCC's Testimony in Support of the Settlement Agreement</u>. John Haselden, Senior Utility Analyst in the Electric Division for the OUCC, testified in support of the Settlement Agreement. He summarized three issues in the Settlement Agreement: (1) lighting; (2) budget flexibility; and (3) financial incentives and explained the benefits of the Settlement Agreement. With respect to lighting, Mr. Haselden stated that retaining GSL LEDs in direct install programs guarantees those bulbs are replacing less-efficient incandescent or halogen bulbs, and that reducing the EUL for GSL LEDs to two years significantly reduces the associated lost revenues. Regarding financial incentives, Mr. Haselden explained that NIPSCO will continue using a shared savings mechanism, while compromising on EULs for lighting measures and avoided costs. For program design, avoided energy and capacity costs will be as NIPSCO proposed in its case-in-chief. However, for purposes of calculating financial incentives, NIPSCO will use a $75/kW-year avoided generation capacity cost rate grossed up for the reserve margin and a $20/kW-year avoided T&D cost rate. Mr. Haselden stated NIPSCO will also reduce the EUL for non-GSLs to seven years for purposes of calculating financial incentives, which will result in ratepayer savings.

Mr. Haselden explained an additional benefit of the Settlement Agreement addressed the OUCC's concerns with including the impact of the carbon price when calculating financial incentives. He testified the Settlement Agreement states there will be a $4/MWh reduction in the avoided energy cost beginning in 2026 when calculating financial incentives, resulting in ratepayer savings.

C. <u>CAC's Testimony in Support of the Settlement Agreement</u>. Kerwin Olson, Executive Director of the CAC, also testified in support of the Settlement Agreement. Mr. Olson described material topics of the Settlement Agreement, including programs, budgets, savings goals, budget flexibility, and the opportunity to earn financial incentives. He stated CAC's support for NIPSCO's EE savings goal, which represents approximately 0.9% of total projected retail sales, and if opt-out sales are excluded, the savings goal represents approximately 1.7% of eligible retail sales. Mr. Olson testified the savings goal and Settlement Agreement, which includes a commitment to new program initiatives and the utilization of budget flexibility funding, are reasonable.

Mr. Olson commented on CAC's involvement with NIPSCO's development of its 2024-2044 DSM market potential study, noting the continued collaboration among NIPSCO, its vendor, and the OSB. Mr. Olson also expressed CAC's support for the use of strategic energy management programs as set forth in the Settlement Agreement, which calls on NIPSCO and the OSB to explore and work to implement such programs targeted at kindergarten through 12th grade schools. Additionally, Mr. Olson supported the Settlement Agreement's provisions to explore and implement additional measures, marketing, and/or other initiatives targeted to agricultural customers. Finally, Mr. Olson expressed CAC's support of the Settlement Agreement with respect to exploring distributor midstream incentive mechanisms.

7. **<u>NIPSCO's Docket Entry Response</u>.** In its Response to Commission's June 18, 2021 Docket Entry, NIPSCO agreed to file the following reports with the Commission:

1. Quarterly scorecards for its 2022–2023 EE Plan within 30 days of the end of each quarter, and the scorecard with EM&V results to be filed no later than June 30;

2. Annual EM&V results no later than July 15 of each year;

3. Compliance filings to be filed as stand-alone documents under the associated plan filing; and

4. Annual tracker filings filed no later than July 15.

In its Docket Entry response, NIPSCO explained that should the Commission determine that the scorecard with final EM&V results be filed by June 30, it will likely not reflect the actual costs of EM&V for a given year because the vendor invoices for those costs following presentation of the EM&V results to the OSB after June 30. As such, NIPSCO explained the scorecard will have a minor disconnection between the actual costs and the reported costs.

Additionally, regarding EM&V annual filings, NIPSCO explained that it intended to provide comments to the Commission as part of the continuing Improving Procedural Efficiencies ("IPE") process. NIPSCO requested that it be allowed to maintain an EM&V timeline consistent with its past practice until the Commission concludes the IPE process. While reserving its right to provide a full response in its IPE comments, NIPSCO did explain why it believes the filing of annual EM&V by April 30 is problematic.

