

# ORIGINAL

## STATE OF INDIANA

### INDIANA UTILITY REGULATORY COMMISSION

Commissioner	Yes	No	Not Participating
Huston	✓		
Bennett	✓		
Freeman	✓		
Veleta	✓		
Ziegner	✓		

VERIFIED PETITION OF NORTHERN INDIANA )  
PUBLIC SERVICE COMPANY LLC FOR )  
APPROVAL OF ITS PROPOSED 2024–2026 )  
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. 45849

APPROVED: OCT 18 2023

### ORDER OF THE COMMISSION

#### Presiding Officers:

**James F. Huston, Chairman**

**Greg S. Loyd, Administrative Law Judge**

On February 15, 2023, 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 2024–2026 Electric Energy Efficiency Plan (“2024–2026 Plan” or “Plan”). NIPSCO filed corrections to its direct testimony on April 13, 2023.

On February 22, 2023, Citizens Action Coalition of Indiana, Inc. (“CAC”) filed a Petition to Intervene, which was granted on March 7, 2023.

On July 7, 2023, NIPSCO filed the Stipulation and Settlement Agreement (“Settlement Agreement”) agreed upon by NIPSCO, the Indiana Office of Utility Consumer Counselor (“OUCC”), and the CAC (collectively, “Parties”). On that same day, the Parties filed their respective testimony in support of the Settlement Agreement.

The Commission held an evidentiary hearing on July 25, 2023, at 9:30 a.m. in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. NIPSCO, the OUCC, and CAC each appeared by counsel and participated in the evidentiary hearing, during which the Parties’ respective testimony and exhibits 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 and published as required by law. NIPSCO is a “public utility” under Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1, and an “electricity supplier” pursuant to Ind. Code ch. 8-1-8.5. Under Ind. Code §§ 8-1-2-4, -42, -68, -69, Ind. Code ch. 8-1-8.5, and 170 IAC 4-8, the Commission has jurisdiction over NIPSCO’s demand side management program offerings and associated cost recovery. Therefore, the Commission has jurisdiction over NIPSCO and the subject matter of this proceeding.

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. NIPSCO has both a gas division and an electric division. NIPSCO provides electric utility service to approximately 483,000 customers in 20 counties. NIPSCO renders such electric utility service by means of utility plant, property, equipment, and related facilities owned, 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 1, 2021, the Commission issued an Order in Cause No. 45456 (“45456 Order”) approving a Stipulation and Settlement Agreement among the Parties for approval of NIPSCO’s proposed energy efficiency (“EE”) programs for the period January 1, 2022 through December 31, 2023 (“2022–2023 Plan”) for electric service, including NIPSCO’s proposed EE goals, the proposed programs to achieve those goals, the program budgets and costs, the evaluation, measurement and verification (“EM&V”) procedures for the programs, and associated ratemaking and accounting treatment. The ratemaking and accounting treatment included timely recovery through NIPSCO’s Rider 783 – Adjustment of Charges for Demand Side Management Adjustment Mechanism and Appendix G – Demand Side Management Adjustment Mechanism Factor of Program Operating Costs (direct and indirect program-specific costs, including EM&V, administrative, and marketing costs), along with recovery of lost revenues (the difference, if any, between revenues lost and the variable operating and maintenance costs saved by NIPSCO as a result of implementing EE programs, consistent with Ind. Code § 8-1-8.5-10(e)) for the earlier of the life of the measure, four years, or a new base rate order, financial incentives, authority to defer costs and subsequently recover or return, as the case may be, the over- and under-recoveries of projected program operating costs and lost revenues pending reconciliation in subsequent periods until such costs are reflected in NIPSCO’s retail electric rates, and authority to defer any Program Operating Costs incurred in implementing the 2022–2023 Plan prior to the date of the Commission’s Final Order in that Cause.

On December 4, 2019, the Commission issued an Order in Cause No. 45159 approving NIPSCO’s Rider 883 – Demand Side Management Adjustment Mechanism and Appendix G – Demand Side Management Adjustment Mechanism (“DSMA”) Factor (“DSMA Mechanism” or “Factor”). This Order also approved new allocators, NIPSCO’s proposal to reset lost revenues in its DSMA Factor, 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 2024–2026 Plan as agreed upon in the Settlement Agreement, including EE goals; EE programs to achieve the EE goals; program budgets and costs; procedures for independent EM&V of programs included in the Plan; allocation and recovery of all associated program costs on a timely basis through NIPSCO’s periodic DSMA Factor, including recovery of financial incentives and lost revenues resulting from the programs; authority to defer and subsequently recover the over- and under-recoveries of projected program operating costs and lost revenues through the DSMA Mechanism pending reconciliation in subsequent periods; and authority to defer any program operating costs incurred in implementing the 2024–2026 Plan prior to the date of the Commission’s Final Order in this Cause. NIPSCO also requests Commission approval to begin implementation of the Plan by January 1, 2024. Additionally, NIPSCO requests Commission approval to continue to utilize 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. **Evidence Presented.**

A. **NIPSCO’s Case-in-Chief.** Alison Becker, Manager of Regulatory Policy for NIPSCO, outlined the 2024–2026 Plan. She discussed NIPSCO’s proposed EE goals, the proposed programs to achieve those goals, the program budgets and costs, and the EM&V procedures for the programs. In addition, she generally addressed the issues of lost revenue recovery and financial incentives and she described the cost recovery mechanism for the Plan costs. She stated that the Plan consists of the following programs:

**Residential Programs:**

- Home Rebates
- Retail Products
- Home Energy Analysis (“HEA”)
- Appliance Recycling
- School Education
- Multifamily Direct Install (“MFDI”)
- Residential New Construction
- HomeLife Energy Efficiency Calculator
- Income Qualified Weatherization (“IQW”)
- Residential Online Marketplace
- Home Energy Report
- Income Qualified Home Energy Report

**Commercial & Industrial (“C&I”) Programs:**

- Prescriptive
- Custom
- C&I New Construction
- Small Business Direct Install (“SBDI”)
- C&I Online Marketplace
- Strategic Energy Management (“SEM”)

Ms. Becker explained NIPSCO also proposed to include emerging technologies in its approved plan. These programs and measures have not yet been identified and NIPSCO proposed to work with the OSB to identify additions to the Plan as new savings are identified. She stated additions will only be made with OSB approval. She asserted the Plan allows NIPSCO to offer a robust portfolio of EE opportunities to its customers while mitigating the rate impact to customers.

