

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

**VERIFIED PETITION OF NIPSCO GENERATION LLC)
FOR CERTAIN DETERMINATIONS BY THE) CAUSE NO. 46183
COMMISSION WITH RESPECT TO ITS JURISDICTION)
OVER PETITIONER’S ACTIVITIES AS A NON-RETAIL) APPROVED: SEP 24 2025
GENERATOR OF ELECTRIC POWER.)**

ORDER OF THE COMMISSION

Presiding Officers:

**James F. Huston, Chairman
Ann S. Pagonis, Administrative Law Judge**

On January 10, 2025, NIPSCO Generation LLC (“GenCo,” or “Petitioner”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) for an order declining to exercise its jurisdiction, pursuant to Ind. Code § 8-1-2.5-5, over certain aspects of Petitioner’s purchase, ownership, development, financing, construction, and operation of generating facilities and related assets (the “Facilities”). Also on January 10, 2025, GenCo filed its case-in-chief.¹

The Citizens Action Coalition of Indiana, Inc. (“CAC”); Invenergy Renewables LLC (“Invenergy”); Board of County Commissioners of LaPorte County, Indiana (“LaPorte”); Clean Grid Alliance (“CGA”); NIPSCO Industrial Group (“Industrial Group”); Takanock Beckham, LLC (“Takanock”)²; United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO/CLC and its Locals 12775 and 13796 (“Union”); and DX Hammond JV LLC (“DX Hammond”) filed Petitions to Intervene which were granted without objection. On February 14, 2025, Northern Indiana Public Service Company LLC (“NIPSCO”) filed a Petition to Intervene, which was granted over the objection of the Indiana Office of Utility Consumer Counselor (“OUCC”) on February 27, 2025.

Following an attorneys conference on February 18, 2025, the Presiding Officers issued a Docket Entry on February 27, 2025, that, among other things, defined the scope of this proceeding. The Docket Entry directed the parties to focus the scope of their respective filings to the request under consideration and the factors listed in Ind. Code § 8-1-2.5-5(b).

On March 24, 2025, CAC, CGA, and LaPorte filed a Motion to Dismiss, to which GenCo responded on April 3, 2025, and the moving parties replied on April 10, 2025. The Motion to Dismiss was denied by Docket Entry dated May 2, 2025.

¹ On March 25, 2025, GenCo filed a correction to this direct testimony and on April 11, 2025, GenCo filed a Notice of Substitution of Witness.

² On June 13, 2025, a Notice of Corporate Name Change of Intervenor Takanock, Inc. to Takanock Beckham, LLC was filed.

On March 31, 2025, LaPorte filed its case-in-chief and on April 1, 2025, the OUCC and certain intervenors filed their respective cases-in-chief.

On April 14, 2025, NIPSCO and GenCo filed respective Motions for Protection and Nondisclosure of Confidential and Proprietary Information, which were granted by Docket Entries dated May 1, 2025.

On April 14, 2025, NIPSCO filed cross-answering testimony. Also on April 14, 2025, GenCo filed rebuttal testimony and attachments.

On April 14, 2025, GenCo filed a Joint Objection and Motion to Strike portions of the direct testimony of Takanock's witness, to which Takanock responded on April 24, 2025, and GenCo and NIPSCO jointly replied on May 2, 2025.³ During the evidentiary hearing, the Presiding Officers denied the Motion to Strike.

On May 1, 2025, the Presiding Officers issued a Docket Entry requesting additional information from Petitioner to which Petitioner responded on May 7, 2025.

On May 8, 2025, GenCo, NIPSCO, and the NIPSCO Industrial Group (together, "Settling Parties") filed a Joint Notice of Agreement in Principle, Request to Vacate Evidentiary Hearing Date and Request for Attorneys' Conference which contained a proposed procedural schedule for settlement. On that same day, LaPorte filed an Objection to Request to Vacate the Evidentiary Hearing to which GenCo and NIPSCO replied on the same day. Also on May 8, 2025, the Presiding Officers, by Docket Entry, continued the hearing over LaPorte's objection and scheduled an attorneys' conference to discuss the procedural schedule.