8. **<u>Discussion and Commission Findings</u>.** 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. Pub. Serv. 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 1-1.1-17(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, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

The Parties request approval of the unanimous Settlement Agreement, including approval of NIPSCO's 2022–2023 Plan and authority for NIPSCO to recover program costs, lost revenues, and financial incentives associated with the Plan through its DSMA Mechanism, as outlined in the

Settlement Agreement and in accordance with Ind. Code § 8-1-8.5-10 ("Section 10") and 170 IAC 4-8 ("DSM Rules").

The Commission has developed a regulatory framework that allows an electric utility to meet long-term resource needs with both supply-side and demand-side resource options in a least-cost manner. As part of its IRP, an electric utility must consider alternative methods of meeting future demand for electric service, including a comprehensive array of demand-side measures that provide an opportunity for all ratepayers to participate in DSM, including low-income residential ratepayers. The DSM Rules were specifically designed to assist the Commission in its administration of the Utility Powerplant Construction Act, Ind. Code ch. 8-1-8.5, and to facilitate increased use of DSM as part of the utility resource mix. This regulatory framework acknowledges the possibility of financial bias against DSM, recognizes the need to evaluate the extent of any bias, and provides ways for the Commission to eliminate any bias through adoption of a package of cost recovery and incentive mechanisms designed to facilitate the use of DSM to meet the long-term resource needs of customers.

Ind. Code ch. 8-1-8.5, the statutory authority for both the Commission's IRP and DSM Rules for electric utilities, establishes a "least cost" standard for issuances of certificates of public convenience and necessity prior to construction of electric generation facilities. We have previously defined "least cost planning" as a "planning approach which will find the set of options most likely to provide utility services at the lowest cost once appropriate service and reliability levels are determined." *PSI Energy, Inc.*, Cause No. 42145, at 4 (IURC Dec. 19, 2002) (quoting *S. Ind. Gas & Elec. Co.*, Cause No. 38738, at 5 (IURC Oct. 25, 1989)). As such, public utilities are to exercise reasonable judgment as to how best to meet the obligation to serve within the context of the "least cost" standard. *PSI Energy, Inc.*, Cause No. 39175, at 3-4 (IURC May 13, 1992).

Section 10 requires electricity suppliers, such as NIPSCO, to file, not less than once every three years, a plan that includes EE goals, EE programs to achieve the goals, program budgets and program costs, and EM&V procedures that must include independent EM&V. Upon submittal of a plan, the Commission is required to consider ten factors in determining the overall reasonableness of a plan. If the Commission finds a plan to be reasonable in its entirety, the Commission shall: (1) approve the plan in its entirety, (2) allow the electricity supplier to recover all associated program costs on a timely basis through a periodic rate adjustment mechanism, (3) allocate and assign costs associated with a program to the class or classes of customers that are eligible to participate in the program, and (4) allow recovery of reasonable financial incentives and lost revenues. If the Commission finds the plan is not reasonable because costs associated with one or more programs included in the plan exceed the projected benefits of the program(s), the Commission may exclude the program(s) and approve the remainder. And, if the Commission finds the plan is not reasonable in its entirety, then the Commission's order shall set forth the reasons for its determination and the electricity supplier shall submit a modified plan within a reasonable time.

It is against the backdrop of the Commission's DSM Rules and Section 10 that we consider NIPSCO's Plan of EE programs, ratemaking proposals, and accounting treatment as agreed upon by the Parties in the Settlement Agreement.

A. Section 10 - Presentation of a Plan. The evidence is uncontroverted that NIPSCO is an electricity supplier as defined by Section 10(a) and that it has made a submission under Section 10(h) seeking approval of a proposed plan prior to the end of calendar year 2020. Based on the evidence presented as discussed further below, we find that NIPSCO's 2022–2023 Plan satisfies the requirements of Section 10(h).

i. EE Goals. Section 10(c) specifically defines "energy efficiency goals" as,

> . . .all energy efficiency produced by cost effective plans that are:
> (1) reasonably achievable;
> (2) consistent with an electricity supplier's integrated resource plan; and
> (3) designed to achieve an optimal balance of energy resources in an electricity supplier's service territory.