Ms. Becker testified the proposed program budgets and costs for these programs are as follows:

	<b>Residential</b>	<b>C&amp;I</b>	<b>Emerging Technologies</b>	<b>Total</b>
Vendor Implementation Cost	\$28,907,973	\$37,114,188	\$1,653,230	\$67,675,391
NIPSCO Administration	\$1,445,400	\$1,855,709	\$82,661	\$3,383,770
NIPSCO Marketing	\$722,701	\$1,270,903	\$41,331	\$2,034,935
EM&V	\$1,445,400	\$1,855,709	\$82,661	\$3,383,770
<b>Total Program Budget</b>	<b>\$32,521,474</b>	<b>\$42,096,509</b>	<b>\$1,859,883</b>	<b>\$76,477,866</b>
Lost Revenues	\$12,277,878	\$19,410,024	TBD	\$31,687,902
Financial Incentives	\$1,070,351	\$7,802,612	TBD	\$8,872,963
<b>Total Program Costs</b>	<b>\$45,869,703</b>	<b>\$69,309,145</b>	<b>\$1,859,883</b>	<b>\$117,038,731</b>

Ms. Becker stated NIPSCO proposed to allocate and assign costs associated with specific EE programs to the class or classes of customers that are eligible to participate in the respective program. She stated this will ensure that residential customers pay for residential programs and commercial/industrial customers pay for C&I programs, minimizing cross-subsidies between customer groups and helping prevent undue or unreasonable preference to any customer class.

Ms. Becker explained the proposed programs are intended to achieve the following megawatt hour savings goals:

	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2024–2026</b>
Residential Programs	43,263	46,236	47,969	137,468
C&I Programs	78,713	77,057	73,843	229,613
Emerging Technologies				8,041
<b>Total Programs</b>	<b>121,976</b>	<b>123,293</b>	<b>121,812</b>	<b>375,122</b>

She testified these EE goals were based on the cost-effective program savings potential, as determined in NIPSCO’s most recent Integrated Resource Plan (“IRP”), submitted November 15, 2021 (“2021 IRP”) and admitted in the current Cause as Attachment 1-C to Petitioner Exhibit 1, which included a lengthy analysis of the demand side management (“DSM”) resources included in its IRP process. She stated NIPSCO incorporated the achievable potential identified in NIPSCO’s most recent Market Potential Study. She reviewed the detailed process and objectives of NIPSCO’s IRP Resource Selection Model and she described how the realistic achievable potential identified in the Market Potential Study was initially developed. Ms. Becker stated that in addition to NIPSCO’s analysis of the 2021 IRP and Market Potential Study, NIPSCO completed

an additional analysis that indicated the goals are achievable in a cost-effective manner. She concluded by stating that all of the bundles that were selected by the model in NIPSCO's 2021 IRP are included in the 2024–2026 Plan.

Ms. Becker stated NIPSCO proposed to maintain its current EM&V process as approved in the 45456 Order, with the following modifications:

- Annual EM&V results no later than July 15 of each year;
- Quarterly scorecards to be submitted within 60 days of the end of each relevant period, with the fourth quarter scorecard to include information for the full year; and
- An updated fourth quarter/full year scorecard, to be submitted after the EM&V results have been received based on the updated savings achieved according to the evaluated results, as well as actual lost revenues, financial incentives, and EM&V expenditures, by July 15 of each year.

Ms. Becker noted that the requirement to submit quarterly scorecards within 60 days of the end of each period is different from the Commission's directive in the 45456 Order, which requires NIPSCO to file its scorecards within 30 days of the end of each quarter. She testified that the 30-day scorecard filing requirement can be problematic for NIPSCO if the company receives the results necessary to create the scorecard late in the month, which is particularly likely after the conclusion of the program year. Ms. Becker stated filing the scorecards 60 days after the end of the quarter would allow NIPSCO sufficient time to obtain results from the vendors, confirm the accuracy of those results and submit the filing with the Commission. Ms. Becker testified NIPSCO will continue to provide the monthly results to the OSB as soon as they are available. NIPSCO also proposed to file an updated fourth quarter/full year scorecard after the EM&V results have been received based on the updated savings achieved according to the evaluated results, as well as actual lost revenues, financial incentives, and EM&V expenditures by July 15 of each year. This is different from the requirements under the 45456 Order, but Ms. Becker noted that this would allow the results to be filed at the same time as the EM&V report.

Ms. Becker stated the estimated, typical monthly bill impact of the Plan for a residential customer using 1,000 kWh of energy monthly would be \$4.87, which is an increase of \$1.26 (25.9%) as compared to the amount a customer pays using the current factor approved in Cause No. 43618 DSM 17. Ms. Becker noted these amounts do not include any prior period variances, revenue reconciliation amounts, carryover benefits, nor costs to the customer prior to December 31, 2023. It also does not take into consideration the amounts customers see as a reduction for their own efficiencies and benefits due to decreased demand on NIPSCO's system.

Ms. Becker testified NIPSCO received and considered stakeholder input as part of the IRP stakeholder process. She said NIPSCO also received comments from stakeholders concerning the adequacy and reasonableness of the Plan. She noted NIPSCO shared the 2024–2026 Plan with the OSB and she discussed the OSB's subsequent involvement. She also stated NIPSCO provided the proposed Plan on its website for public review and comment.

Ms. Becker addressed the appropriateness of allowing a utility to recover lost revenues and financial incentives. She stated that recovery of lost revenues encourages energy efficiency programs, keeps the utility whole from a fixed cost recovery perspective, and avoids imposing a penalty on the utility for pursuing state energy policy goals. She asserted the implementation of EE programs causes the utility's recovery of its fixed costs to decline through reduced sales, so approval of lost revenue recovery makes the utility whole.

Ms. Becker concluded her direct testimony by explaining NIPSCO's view as to why the proposed Plan is reasonable; namely, the Plan provides programs for all participating customers; the programs are cost-effective using standard industry tests and provide benefits to customers who participate as well as to those who do not; the requests for lost revenue recovery and financial incentives allow EE programs to be on an equal footing with supply-side options; and the Plan not only includes programs selected by the 2021 IRP, but includes additional programs in order to provide a robust portfolio of cost-effective programs.

Jennifer Staciwa, Manager of DSM Reporting for NIPSCO, described NIPSCO's 2022–2023 Plan and its 2024–2026 Plan, including EE goals, EE programs to achieve those goals, program budgets and program costs, and EM&V procedures. She also detailed NIPSCO's proposal for lost revenue recovery and the proposal for NIPSCO to have the opportunity to earn financial incentives.

She noted NIPSCO anticipates lost revenues associated with the 2024–2026 Plan will total \$31,687,902 (\$12,277,878 for residential electric customers and \$19,410,024 for C&I electric customers). Ms. Staciwa explained the manner in which NIPSCO forecast lost revenues, as well as the manner in which it proposed to collect such losses. She said the reconciliation of lost revenues will take place once per year, with the variance spread over the succeeding 12-month period. Ms. Staciwa noted if the Commission permits NIPSCO to recover lost revenues for particular programs and these lost revenues are considered in NIPSCO's base rates, then NIPSCO will stop collecting lost revenues for these programs through its DSMA Mechanism.

Ms. Staciwa testified NIPSCO should be authorized to recover a financial incentive for each of its programs (except the IQW program and Income Qualified Home Energy Reports programs). The financial incentive is 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:

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

She stated that the program operating costs and financial incentives will be allocated on a per kilowatt-hour basis based on the 12-month kilowatt-hour sales forecast for each Rate Schedule. Additionally, Ms. Becker stated that lost revenues will be forecast and allocated based on projected energy savings in its energy forecast (with the exception of the Home Energy Report Program which is forecasted based on customer count).