On May 9, 2025, GenCo filed a Notice of Submission of Confidential Information indicating that it had submitted to the Commission as a confidential document the term sheet reflecting the settlement in principle among the Settling Parties. On May 12, 2025, CAC, CGA, LaPorte County, Takanock, and Union filed a Joint Response to the proposed procedural schedule for settlement to which the Settling Parties replied on May 14, 2025.

Also on May 14, 2025, the Settling Parties filed respective settlement testimony. That same day, GenCo submitted Settling Parties' Joint Exhibit 1, the Stipulation and Settlement Agreement among the Settling Parties.

On May 22, 2025, the Presiding Officers by Docket Entry established the procedural schedule for settlement.

On June 13, 2025, the OUCC, CAC, CGA, LaPorte, and Takanock filed testimony in opposition to the settlement.

³ GenCo and NIPSCO jointly replied a day late pursuant to an unopposed motion.

On June 17, 2025, GenCo and NIPSCO filed settlement reply testimony which included a Revised Joint Exhibit 1 in clean and redlined version of the Stipulation and Settlement Agreement among the Settling Parties (“Settlement Agreement” or “Settlement”), to present an agreed upon change in response to non-settling parties and a correction to the Settlement Agreement.

On June 30, 2025, GenCo, NIPSCO, and the Industrial Group filed a Joint Motion for Limitation of Cross-Examination by Parties with Similar Interests and Supporting Memorandum. During the evidentiary hearing, after hearing oral arguments from the parties, the Presiding Officers denied the motion.

The Commission held an evidentiary hearing on July 1, 2025, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. GenCo, NIPSCO, the OUCC, and intervenors were present and participated through counsel. The testimony and exhibits of the participating parties were admitted into the record without objection.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. Jurisdiction and Notice. Notice of the hearing in this Cause was given and published by the Commission as required by law. As discussed further below, Petitioner intends to engage in activity that would qualify it as a “public utility” under Ind. Code § 8-1-2-1 and as an “energy utility” under Ind. Code § 8-1-2.5-2. The Commission may decline to exercise, in whole or part, its jurisdiction over an energy utility pursuant to Ind. Code § 8-1-2.5-5. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner’s Characteristics and Businesses. GenCo is a limited liability company with its principal place of business located at 801 East 86th Avenue, Merrillville, Indiana. GenCo intends to purchase, construct, own, and operate generation facilities and related assets. GenCo will have no franchises, service territory, or retail customers and will make no retail sales in Indiana or elsewhere. All sales by Petitioner of electric energy produced by its generation facilities will be provided exclusively to NIPSCO through a power purchase agreement (“PPA”) or similar agreement that will be subject to Commission approval. If excess generation exists after satisfying contractual requirements with NIPSCO, electric energy produced by its generation facilities will be offered into the wholesale power market (governed by the policy and protocols established by the Midcontinent Independent System Operator, Inc. (“MISO”)) and not sold at retail. GenCo will obtain the requisite approval from the Federal Energy Regulatory Commission (“FERC”) for such participation in the wholesale market. GenCo will not otherwise dedicate or hold itself out to serve the electric needs of the general public; however, development of its generation facilities will provide public benefits.

3. Relief Requested. Petitioner requests the Commission decline jurisdiction over certain delineated aspects of Petitioner’s purchase, ownership, development, financing, construction, and operation of the Facilities. Specifically, Petitioner requested: (1) a finding that GenCo is a “public utility” within the meaning of Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1 and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2 for purposes of the purchase, ownership, development, financing, construction, and operation of the Facilities; (2) a finding that

the Commission's limited declination of jurisdiction will serve the public interest; and (3) a declination of the Commission's jurisdiction under certain statutes set forth in Attachment A to the Petition, Petitioner's Exhibit 1. The statutes for which GenCo sought declination were further refined as set forth in Settlement Agreement Exhibit A.