NIPSCO's proposed EE savings goal for 2022–2023 represents approximately 0.9% of total projected retail sales, and if opt-out sales are excluded, the savings goal represents approximately 1.7% of eligible retail sales. These projections do not include the incremental cost-effective savings that can be achieved through the initiatives outlined in the Settlement Agreement. NIPSCO witness Morgan supported the reasonable achievability of the Plan's EE goals, and offered his opinion that NIPSCO should be able to successfully meet its goals with its proposed Plan. Ms. Becker supported the consistency of the Plan with NIPSCO's 2018 IRP and described the steps taken by NIPSCO to treat demand-side resources on a level playing field with supply-side resources in its integrated resource planning process. Specifically, the evidence demonstrates that all the bundles selected by the model in NIPSCO's 2018 IRP are included in the Plan. In addition, while NIPSCO ultimately elected to include additional bundles and EE goals to offer a robust portfolio of customer options, the Plan is consistent with the findings of its 2018 IRP and contains programs designed to aid NIPSCO in achieving an optimal balance of energy resources in its service territory. The Parties also agree that NIPSCO's proposed energy savings goals comply with Section 10(c).

Under the Settlement Agreement, NIPSCO proposes EE goals to be achieved through its Plan that are expected to result in significant energy savings. The evidence demonstrates that NIPSCO has made a concerted effort to treat DSM as a resource rather than assuming an estimate in the load forecast. Accordingly, we find that NIPSCO's EE goals as set forth in its Plan and proposed DSM programs as modified in the Settlement Agreement are reasonably achievable, consistent with the NIPSCO's IRP, and designed to achieve an optimal balance of energy resources in its service territory.

ii. EE Programs. The Plan includes 11 residential programs and six C&I programs designed to achieve the EE savings goals. The Settlement Agreement also calls on NIPSCO and the OSB to specifically explore and implement: a strategic energy management program targeted at kindergarten through 12th grade schools; additional measures, marketing, and/or initiatives targeted to agricultural programs; and distributor midstream incentive mechanisms for EE programs, including residential measures such as HVAC. The Settlement Agreement also requires NIPSCO to make a "good faith effort to expand other measures and programs, with a focus on residential measures and programs." Based on the evidence presented, we find the Plan, and the Settlement Agreement's commitment to new programs and other initiatives, includes EE programs designed to achieve the EE goals.

iii. Program Budgets and Costs. Mr. Sears identified the annual budget associated with the Plan and the costs associated with each of the programs. The Settlement Agreement also addressed the use of spending flexibility and carryover funds. We note that the flex funding agreed to by the Parties is a 10% increase over what was previously approved in Cause No. 45011, such that NIPSCO, with OSB approval, could increase any individual program funding by up to 20% of the total program budget even if it exceeds the Plan's overall budget.

The Commission has recognized that the OSB should generally have the flexibility to increase the budget. Among other things, spending flexibility allows the OSB to react in a timely manner to changing circumstances during implementation of the Commission-approved Plan. The Settlement Agreement provides that any use of the spending flexibility authority to pursue cost-effective energy savings must be agreed to by the OSB. The record also reflects that the NIPSCO OSB has successfully used the Commission-approved spending flexibility to achieve cost-effective energy savings. However, such flex funding has typically been limited to 10% of the plan budget. *See e.g., Duke Energy Indiana, LLC,* Cause No. 43955 DSM 8 at 24 (IURC Dec. 29, 2020); *Ind. Mich. Power Co.,* Cause No. 45285 at 35 (IURC Feb. 3, 2021). Therefore, to monitor the increased spending flexibility more closely, we find that when the OSB approves any spending flexibility, NIPSCO shall file within ten days a compliance filing under this Cause that contains the OSB minutes approving the spending flexibility and the corresponding justification for the spending flexibility approved.

Based on the evidence presented, we find the program and overall Plan budgets reasonably reflect the amount necessary to achieve the agreed energy savings goals and approve them. We also approve the spending flexibility provisions of the Settlement Agreement, with the additional reporting requirements.

iv. Independent EM&V. Mr. Sears also explained that the Plan includes EM&V with a process for independent evaluation of the programs and identified the projected EM&V costs of $2,171,827, which is 5% of the proposed implementation budget. The evidence reflects that NIPSCO, after approval by the OSB, intends to continue utilizing ILLUME based on a request for proposal conducted in 2019 to select the vendor to evaluate the Current Plan. NIPSCO also proposed to submit its quarterly scorecard reports within 30 days of the end of each quarter, the scorecard with EM&V results no later than June 30, and its annual EM&V results no later than July 15 of each year. NIPSCO also agreed that compliance filings would be filed as stand-alone documents under the associated plan filing, and that annual tracker filings would be filed no later than July 15. Based on the evidence presented, we find the proposed EM&V procedures to independently verify the results of the DSM programs and the estimated EM&V costs are reasonable and are approved.