Ms. Staciwa explained the manner in which NIPSCO intends to work with the OSB to select an independent evaluator. She also sponsored Attachment 2-D to Petitioner Exhibit 2 which set forth NIPSCO's proposed EM&V process.

R. Kenneth Skinner, Vice President of Integral Analytics, Inc., also testified in support of the Plan, including the cost benefit analyses of the proposed Plan programs. Mr. Skinner testified that his analysis, which covered the period of January 1, 2024 through December 31, 2026, considered the UCT, the Total Resource Cost ("TRC") test, the Ratepayer Impact Measure ("RIM") test, and the Participant test. His testimony explained that the proposed programs, both individually and as analyzed in residential and C&I portfolios, passed both the UCT and the TRC tests.

Mr. Skinner explained that he utilized a cost analysis tool to calculate cost-effectiveness for the programs. He said NIPSCO is likely to achieve the goals of the EE program included in the Plan, basing his opinion on the history of success of NIPSCO's programs and the similarity to other successful utility programs.

Mr. Skinner also testified concerning the Plan's impact on customer bills. He said the fact all programs passed the Participant test indicates Plan participants will see direct savings in bill reductions from the EE changes they perform due to the program. Mr. Skinner noted that the potential impact on non-participants is shown by the RIM test result, which indicates that non-participant rates will potentially increase over the analysis period. He said this is typical for EE programs and also noted that, as demonstrated by the 2021 IRP, EE is often a least cost option, which reduces customer rates over the long term. He concluded by giving his opinion that the Plan is both cost-effective and achievable.

**B. The Settlement Agreement.** The unanimous Settlement Agreement, admitted as Joint Exhibit 1, addresses all aspects of NIPSCO's proposed 2024–2026 Plan. Through the Settlement Agreement, the Parties adopted the electric EE programs, program budgets and costs, EE savings goals, and NIPSCO's reporting requirements as set forth in NIPSCO's case-in-chief testimony, with certain modifications as set forth below. The Parties stated in the Settlement Agreement that the proposed programs are cost effective, reasonably achievable, consistent with NIPSCO's 2021 IRP, and are designed to achieve an optimal balance of energy resources in NIPSCO's service territory.

As part of the Settlement Agreement, the Parties agreed NIPSCO should be authorized to implement these programs up to the budget amounts set forth in NIPSCO's case-in-chief, subject to certain budget flexibility. The Parties agreed 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 2024–2026 Plan budget approved by the Commission. A majority vote of the

OSB is required for flexible funding requests of 0-10%, and a unanimous vote of the OSB is required for flexible funding requests greater than 10%. The Settlement Agreement also provides that if NIPSCO seeks funding in an amount greater than 20% of its three-year DSM Program budget, then, with unanimous OSB approval, it may seek additional funding authorization from the Commission. Further, all other previous conditions set forth in the settlement agreement in Cause No. 45456 related to flex funding apply to both the electric and gas programs, including that approval of flex funding will be sought before such flex funding is utilized.

Additionally, the Settlement Agreement provides NIPSCO may roll over unspent budget amounts from one program year to the next within the 2024–2026 Plan, with a corresponding increase to the savings goal. Also, to the extent NIPSCO has unspent budget amounts available at the conclusion of the 2023 program year, NIPSCO may utilize those unspent budget amounts in the 2024 program year, for the purpose of paying program expenses related to the 2023 program year. The savings goal for the 2024 program year will be increased accordingly. Finally, the Settlement Agreement provides that NIPSCO will continue to work with its OSB and its vendors to use the flex funding to increase savings as available, appropriate, and cost-effective.

The Settlement Agreement also provides that the OSB will work collaboratively and in good faith to use best efforts to identify and achieve, through the use of the flexible funding, additional cost-effective energy savings of an additional 45,015 gross MWh over the total three-year period of 2024–2026. The Parties, through the OSB, will use best efforts to increase the scale of programs and/or identify emerging technologies to produce reasonably achievable, cost-effective (based on pro forma estimates) incremental energy savings. 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 potentially expand existing programs and initiatives to seek to achieve greater savings levels. NIPSCO will also make a good faith effort to expand other measures and programs.

The Parties further agreed that the OSB will continue to function as it is currently functioning, including implementing the increased budget flexibility described above and designing and implementing new programs so long as they are cost-effective and do not exceed the overall 2024–2026 Plan budget. 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.

The Settlement Agreement provides that NIPSCO, in collaboration with the OSB, will work in good faith to optimize and enhance its delivery of programs and initiatives. NIPSCO and the OSB will specifically strive to: (1) improve and continue to monitor the Residential New Construction program; (2) increase residential midstream participation; (3) include additional residential midstream heating, ventilation, and air conditioning (“HVAC”) and water heating measures; (4) increase participation in the Small Business Direct Install program through enhanced incentives and/or targeted outreach; (5) increase the scope and comprehensiveness of the Strategic Energy Management program; and (6) review and make a good faith effort to align incentive levels for C&I measures relative to current equipment prices and/or other Indiana investor owned utilities’ C&I programs.



The Settlement Agreement requires NIPSCO to collaborate with the OSB to improve education for contractors and other trade allies related to targeted measures or programs, including, but not limited to, heat pumps. Such efforts may include, but are not limited to, utilizing marketing funds to provide additional education opportunities for contractors and other trade allies. The OSB shall have the opportunity to review and provide input on final program designs, including program offerings, each year prior to implementation.

The Parties also agreed to the EM&V procedures set forth in NIPSCO's case-in-chief. The selected EM&V evaluator will provide an evaluation plan covering the DSM program portfolio as a whole and an evaluation plan specific to each EE program; identify gross and net savings; conduct process evaluations to assess the impact, improve program delivery, as well as gauge the targeted budget and quality control; perform benchmarking; and conduct impact evaluations.

The Settlement Agreement provides that the Parties agree to limit lost revenues, such that lost revenue for all measures installed in 2024–2026 will be limited to the earlier of three years, the life of the measure, or until new rates are implemented pursuant to a Final Order in NIPSCO's next base rate case following issuance of an Order in this Cause.

The Settlement Agreement states that subsequent to approval of new base rates in NIPSCO's next base rate case proceeding, following issuance of an Order in this Cause, NIPSCO will zero out, in its Adjustment of Charges for Demand Side Management Adjustment Mechanism (currently Rider 883), all lost revenue recovery approved for the DSM program years up to, and including, the test year adopted for the setting of base rates in NIPSCO's next base rate proceeding.

The Parties, through the Settlement Agreement, authorize NIPSCO to defer and subsequently recover or return, as the case may be, the over- and under-recoveries of projected program operating costs, lost revenues, as well as actual financial incentives, through the DSMA Mechanism, pending reconciliation in subsequent periods. Further, NIPSCO is authorized under the Settlement Agreement to defer any program operating costs incurred in implementing the 2024–2026 Plan prior to the date of the Commission's Order in this Cause.

The Parties also agreed in the Settlement Agreement, as set forth in NIPSCO's case-in-chief, 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.