B. <u>Reasonableness of the 2022–2023 Plan</u>. Section 10(j) identifies ten factors the Commission must consider in determining whether a plan submitted under Section 10(h) is reasonable. For the reasons set forth below, we find that NIPSCO's 2022–2023 Plan, as described in the Settlement Agreement, except for the flex funding as discussed above, is reasonable and approved.

i. Projected Changes in Customer Consumption. The evidence indicates that projected changes in customer consumption are shown in two ways. First, participants in the EE programs will see savings from making the EE improvements, as is shown by the Participant test scores. As Mr. Morgan testified, the results show that in all cases the participants save more than they invest in the EE improvements. Second, projected changes in customer consumption are modeled in connection with NIPSCO's IRP. Mr. Morgan noted that the Plan is cost effective and will result in a gross energy savings of approximately 279,033 MWh and a demand reduction of approximately 103 megawatts over the two-year period. The record reflects that the proposed EE savings goal for 2022–2023 represents approximately 0.9% of total projected retail sales, and if opt-out sales are excluded, the savings goal represents approximately 1.7% of eligible retail sales. Accordingly, we find it is reasonable to expect a corresponding decrease in customer consumption of electricity compared to what would be the case without the programs.

ii. Cost-Benefit Analysis. The evidence demonstrates that NIPSCO evaluated the cost effectiveness of its proposed Plan programs using the standard UCT, TRC, RIM, and Participant tests. Mr. Morgan explained the purpose of the various tests and provided the test results for each of the proposed programs. All the programs, and the residential and C&I program portfolios, passed the UCT and TRC tests. All programs also passed the Participant test. Although neither the Plan nor most of the programs passed the RIM test, the explanation for why this was the case is reasonable. Based on the evidence presented, we find that NIPSCO has demonstrated that the proposed 2022–2023 Plan is reasonably cost effective.

iii. Consistent with State Energy Analysis and Utility IRP. Ind. Code § 8-1-8.5-3 requires the Commission to develop, publicize, and keep current an analysis of the long-range need for the expansion of electric generation facilities and sets forth certain requirements that the analysis must include. As noted by Ms. Becker, such a state energy analysis that meets all the statutory criteria does not currently exist. However, Ms. Becker testified that the Plan is consistent with the 2019 SUFG report, and as previously discussed, we find that the Plan is consistent with NIPSCO's 2018 IRP.

iv. EM&V. Evaluation for all programs in the Plan will be conducted by an independent evaluator. Mr. Sears testified the independent evaluator will perform a process evaluation and an impact evaluation. These EM&V procedures are similar to those currently being used by NIPSCO. Based on the evidence presented, we find that the proposed EM&V procedures to independently verify the results of its programs are reasonable.

v. No Undue or Unreasonable Preference to Customer Classes. No evidence was presented showing that undue or unreasonable preference to any customer class will result from implementation of the Plan. Instead, the evidence presented demonstrates the Plan is specifically designed to ensure that each class pays for programs they benefit from. Further, Ms. Becker noted that all customers receive benefits from decreased energy usage. Accordingly, we find that the Plan will not result in undue or unreasonable preference to any customer class.

vi. Stakeholder Comments. Section 10(j) requires the Commission to consider comments provided by customers, customer representatives, the OUCC, or other stakeholders concerning the adequacy and reasonableness of the 2022–2023 Plan. Both the OUCC and CAC provided such comments through the evidence they presented in this proceeding, which the Commission has considered and addressed in making its determinations in this Order. Additionally, the evidence shows that NIPSCO affirmatively sought comments from customers and other stakeholders concerning the adequacy and reasonableness of the Plan, through its OSB process and by putting the proposed Plan on its website for public review and comment. Thus, the Commission, having considered the unanimous Settlement Agreement, which includes all parties on NIPSCO's OSB, finds the stakeholder comments weigh in favor of the Plan's reasonableness.

vii. Effect or Potential Effect of the Plan on Electric Rates and Customer Bills of Participants and Non-Participants. NIPSCO provided evidence of the short-term bill impacts on customers as well as various cost-effectiveness tests—some of which are designed specifically to evaluate the long-term effect of the proposed programs on the electric rates and bills of both participating and non-participating customers. Ms. Becker testified that the short-term effect for participating customers is reduced energy consumption, which can result in lower energy bills, and which remains unchanged with the Settlement Agreement. Based on NIPSCO's estimated impact information along with the results of the cost-effectiveness tests, we find that effects or potential effects of the Plan on electric rates and customer bills of participants and non-participants to be reasonable.

viii. Lost Revenues and Financial Incentives. Petitioner's requested lost revenues and financial incentives are discussed below.

ix. Utility's IRP. The Plan's consistency with NIPSCO's 2018 IRP and underlying resource assessment is discussed and addressed above.

x. Conclusion. Based on the evidence presented in this case and our consideration of the factors enumerated in Ind. Code § 8-1-8.5-10(j), we find that NIPSCO's Plan as modified by the Settlement Agreement is reasonable, in the public interest, and is approved as set forth herein.

C. Program Costs. Section 10(k)(2) provides that once an electricity supplier's EE plan is approved, the Commission shall allow the electricity supplier to recover all associated program costs on a timely basis through a periodic rate adjustment mechanism. The DSM Rules also provide authorization for the recovery of such program costs. *See* 170 IAC 4-8-5. Having found NIPSCO's 2022–2023 Plan to be reasonable in its entirety, we therefore find that NIPSCO shall be authorized to recover its associated direct and indirect program operating costs, including administration, marketing, and EM&V costs, via its DSMA Mechanism.

D. Lost Revenues and Financial Incentives. If the Commission finds that an electricity supplier's EE plan is reasonable, Section 10(o) requires us to allow an electricity supplier to recover:

(1) Reasonable financial incentives that:
  (A) encourage implementation of cost effective energy efficiency programs; or
  (B) eliminate or offset regulatory or financial bias:
    (i) against energy efficiency programs; or
    (ii) in favor of supply side resources.
(2) Reasonable lost revenues.

Because we have found NIPSCO's Plan, as modified by the Settlement Agreement, is reasonable, we must consider whether the Parties' agreement regarding financial incentives and lost revenues associated with NIPSCO's EE programs is reasonable.

i. Lost Revenues. NIPSCO seeks to recover lost revenues associated with its 2022–2023 Plan in the same manner that it has been authorized to recover lost revenues associated with its DSM programs previously, specifically, for the lesser of the life of the measure or four years. However, should NIPSCO's base rates be modified in such a manner that the lost revenues associated with measures installed pursuant to the relief granted in this Cause are considered when establishing base rates, then NIPSCO's collection of lost revenues related to those specific measures will no longer be recovered through the DSMA Mechanism. We find this proposal to be reasonable, and we approve the recovery of lost revenues as described above via NIPSCO's DSMA Mechanism.

ii. Financial incentives. Consistent with the Settlement Agreement, NIPSCO requests approval to earn a financial incentive on all programs except the IQW program. Both Section 10(o)(1) and the DSM Rules at 170 IAC 4-8-7 authorize the Commission to approve reasonable financial incentives to encourage the implementation of DSM programs and address the regulatory or financial bias against such programs. The evidence in this case sufficiently demonstrates that the Plan and proposed EE programs are reasonable, and that the energy savings goals are consistent with NIPSCO's IRP and designed to achieve an optimal balance of energy resources in its service territory. Additionally, we find it appropriate for financial incentives to be tied to both tiered levels of energy savings achieved and the net present value of the net benefits of the UCT test. This type of structure encourages a utility to minimize program costs while also striving to achieve as much cost-effective EE as reasonably possible. Therefore, we find that NIPSCO is authorized to recover financial incentives as provided in the Settlement Agreement for each of its programs, on a program by program basis (excluding the IQW programs) as follows:

Achievement (% of Gross Energy Savings Target (MWh) – Program)	Incentive Level (NPV of net benefits of UCT)
110%	9%
100 – 109.99%	7%
90 – 99.99%	6%
80 – 89.99%	5%
0 – 79.99%	0%