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

**C. NIPSCO's Settlement Evidence.** Ms. Becker testified in support of the Settlement Agreement. She stated the Settlement Agreement contains EE goals, EE programs to achieve those goals, program budgets and program operating costs, and EM&V procedures that

are independent, all as required by Indiana Code § 8-1-8.5-10. Further, she said the Settlement Agreement is supported by NIPSCO's case-in-chief testimony and attachments which address: EE goals; projected changes in consumption resulting from a plan; cost benefit analyses of the plan (including the likelihood of achieving the goals); an explanation of how the plan is consistent with NIPSCO's 2021 IRP; proposed procedures to independently evaluate, measure, and verify the results of the programs included in the plan; a demonstration that no undue or unreasonable preference to any customer class will result from implementation of the plan, due to the class-by-class cost allocation; comments provided by customers, customer representatives, the OUCC, and other stakeholders, as demonstrated by the Settlement Agreement itself; and, the potential effect of the plan on electric rates and bills of participating customers as well as non-participating customers. Ms. Becker noted the Settlement Agreement provides NIPSCO the opportunity to earn financial incentives, which will encourage implementation of the programs and will mitigate financial bias against demand-side programs as compared to supply-side options.

She further stated the Settlement Agreement provides for the 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. She added that the Plan not only includes the programs selected by NIPSCO's 2021 IRP, but also includes additional programs in order to provide a robust portfolio of cost-effective programs.

Ms. Becker recommended the Commission approve the Settlement Agreement in its entirety and authorize NIPSCO to implement the 2024–2026 Plan and recover associated costs on a timely basis through its DSMA Mechanism.

**D. OUCC Settlement Evidence.** April M. Paronish, Assistant Director in the Electric Division for the OUCC, also testified in support of the Settlement Agreement. She said the OUCC negotiated this Cause in an effort to ensure NIPSCO's proposed DSM programs are cost-effective. She described the modifications agreed upon in the Settlement Agreement, including: (1) provisions for adding additional measures to achieve additional energy savings; (2) optimizing and enhancing, through NIPSCO's OSB, delivery of programs and initiatives; (3) an increased energy savings goal; (4) collaborating with the OSB to improve education for NIPSCO's contractors and trade allies; (5) voting restrictions on certain requests to use flexible funding; and (6) reduced timeframe for collecting lost revenues. She testified that NIPSCO will implement the electric DSM programs as presented in its case-in-chief and she explained that any measures that members of the OSB propose adding to these programs must, as a group, be cost-effective outside of the total program. Ms. Paronish stated that this benefits ratepayers by ensuring benefits are received for every additional dollar spent.

Ms. Paronish testified that the Settlement Agreement requirement for NIPSCO to work in good faith with its OSB regarding identified goals and programs (as explained above) are designed to improve NIPSCO's DSM programs with the goal of increasing participation in these programs. She said this will increase the possibility NIPSCO's DSM portfolio will be successful, which will benefit NIPSCO and its ratepayers.

Ms. Paronish testified the Plan goals are reasonably achievable and cost-effective, based on pro-forma estimates. She explained the stretch goal term increases the amount of cost-effective

energy savings NIPSCO and its ratepayers can achieve. She stated it is important that NIPSCO's customers do not pay for programs that are predetermined as not meeting the cost-effectiveness threshold. Ms. Paronish further testified that NIPSCO will collaborate with its OSB to improve education for its contractors and other trade allies related to certain measures or programs, which may include use of additional marketing funds. She stated that improving education efforts for NIPSCO's contractors and other trade allies will improve awareness of NIPSCO's DSM programs, leading to a better customer experience.

Ms. Paronish reviewed the agreed flexible funding process in a manner consistent with Ms. Becker's explanation. Ms. Paronish testified that the requirement of a unanimous OSB vote for certain funding requests provides additional program scrutiny and protection for NIPSCO's ratepayers.

She also discussed the agreed lost revenue cap in a manner consistent with Ms. Becker's testimony. Ms. Paronish stated the three-year cap on lost revenues imposed by the Settlement Agreement is an improvement over NIPSCO's proposal in its case-in-chief, as this limitation may lead to reduced costs for ratepayers.

Ms. Paronish ultimately recommended the Commission approve the Settlement Agreement.

**E. CAC's Testimony in Support of the Settlement Agreement.** Ben Inskeep, Program Director of the CAC, also testified in support of the Settlement Agreement. He stated the CAC supports NIPSCO's EE savings goal, which represents approximately 0.8% of total projected retail sales, and if opt-out sales are excluded, the savings goal represents approximately 1.6% of eligible retail sales. Mr. Inskeep asserted the EE savings goal, Settlement Agreement, which includes a commitment to new program initiatives, additional cost-effective energy savings of an additional 45,015 gross MWh over the total three-year period of 2024–2026, and the use of flexible budget funding, are reasonable. Mr. Inskeep testified CAC strongly supports the expanded use of distributed midstream incentive mechanisms, including the plan to work in good faith to increase residential midstream participation and include additional residential midstream HVAC and water heating measures. Mr. Inskeep noted CAC's support of the Plan requirement that NIPSCO and the OSB work in good faith to enhance several C&I programs and for NIPSCO and the OSB to work together to improve education to contractors and other trade allies on targeted measures or programs.

Mr. Inskeep described the agreed upon lost revenue cap in a manner consistent with Ms. Becker and Ms. Paronish.

Finally, Mr. Inskeep stated the Settlement Agreement includes numerous provisions that can enhance affordability for NIPSCO's customers, including the adoption of a suite of cost-effective programs in NIPSCO's Plan that will help consumers reduce their utility bills through EE measures, mechanisms for potentially expanding and enhancing cost-effective EE programs during the duration of the Plan, and the inclusion of the three-year cap on lost revenues. Mr. Inskeep recommended approval of the Settlement Agreement.

**6. Discussion and Commission Findings.** The Parties seek Commission approval of the Settlement Agreement in accordance with Ind. Code § 8-1-8.5-10 (“Section 10”) and 170 IAC 4-8. 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 Commission 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. 170 IAC 4-8 was 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.

Section 10(h) requires electricity suppliers, such as NIPSCO, to file, at least once every three years, a petition for approval of a plan that includes:

- (1) energy efficiency goals;
- (2) energy efficiency programs to achieve the energy efficiency goals;
- (3) program budgets and program costs; and
- (4) evaluation, measurement, and verification procedures that must include independent evaluation, measurement, and verification.

If the Commission finds the 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. Section 10(k)

and Section 10(o). 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. Section 10(l). 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. Section 10(m).

Given this legal background, we begin by considering NIPSCO's request for approval of its 2024–2026 Plan under Section 10.

**A. Presentation of a Plan (Ind. Code 8-1-8.5-10).** 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 2023. Based on the evidence presented as discussed further below, we find that NIPSCO's 2024–2026 Plan satisfies the requirements of Section 10(h).

**i. EE Goals.** Section 10(c) specifically defines “energy efficiency goals” as:

[A]ll 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.