Also consistent with the Settlement Agreement, for purposes of determining financial incentives, we find that NIPSCO shall use an avoided generation capacity cost rate of $75/kW-year grossed up for the reserve margin, which is in line with the statewide average and an avoided T&D cost rate of $20/kW-year. However, for purposes of program design, NIPSCO shall continue to use its avoided generation capacity cost rate of $121.07/kW-year and the avoided T&D cost of $33.16/kW-year consistent with its case-in-chief. Additionally, NIPSCO will reduce the power price forecast used for the avoided energy cost in calculating financial incentives beginning in 2026 by $4.00/MWh but will continue to use the original numbers contained in its case-in-chief for program design. Also, for the purposes of calculating financial incentives, NIPSCO will reduce the EUL for non-GSLs to seven years. Based on the evidence presented, we find the Parties' agreement concerning the calculation of financial incentives to be reasonable, and we approve it.

E. <u>OSB</u>. NIPSCO requested approval to continue to use its OSB to assist in the administration of the Plan. The Commission has consistently approved OSBs to oversee and monitor EE programs for utilities. *See, e.g.*, *Indianapolis Power & Light Co.*, Cause No 44945, at 45-46 (Feb. 7, 2018). Accordingly, based on our review of the record, we find that NIPSCO's proposed ongoing use of the OSB is reasonable.

F. <u>Approval of Settlement Agreement</u>. Based upon the above discussion and findings, the Commission finds that the Settlement Agreement is reasonable and consistent with the governing regulatory framework. The resolution of the pending matters set forth in the Settlement Agreement is within the scope of and supported by the evidence presented by the Parties. The Settlement Agreement incorporates substantial concessions by the Parties and reflects a reasonable compromise on all issues raised in this proceeding. We find the Settlement Agreement will allow NIPSCO to offer cost-effective EE programs to customers, while mitigating the impact on customers' rates for electric service.

Based on the evidence of record, the Commission finds the Settlement Agreement is reasonable, in the public interest, and approved. As to future citation of this Order, our approval herein should be construed in a manner consistent with our finding on the precedential value of settlement agreements in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

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

1. The Settlement Agreement, a copy of which is attached hereto, is approved as set forth in this Order.

2. NIPSCO's proposed 2022–2023 Plan, as modified by the Settlement Agreement, is approved.

3. NIPSCO is authorized to timely recover of all costs, including direct and indirect program operating costs, lost revenues, and financial incentives associated with the 2022–2023 Plan, through its DSMA Mechanism, consistent with the Settlement Agreement and the terms of this Order.

4. NIPSCO's request for continued authority to use deferred accounting on an ongoing basis until such costs are reflected in retail rates through its DSMA Mechanism is approved.

5. NIPSCO shall file under this Cause quarterly scorecards within 30 days of the end of each relevant period, with the fourth quarter scorecard to include information for the full year and to be filed no later than June 30, and annual EM&V results not later than July 15 of each year.

6. NIPSCO's OSB shall continue to operate as it has been operating.

7. Consistent with the Settlement Agreement, NIPSCO and the OSB are authorized to use certain budget and program flexibility. Specifically, NIPSCO, with OSB approval, may increase any individual program funding by up to 20% of the total program budget, even if this exceeds the overall 2022–2023 Plan budget approved herein. Additionally, NIPSCO may roll over unspent budget amounts from one program year to the next within the 2022–2023 Plan, with a

corresponding increase to the savings goal. And, to the extent NIPSCO has unspent budget amounts available at the conclusion of the 2021 program year, NIPSCO may use those unspent budget amounts in the 2022 program year for the purpose of paying program expenses related to the 2021 program year. The savings goal for the 2022 program year will be increased accordingly. In addition, when the OSB approves any spending flexibility, NIPSCO shall file within ten days a compliance filing under this Cause that contains the OSB minutes approving the spending flexibility and the corresponding justification for the spending flexibility approved.