**a. Reasonably Achievable.** NIPSCO's proposed EE savings goal of 375,122 gross megawatt hours for 2024–2026 represents approximately 0.8% of total projected retail sales, and if opt-out sales are excluded, the savings goal represents approximately 1.6% of eligible retail sales. These projections, as noted by Mr. Inskip, do not include the incremental cost-effective savings like those contemplated in the stretch goal that can be achieved through the initiatives outlined in the unanimous Settlement Agreement.

Mr. Skinner supported the reasonable achievability of the Plan's EE goals and offered his opinion that NIPSCO should be in a position to successfully meet its goals based upon the history of success of NIPSCO's programs and the similarity of these programs to other utilities' successful programs. He stated the likelihood of NIPSCO achieving its EE goals is bolstered by the fact the Settlement Agreement calls upon NIPSCO, in collaboration with the OSB, to work in good faith to optimize and enhance its delivery of programs. The Parties, through the OSB, will use best efforts to increase the scale of programs and/or identify emerging technologies to produce reasonably achievable, cost-effective (based on pro forma estimates) incremental energy savings.

We note that the Settlement Agreement provides NIPSCO financial incentives, discussed below, that will further encourage the utility to achieve the Plan savings goals.

Based on this evidence, we find the proposed Plan EE goals to be reasonably achievable.

**b. Consistent with NIPSCO’s Most Recent Integrated Resource Plan.** In considering whether NIPSCO’s proposed EE savings goals are consistent with its IRP, we note the Commission previously stated that “Section 10 requires the [DSM plan] to be consistent with, not the same as, the [integrated resource plan].” *Ind. Mich. Power Co.*, Cause No. 44841, 2017 WL 4232048, at \*24 (IURC Sept. 20, 2017). The integrated resource plan portfolios are not intended to be prescriptive; rather, they reflect the mix of resources likely to be used. *Indianapolis Power & Light Co.*, Cause No. 44945, 2018 WL 853593 \*37 (IURC Feb. 7, 2018).

The Plan and NIPSCO’s IRP are consistent in their respective included programs. All the bundles selected by the model in NIPSCO’s 2021 IRP are included in the Plan. While NIPSCO included additional bundles and EE goals programs in the Plan to help achieve an optimal balance of energy resources in NIPSCO’s service territory, the similarity in programs as a whole remains consistent. The consistency between the 2021 IRP and the Plan is also evident in the minimal difference between their respective EE savings, both as a percent of retail sales and in terms of megawatt hours, as set forth in the following table:

<b>Comparison of EE Savings in IRP and Plan</b>					
	<b>IRP (MWh)</b>	<b>IRP (% of Forecast)</b>	<b>EE Plan</b>	<b>EE Plan (% of Forecast)</b>	<b>Forecasted Sales</b>
2024	114,256	1.5%	121,976	1.6%	7,853,522
2025	117,907	1.5%	123,923	1.6%	7,847,459
2026	121,622	1.5%	121,812	1.5%	7,912,744
Total	353,785	1.5%	375,122	1.6%	23,613,725

Based upon this evidence, we find the Plan is consistent with NIPSCO’s most recent IRP.

**c. Designed to Achieve an Optimal Balance of Energy Resources.** An integrated resource evaluation is undertaken to determine the optimal means to meet the future need for electricity, which includes an assessment of least-cost planning. *See Ind. Code ch. 8-1-8.5.* The Commission has 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, 2002 WL 32089933 (IURC Dec. 19, 2002) (internal citation omitted). The Commission has “emphasized that [Ind. Code ch. 8-1-8.5] does not require the utility to automatically select the least cost alternative. Nor does the statute require the utility to ignore its obligation to provide reliable service or to disregard its exercise of reasonable judgment as to how best to meet its obligation to serve.” *Id.* As the Commission has previously ruled: “[i]f an Indiana utility reasonably considers and evaluates the statutorily required options for providing reliable, efficient, and economic service, then the utility should, in recognition that it bears the service obligations of Ind. Code § 8-1-2-4, be given some discretion to exercise its reasonable judgment in selecting the option or options to implement which minimize the cost of providing such service.” *PSI Energy, Inc.*, Cause No. 39175, at 14, 1992 WL 207191, 134 P.U.R.4th 251 (IURC May 13, 1992).

As noted above, NIPSCO selected the EE programs based on the extensive analysis conducted as part of the MPS and IRP development processes. This included, in part, assessments in the MPS of each measure’s technical potential, economic potential, and achievable potential.

These different assessments and the overall MPS and IRP methodologies described above indicate that the EE plan was designed to achieve an optimal balance of energy resources.

Based upon the above evidence, we find the proposed Plan is designed to achieve an optimal balance of energy resources.

ii. **EE Programs to Achieve the EE Goals.** The Plan includes 12 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 strive to: (1) improve and continue to monitor the Residential New Construction program; (2) increase residential midstream participation; (3) include additional residential midstream HVAC and water heating measures; (4) increase participation in the Small Business Direct Install program through enhanced incentives and/or targeted outreach; (5) increase the scope and comprehensiveness of the Strategic Energy Management program; and (6) review and make a good faith effort to align incentive levels for C&I measures relative to current equipment prices and/or other Indiana investor owned utilities' C&I programs. The Settlement Agreement also commits NIPSCO and the OSB to use good faith to identify and achieve through flexible funding additional cost-effective energy savings of 45,015 gross MWh over the total three-year period of 2024–2026.

Based on NIPSCO's IRP modeling and the flexibility provided to the OSB to monitor, reevaluate, and modify programs and measures to meet energy savings goals, we find the EE programs are designed to achieve NIPSCO's EE goals.

iii. **Program Budgets and Costs.** Ms. Staciwa presented the annual budget associated with the Plan and the costs associated with each of the programs. The total program costs for the EE Plan are \$117,038,731, consisting of \$76,477,866 in program costs, \$31,687,902 in lost revenues, and \$8,872,963 in financial incentives.

The Settlement Agreement permits NIPSCO, with OSB approval, to increase any individual program funding by up to 20% of the total program budget, even if this exceeds the overall 2024–2026 Plan budget approved in this Order. A majority vote of the OSB is required for flexible funding requests of 0-10% and unanimous OSB approval is required for flexible funding requests greater than 10%. To the extent additional funding is needed to achieve additional cost-effective saving opportunities that require funding over and above the amount allotted by flexible funding, NIPSCO may, subject to unanimous OSB approval, request the Commission approve additional funding. All other previous conditions set out in the settlement agreement in Cause No. 45456 related to flex funding apply to both the electric and gas programs, including that approval of flex funding will be sought before such flex funding is utilized. We note that the annual total portfolio budget cannot be increased by more than 20%, regardless of whether the amount is utilized entirely for one program or for multiple programs within a portfolio, without Commission approval.

The Commission has recognized that the OSB should generally have the flexibility to increase the budget. *See, e.g., Indianapolis Power & Light Co.*, Cause No. 45370, 2020 WL 7863002 \*8 (IURC Dec. 29, 2020) (internal citation omitted); *Duke Energy Indiana*, Cause No. 43955 DSM 8, 2020 WL 7863000 \*35 (IURC Dec. 29, 2020) (approving 20% spending

flexibility). Among other advantages, spending flexibility allows the OSB to react in a timely manner to changing circumstances during the implementation of the Commission approved Plan. Moreover, a majority of or all OSB members must approve any use of the spending flexibility authority to pursue cost-effective energy savings.

Pursuant to the Settlement Agreement, NIPSCO will continue to work with the OSB and its vendors to use the flex funding to increase savings as available, appropriate, and cost effective with a stretch target of an additional 45,015 gross MWh over the total three-year period of 2024–2026. While the OSB previously had the opportunity to use spending flexibility to increase EE investment and procurement, the Settlement Agreement provides a projection of savings through the stretch goal and creates the process by which NIPSCO can achieve additional savings through a collaborative process with the OSB and NIPSCO’s vendors. Spending flexibility allows the OSB to react in a timely manner to changing circumstances during the implementation of the Commission approved Plan. The Commission approves as reasonable these Settlement Agreement provisions regarding the use of spending flexibility.

Additionally, the Settlement Agreement permits NIPSCO to roll over unspent budget amounts from one program year to the next within the Plan, with a corresponding increase to the energy savings goal. To the extent NIPSCO has unspent budget amounts available at the conclusion of the 2023 program year, the Settlement Agreement allows NIPSCO to utilize those unspent budget amounts in the 2024 program year, for the purpose of paying program expenses related to the 2023 program year, with a corresponding increase to the energy savings goal for the 2024 program year. Moreover, any use of the carryover must be agreed to by the OSB based on governance provisions as approved by the OSB.

We find the agreed spending flexibility and rollover provisions of the Settlement Agreement are reasonable. We also find the budgets reasonably reflect the amount necessary to achieve the agreed energy savings goals and additional savings that may be achieved through the prudent exercise of the agreed spending flexibility and carryover funds. The impact and effect of the proposed budgets and costs are discussed further below in our consideration of the factors specified by Section 10(j).

iv. **Independent EM&V and Reporting.** The Parties agreed the EM&V procedures would be conducted as set forth in NIPSCO’s case-in-chief and summarized in Petitioner’s Exhibit No. 2, Attachment 2-D. The parties also agreed upon NIPSCO’s EM&V reporting proposal. We find these procedures and reporting requirements reasonable. NIPSCO’s quarterly scorecards and annual EM&V report shall be filed under this Cause.

v. **Conclusion.** Based upon the above analysis, we find the 2024–2026 Plan satisfies the requirements of Section 10(h). We next analyze the overall reasonableness of the Plan through the ten factors set forth in Section 10(j).

B. **Reasonableness of the 2024–2026 Plan.** Section 10(j) identifies ten factors that the Commission must consider in conducting this analysis. For the reasons set forth below, we find that NIPSCO’s 2024–2026 Plan, as agreed upon in the Settlement Agreement, is reasonable and is approved.



i. **Projected Changes in Customer Consumption (Ind. Code § 8-1-8.5-10(j)(1)).** As noted above, Ms. Becker indicated that the Plan will result in gross energy savings of approximately 375,122 MWh. Mr. Inskeep noted that the proposed EE savings goal for 2024–2026 represents approximately 0.8% of total projected retail sales, and if opt-out sales are excluded, the savings goal represents approximately 1.6% 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 (Ind. Code § 8-1-8.5-10(j)(2)).** Ind. Code § 8-1-8.5-10(j)(2) requires a cost-benefit analysis of the proposed DSM plan, including the likelihood of achieving the goals of the EE programs included in the plan. To this end, 170 IAC 4-8-2 requires the use of, at a minimum, four tests—the TRC, the participant cost test (“PCT”), the UCT, and RIM.

Each of these tests is designed to compare various costs and benefits from a different perspective. The TRC test helps determine whether EE is cost effective overall, whereas the PCT, UCT, and RIM help to determine whether the program design and efficiency measures provided by the program are balanced from the perspective of the participant, utility, and non-participants, respectively. The purpose of applying several different tests is to provide a more comprehensive analysis of the cost effectiveness than that which can be accomplished with just one of the tests. Consideration of multiple cost-effectiveness tests allows us to better evaluate the reasonableness of individual programs and the overall DSM portfolio as a whole.

Mr. Skinner testified NIPSCO evaluated the cost-effectiveness of its proposed Plan programs using the UCT, TRC, RIM, and PCT tests. He stated all of the programs, and the residential and C&I program portfolios, passed the UCT and TRC tests, and as applicable, the PCT test. He acknowledged that none of the individual programs and neither the residential portfolio nor C&I portfolio passed the RIM test. He stated this is typical for EE programs and he noted that, as demonstrated by the 2021 IRP, EE is often a least cost option, which reduces customer rates over the long term. In placing the RIM score results in context of the UCT, TRC, PCT scores and the Plan as a whole, we find the proposed Plan satisfies the cost benefit analysis of Section 10(j)(2).

iii. **Consistent with State Energy Analysis and Utility’s Most Recent Long-Range Integrated Resource Plan (Ind. Code § 8-1-8.5-10(j)(3)).** In evaluating the overall reasonableness of NIPSCO’s plan, Ind. Code § 8-1-8.5-10(j)(3) requires the Commission to consider whether the plan is consistent with “(A) The state energy analysis developed by the commission under [Ind. Code § 8-1-8.5-3] [and] (B) The electricity supplier’s most recent long range integrated resource plan submitted to the commission.”

The Commission has previously acknowledged that a state energy analysis that meets all the statutory criteria set forth in Ind. Code § 8-1-8.5-3 does not currently exist. *See e.g., Northern Indiana Public Service Co. LLC*, Cause No. 45456, 2021 WL 4052610 \*15 (IURC Sept. 1, 2021). However, as stated above, the Plan is consistent with NIPSCO’s most recent IRP. As such, we find that NIPSCO satisfies this subsection.

iv. **EM&V (Ind. Code § 8-1-8.5-10(j)(4)).** As noted above, we approve of the EM&V procedures agreed upon by the Parties.

v. **Undue or Unreasonable Preference to Customer Classes (Ind. Code § 8-1-8.5-10(j)(5)).** The evidence indicates that the Plan was specifically designed and implemented to ensure that each class pays only for the programs from which they benefit. Ms. Becker added that although residential customers are not paying to provide benefits to C&I customers (and vice versa), all customers receive the benefits of decreased energy usage. Accordingly, based on the evidence, our analysis of this issue weighs in favor of the Plan's reasonableness.

vi. **Stakeholder Comments (Ind. Code § 8-1-8.5-10(j)(6)).** Section 10(j)(6) requires the Commission to consider comments provided by customers, customer representatives, the OUCC, or other stakeholders regarding the Plan adequacy and reasonableness. Ms. Becker said NIPSCO received comments from stakeholders concerning the adequacy and reasonableness of the Plan. We note the OUCC and the CAC provided comments through the evidence they presented in this proceeding, which the Commission has considered in making its determinations regarding this Cause.