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

APPROVED: SEP 01 2021

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

Dana Kosco Digitally signed by Dana Kosco Date: 2021.09.01 10:17:36 -04'00'

**Dana Kosco
Secretary to the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC FOR APPROVAL OF ITS PROPOSED 2022-2023 ENERGY EFFICIENCY PLAN FOR ELECTRIC SERVICE AND ASSOCIATED RATEMAKING AND ACCOUNTING TREATMENT, INCLUDING TIMELY RECOVERY THROUGH NIPSCO'S DEMAND SIDE MANAGEMENT ADJUSTMENT MECHANISM OF ASSOCIATED COSTS (INCLUDING PROGRAM OPERATING COSTS, LOST REVENUES, AND FINANCIAL INCENTIVES), IN ACCORDANCE WITH INDIANA CODE SECTION 8-1-8.5-10, AND FOR AUTHORITY TO DEFER PROGRAM COSTS.	)	**CAUSE NO. 45456**

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement is entered into as of the 12th day of May, 2021, by and among Northern Indiana Public Service Company LLC ("NIPSCO" or "Company"), the Indiana Office of Utility Consumer Counselor ("OUCC"), and Citizens Action Coalition of Indiana, Inc. ("CAC") (collectively, the "Settling Parties") (the "Agreement"), who stipulate and agree for purposes of settling the issues in Cause No. 45456 that 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.

I. Substantive Terms and Conditions

The Settling Parties agree to Commission approval of NIPSCO's proposed 2022-2023 Energy Efficiency Plan (the "2022-2023 DSM Plan") and associated accounting and ratemaking treatment as follows:

A. <u>Programs, Budgets, and Savings Goals</u>

NIPSCO should be authorized to implement the electric energy efficiency programs in its direct case, up to the budget amounts set out therein (subject to the budget flexibility described in subsection B below). The Settling Parties agree and stipulate that these programs are cost-effective, reasonably achievable, consistent with NIPSCO's 2018 Integrated Resource Plan, and designed to achieve an optimal balance of energy resources in NIPSCO's service territory. The Settling Parties agree to work collaboratively in good faith through the Oversight Board ("OSB") to prudently exercise the spending flexibility and to use best efforts to achieve additional energy savings that are cost effective over the two year DSM Plan. To the extent measures are added to an existing program to achieve additional savings, those measures, as a group, must be cost effective outside of the total program.

For program design, NIPSCO will reduce the expected useful life ("EUL") for non-general service lamps ("GSLs") to 10 years. Should the Indiana Technical Resource Manual or other guidance/regulations (i.e. Federal standards, including Energy

Independence and Security Act ("EISA")) be updated to take effect during the term of the 2022-2023 DSM Plan, the baseline for the Residential Lighting program will be updated on a going-forward basis as of the effective date for Evaluation, Measurement & Verification ("EM&V") and planning purposes.

In addition to other programs identified by the OSB in working with the program vendor, the OSB will work in good faith to explore new programs and initiatives and expand existing programs and initiatives to achieve greater savings levels. NIPSCO and the OSB will specifically explore and work to implement (1) a strategic energy management program targeted at kindergarten through twelfth grade schools; (2) additional measures, marketing, and/or other initiatives targeted to agricultural customers, either through an existing program or a standalone program; and (3) distributor midstream incentive mechanisms for energy efficiency programs, including residential measures such as HVAC. NIPSCO will also make a good faith effort to expand other measures and programs, with a focus on residential measures and programs. NIPSCO agrees to not increase spending on Residential Behavioral beyond the budget proposed in the case in chief, or the revised Behavioral program vendor budget, whichever is less. However, NIPSCO will still count additional Residential Behavioral savings achieved by the vendor.

NIPSCO and its vendor will continue to evaluate the costs of the current program design. NIPSCO will provide an accounting of such cost savings to the OSB and indicate plans to direct those cost savings toward procurement of more energy savings. To the extent savings are identified in those programs, the parties agree that a portion of those funds may be used for marketing and start-up of new programs in order to improve the uptake of those new programs by customers. Any costs associated with initial marketing and start-up of new programs will not be included in the benefit cost test.

B. Budget Flexibility

The Settling Parties agree that NIPSCO (with OSB approval) should be authorized to increase any individual program funding by up to 20% of the total program budget, even if this exceeds the overall 2022-2023 DSM Plan budget approved by the Commission. NIPSCO may also roll over unspent budget amounts from one program year to the next within the two year 2022-2023 DSM Plan period, with a corresponding increase to the savings goal. In addition, to the extent NIPSCO has unspent budget amounts available at the conclusion of the 2021 program year, it may utilize those unspent budget amounts in the 2022 program year, for the purpose of paying program expenses related to the 2021 program year. The savings goal for the 2022 program year will be increased correspondingly. NIPSCO will continue to work with the OSB and its vendor(s) to use the flex funding to increase savings as available and appropriate (e.g., cost-effective).