vii. **Effect or Potential Effect of the Plan on Electric Rates and Customer Bills of Participants and Non-Participants (Ind. Code § 8-1-8.5-10(j)(7)).** NIPSCO provided evidence of the short-term bill impacts on customers. Specifically, Ms. Becker testified that upon implementation of the Plan, a residential customer using 1,000 kWh of electricity per month will see a monthly rate increase of \$1.26 (25.9%), in comparison to what a customer pays using the current factor approved in Cause No. 43618 DSM 17. NIPSCO also provided the above 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. 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 (Ind. Code § 8-1-8.5-10(j)(8)).** In assessing the overall reasonableness of the Plan and the Settlement Agreement, we are required to consider the "lost revenues and financial incentives associated with the plan and sought to be recovered or received by the electricity supplier." Ind. Code § 8-1-8.5-10(j)(8).

a. **Lost Revenues.** "Lost revenues" means the difference, if any, between: (1) revenues lost; and (2) the variable O&M costs saved by an electricity supplier as a result of implementing EE or other DSM programs. Section 10(e). Pursuant to the Settlement Agreement, NIPSCO seeks to recover lost revenues for all measures installed in 2024–2026 for the lesser of the life of the measure, three years, or until new rates are implemented pursuant to a final order in NIPSCO's next base rate case. As noted above, NIPSCO projects \$31,687,902 of lost revenues associated with the implementation of the 2024-2026 Plan period. Ms. Staciwa noted if the Commission permits NIPSCO to recover lost revenues for particular programs and these lost revenues are considered when establishing NIPSCO's base rates, then NIPSCO will stop collecting lost revenues for these programs through its DSMA Mechanism.

Based on the evidence, we find the recovery of lost revenues as provided in the Settlement Agreement is reasonable and is approved.

**b. Financial Incentives.** The Settlement Agreement permits NIPSCO, as set forth in the utility's case-in-chief, to earn a performance incentive on all programs except the IQW and Income Qualified Home Energy Reports programs. Both Section 10(o)(1) and 170 IAC 4-8-7 authorize the Commission to approve reasonable performance incentives to encourage the implementation of DSM programs to address the regulatory or financial bias against such programs. The financial incentives for the Plan are projected to cost \$8,872,963 over the course of the 2014–2016 period.

We find it appropriate for performance incentives to be coupled with 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. Such a structure also encourages pursuit of cost-effective savings by increasing the available incentive for exceeding specific targets.

We therefore authorize NIPSCO to recover performance incentives as provided in the Settlement Agreement for each of its programs, on a program-by-program basis (excluding the IQW and Income Qualified Home Energy Reports programs).

**ix. Utility's Current Integrated Resource Plan and the Underlying Resource Assessment (Ind. Code § 8-1-8.5-10(j)(9)).** The Plan's consistency with NIPSCO's 2021 IRP and underlying resource assessment is discussed above.

**x. Other Considerations (Ind. Code § 8-1-8.5-10(j)(10)).** Section 10(j)(10) permits the Commission to consider any other information that the Commission considers necessary. We note that Indiana law strongly favors settlement as a means of resolving contested proceedings. *Mendenhall v. Skinner & Broadben*, 728 N.E.2d 140, 145 (Ind. 2000) ("The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes."). Mr. Inskeep testified that the parties reached the unanimous Settlement Agreement through months of extensive discussions and negotiations as a part of difficult arms-length negotiations. He said the Settlement Agreement incorporates a number of provisions that are of particular interest and importance to the CAC and that overall, the CAC is satisfied with the Settlement Agreement. Ms. Paronish affirmed that the Settlement Agreement was reached due to collaboration and good faith negotiations and that the resulting agreement's terms are in the public interest.

Accordingly, we find these facts weigh in favor of approving the Plan as agreed upon by the Parties in the Settlement Agreement.

**xi. Conclusion Regarding the Plan.** Based on the evidence presented and our consideration of the factors enumerated in Ind. Code § 8-1-8.5-10(j), we find that NIPSCO's Plan is reasonable, in the public interest, and is approved.

**C. Program Cost Recovery.** NIPSCO requests authorization to recover program operating costs through its DSMA Mechanism. 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. 170 IAC 4-8-5 also provides authorization for the recovery of such program costs. According to the Settlement Agreement, the Parties agreed to program cost recovery. Having found NIPSCO's Plan to be reasonable in its entirety, we therefore find that NIPSCO shall be authorized to recover its associated program operating costs (direct and indirect costs, including EM&V, administrative, and marketing costs) via its DSMA Mechanism.

**D. Lost Revenues and Performance 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.

For the reasons set forth in Section 6.B.viii. above, we find NIPSCO is entitled to recover the agreed upon financial incentives and lost revenues.

**E. Oversight.** NIPSCO requested approval to continue to utilize its OSB to assist in the administration of its 2024–2026 Plan. The Commission has previously approved OSBs to oversee and monitor energy efficiency programs provided by utilities. *See, e.g., Ind. Mich. Power Co.*, Cause No. 45285 (IURC Feb. 3, 2021). Based on our review of the record, we find that NIPSCO's proposed ongoing use of the OSB is reasonable.

**F. Approval of Settlement Agreement.** Based upon the above discussion and findings, the Commission finds that the Settlement Agreement is reasonable, is in the public interest, and is consistent with the governing regulatory framework. The resolution of this Cause as set forth in the Settlement Agreement is within the scope of and supported by the evidence presented by the Parties. 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 is approved.

The Settlement Agreement 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, regarding future citation of this Order, our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849 at \*7-8 (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, and NIPSCO's 2024–2026 Plan, as described in the Settlement Agreement, is approved as set forth in this Order, including independent EM&V procedures.

2. NIPSCO is authorized to timely recovery of all costs, including direct and indirect program operating costs, lost revenues, and financial incentives associated with the 2024–2026 Plan, through its DSMA Mechanism, consistent with the Settlement Agreement and the terms of this Order.

3. 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.

4. NIPSCO shall file scorecards within 60 days of the end of each relevant period, with the fourth quarter scorecard to include information for the full year; and NIPSCO shall file annual evaluation, measurement, and verification results not later than July 15 of each year. An updated fourth quarter/full year scorecard, to be submitted after the EM&V results have been received based on the updated savings achieved according to the evaluated results, as well as actual lost revenues, financial incentives, and EM&V expenditures, shall be filed by July 15 of each year. All of these filings shall be filed in this Cause.

5. NIPSCO's Oversight Board shall continue to operate as it has been operating.

6. Consistent with the Settlement Agreement, NIPSCO and the Oversight Board are authorized to utilize 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 2024–2026 Plan budget approved in this Order, subject to the provisions of Finding 6.A.iii. above. Additionally, NIPSCO may roll over unspent budget amounts from one program year to the next within the 2024–2026 Plan, with a corresponding increase to the savings goal. To the extent NIPSCO has unspent budget amounts available at the conclusion of the 2023 program year, NIPSCO may utilize those unspent budget amounts in the 2024 program year, for the purpose of paying program expenses related to the 2023 program year. The savings goal for the 2024 program year shall be increased accordingly. Finally, NIPSCO shall continue to work with its OSB and its vendor(s) to use the flex funding to increase savings as available, appropriate, and cost-effective.

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

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: OCT 18 2023**

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

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**Dana Kosco  
Secretary of the Commission**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**VERIFIED PETITION OF NORTHERN INDIANA )  
PUBLIC SERVICE COMPANY LLC FOR )  
APPROVAL OF ITS PROPOSED 2024-2026 ENERGY )  
EFFICIENCY PLAN FOR ELECTRIC SERVICE AND )  
ASSOCIATED RATEMAKING AND )  
ACCOUNTING TREATMENT, INCLUDING ) CAUSE NO. 45849  
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. )**

**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement is entered into as of the 28<sup>th</sup> day of June, 2023, 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. 45849 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 2024-2026 Energy Efficiency Plan (the "2024-2026 DSM Plan") and associated accounting and ratemaking treatment as follows:

### **A. Programs, Budgets, and Savings Goals**

1. NIPSCO should be authorized to implement the electric energy efficiency programs presented in its Case-in-Chief Testimony, 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 2021 Integrated Resource Plan, and designed to achieve an optimal balance of energy resources in NIPSCO's service territory. 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.

2. NIPSCO, in collaboration with the Oversight Board ("OSB"), will work in good faith to optimize and enhance its delivery of programs and initiatives. NIPSCO and the OSB will specifically strive to: (1) improve and continue to monitor the Residential New Construction program; (2) increase residential midstream participation; (3) include additional residential midstream heating, ventilation, and air conditioning ("HVAC") and water heating measures; (4) increase participation in the Small Business Direct Install program through enhanced incentives and/or targeted outreach; (5) increase the scope and comprehensiveness of the Strategic Energy Management program; and (6) review and make a good faith effort to align incentive levels for commercial and industrial ("C&I") measures relative to current equipment prices and/or other Indiana investor owned utilities' C&I programs.

3. The NIPSCO OSB agrees to work collaboratively and in good faith to use best efforts to identify and achieve, through the use of the flexible funding, additional cost-effective energy savings of an additional 45,015 gross MWh over the total three-year period of 2024-2026. The Settling Parties, through the OSB, will use best efforts to increase the scale of programs and/or identify emerging technologies to produce reasonably achievable, cost-effective (based on pro forma estimates) incremental energy savings. 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 potentially expand existing programs and initiatives to seek to achieve greater savings levels. NIPSCO will also make a



good faith effort to expand other measures and programs.

4. NIPSCO will collaborate with the OSB on ways to seek to improve education for contractors and other trade allies related to targeted measures or programs, including, but not limited to, heat pumps. Such efforts may include, but are not limited to, utilizing marketing funds to provide additional education opportunities for contractors and other trade allies.

5. As in previous NIPSCO DSM Plans approved by the Commission, the OSB shall have the opportunity to review and provide input on final program designs, including program offerings, each year prior to implementation.

**B. Budget Flexibility**

1. 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 2024-2026 DSM Plan budget approved by the Commission by up to, but not exceeding, 20%. A majority vote of the OSB is required for flexible funding requests of 0-10%, and a unanimous vote of the OSB is required for flexible funding requests greater than 10%.

2. To the extent additional funding is needed to achieve additional cost-effective saving opportunities that requires funding over and above the amount allotted by flexible funding, the Settling Parties, through the OSB by unanimous vote, shall vote on whether to request additional funding through a request to the Commission.

3. All other previous conditions set out in the settlement agreement in Cause No. 45456 related to flex funding shall apply to both the electric and gas programs, including that approval of flex funding will be sought before such flex funding is utilized.

4. NIPSCO may also roll over unspent budget amounts from one program year to the next within the three year 2024-2026 DSM Plan period, with a corresponding increase to the savings goal.

5. In addition, to the extent NIPSCO has unspent budget amounts available at the conclusion of the 2023 program year, it may utilize those unspent budget amounts in the 2024 program year, for the purpose of paying program expenses related to the 2023 program year. The savings goal for the 2024 program year will be increased correspondingly.

6. 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. Lost Revenues**

1. The Settling Parties agree to cap lost revenues, such that lost revenue for all measures installed in 2024-2026 will be limited to (a) three years, (b) the life of the measure, or (c) until new rates are implemented pursuant to a final order in NIPSCO's next base rate case following issuance of an Order in this Cause, whichever occurs earlier.

2. Subsequent to approval of new base rates in NIPSCO's next base rate case proceeding following issuance of an Order in this Cause, NIPSCO will zero out, in its Adjustment of Charges for Demand Side Management Adjustment Mechanism (currently Rider 883), all lost revenue recovery approved for the DSM program years up to, and including, the test year adopted for the setting of base rates in the Company's next base rate case proceeding.

**D. Other**

1. All other aspects of NIPSCO's Petition and Case-in-Chief Testimony, as corrected, remain the same as proposed by NIPSCO, including, but not limited to, 2024-2026 DSM Plan implementation, marketing, EM&V procedures, EM&V costs, performance incentives, reporting requirements, 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 2024-2026 DSM Plan in this Cause No. 45849, 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, 2023, so that the 2024-2026 DSM Plan can be implemented on January 1, 2024.

B. The Settling Parties agree to jointly present this Agreement to the Commission for its approval in Cause No. 45849, 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. 45849 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.

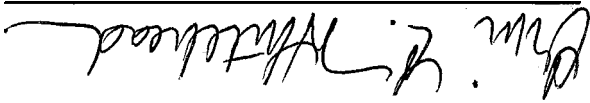
I. The provisions of this Agreement shall be enforceable by any Settling Party before the Commission or in any court of competent jurisdiction.

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.

*[Remainder of Page is Intentionally Blank]*

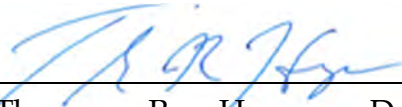
ACCEPTED AND AGREED this 28th day of June, 2023.

Northern Indiana Public Service Company LLC

A handwritten signature in black ink, appearing to read "Erin E. Whitehead". The signature is written in a cursive, flowing style.

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

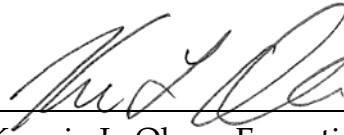
**Indiana Office of Utility Consumer Counselor**



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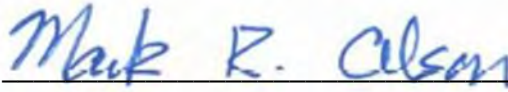
Thomas R. Harper, Deputy Consumer  
Counselor

**Citizens Action Coalition of Indiana, Inc.**

A handwritten signature in black ink, appearing to read "K. L. Olson", written over a horizontal line.

Kerwin L. Olson, Executive Director

Respectfully submitted,



Mark R. Alson (No. 27724-64)

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Attorney for Petitioner

Northern Indiana Public Service Company LLC

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served via email transmission upon the following:

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[jwashburn@citact.org](mailto:jwashburn@citact.org)  
[rkurtz@citact.org](mailto:rkurtz@citact.org)

Dated this 7<sup>th</sup> day of July, 2023.



Mark R. Alson