C. Opportunity to Earn Financial Performance Incentives

The Settling Parties agree that NIPSCO should be authorized to recover a financial performance incentive for each of its programs (except for the Income Qualified Weatherization program) as shown below. The financial performance incentive will be calculated as a shared savings incentive based on the net present value ("NPV") of the Utility Cost Test ("UCT") net benefits at the program level, to be recovered on a timely basis through NIPSCO's DSMA Mechanism, as follows:

Achievement (% of Gross Energy Savings Target (MWh) – Program)	Incentive Level (NPV of net benefits of UCT)
110%	9%
100 - 109.99%	7%
90 - 99.99%	6%
80 - 89.99%	5%
0 - 79.99%	0%

For purposes of determining financial performance incentives, NIPSCO will utilize an avoided generation capacity cost rate of $75/kW-year grossed up for the reserve margin, which is in line with the statewide average and an avoided transmission and distribution ("T&D") cost rate of $20/kW-year. However, for purposes of program design, NIPSCO will continue to utilize its avoided generation capacity cost rate of $121.07/kW-year and the avoided T&D cost of $33.16/kW-year consistent with its case in chief. NIPSCO will reduce the power price forecast utilized for the avoided energy cost in calculating financial performance incentives beginning in 2026 by $4.00/MWh , but will continue to use the original numbers as utilized in its case in chief for program design. For the purposes of calculating financial incentives, NIPSCO will reduce the EUL for non-GSLs to seven years. The Settling Parties agree that recovery of financial performance incentives as described above is reasonable.

D. Other

All other aspects of NIPSCO's Petition and Case-in-Chief Testimony remain the same as proposed by NIPSCO, including but not limited to 2022-2023 DSM Plan implementation, marketing, EM&V procedures, EM&V costs, and program design. The Settling Parties agree to work in good faith to resolve any additional issues which may arise.

II. Procedural Aspects and Presentation of the Agreement.

A. The Settling Parties acknowledge that a significant motivation to enter into this Agreement is the expectation that, if the Commission finds this Agreement is reasonable and in the public interest, the Commission would issue an order authorizing the implementation of NIPSCO's 2022-2023 DSM Plan in this Cause No. 45456, along with associated accounting and ratemaking treatment. The Settling Parties have spent valuable time reviewing data and negotiating this Agreement in an effort to eliminate time consuming and costly litigation. The Settling Parties agree to request that the Commission review the Agreement in a timely manner and, if it finds the Agreement is reasonable and in the public interest, approve this Agreement without any material changes no later than December 31, 2021, so that the 2022-2023 DSM Plan can be implemented on January 1, 2022.

B. The Settling Parties agree to jointly present this Agreement to the Commission for its approval in Cause No. 45456, and agree to assist and cooperate in the preparation and presentation of settlement supporting testimony as necessary.

C. 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 it. In the event 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.

D. The Settling Parties agree that this Agreement and each provision 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, risk, and expenses.

E. The Settling Parties stipulate that the evidence of record presented in Cause No. 45456 constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed. The Settling Parties agree to the admission into the evidentiary record of this Agreement, along with testimony supporting it, without objection.

F. The issuance of a Final Order by the Commission approving this Agreement without any material modification or further condition shall terminate all proceedings in this Cause.

G. 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.

H. 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. All Settling Parties shall support the Final Order if appealed by any party not a signatory to this Agreement.

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

J. 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 and confidential.

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ACCEPTED AND AGREED this 12th day of May, 2021.

Northern Indiana Public Service Company LLC

Erin E. Whitehead

Erin E. Whitehead, Vice President, Regulatory Policy and Major Accounts

Indiana Office of Utility Consumer Counselor

Jeffrey M. Reed, Atty. No. 11651-49
Deputy Consumer Counselor

Citizens Action Coalition of Indiana, Inc.

____
Kerwin L. Olson, Executive Director

Respectfully submitted,

Mark R. Alson

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