4. Overview of the Evidence.

A. GenCo Direct Evidence. Mr. Parisi provided an overview of GenCo's request and explained that the specific sections of the Indiana Code for which declination is being requested are delineated in Attachment A to the Petition, Petitioner's Exhibit 1. He then discussed the interest from potential megaload customers. He explained that these inquiries are different than usual in two respects. First, there is the sheer number of inquiries. Second is the magnitude of the requests of the potential electric load. He said most of the inquiries NIPSCO is seeing are for hundreds of megawatts ("MW"), and in some cases thousands of MW, and they are generally related to development of data centers. Based on the magnitude of potential electric load, NIPSCO refers to these potential customers as "megaload customers." Mr. Parisi described the typical characteristics of megaload customers and the type of service they demand. Typically, these companies are financially savvy, including having experience in energy markets and rate structures in numerous states and regions across the United States and the world. He explained that generally these types of customers want service to begin as soon as possible and to ramp up quickly.

Mr. Parisi described the fundamental considerations NIPSCO made when developing its strategy to serve megaload customers. He said NIPSCO focused on: (1) protecting existing retail customers; (2) serving new megaload customers with speed and flexibility; and (3) maintaining NIPSCO's financial integrity. He said while demand is growing rapidly, supply of electricity is struggling to keep pace. He said it takes months or years to construct the infrastructure and resources necessary to produce and deliver energy. This has led to megaload developers competing to find utilities who can serve electric load in as short of a time as possible. In turn electric utilities and other providers compete to attract these megaload customers to their electric systems. Mr. Parisi testified that GenCo is a key element of NIPSCO's overall plan to attract and ultimately serve megaload customers. GenCo, he said, will enable speed-to-market, and allow NIPSCO to develop the resources that megaload customers seek without the costs being borne by NIPSCO's non-megaload retail customers.

Mr. Parisi described the relationships between NIPSCO, GenCo, and megaload customers. He said subject to the Commission's approval in a separate proceeding, which will be filed later, NIPSCO and GenCo will enter into a PPA or similar agreement, whereby all energy and capacity from GenCo's generation assets will be sold to NIPSCO. NIPSCO would then use the assets to serve megaload customers. He explained that GenCo is key to NIPSCO's overall approach, as it is GenCo that will construct, own, and operate the generation facilities and related assets necessary to serve new megaload customers. He said GenCo and NIPSCO will be separate companies, although both are subsidiaries of NIPSCO Holdings II. This separation will allow the assets used to serve megaload customers to be "ringfenced" from the assets owned and operated by NIPSCO to serve its other retail customers. He said GenCo was formed to protect NIPSCO's non-megaload customers.

Mr. Parisi said there is nothing fundamentally wrong with a more traditional approach to ownership and operation of the assets necessary to serve megaload customers. There are ways to attempt to protect current customers under this type of process to some degree, including use of minimum contract terms, minimum load factors, exit fees, etc., but this approach presented challenges to NIPSCO. He said having ownership and the related capital and operation and maintenance (“O&M”) costs outside of NIPSCO protects NIPSCO’s current customers from the costs of generation recovered during construction and operation. He said non-megaload NIPSCO customers will also be protected from paying for a generation asset that is no longer needed if a megaload customer terminates a contract or leaves following expiration of a contract term. He explained it is possible that there will be some investments that NIPSCO (not GenCo) will seek to include in rate base for recovery from all customers through the traditional ratemaking process if they support and benefit the broader NIPSCO electric system. He explained that in that case, megaload customers would also share in the cost responsibility for those assets. Mr. Parisi testified that GenCo is not seeking declination of the Commission’s authority over sales, transfers, assignments, etc. of assets between utilities under Ind. Code § 8-1-2-83.

Mr. Parisi said speed-to-market has been a priority for the overwhelming majority of the potential megaload customers with whom NIPSCO has spoken. Utilizing GenCo to construct, own, and operate generation facilities presents an opportunity to significantly reduce the time it takes to bring new generation online as compared to the traditional regulatory model. He said NIPSCO can differentiate itself from other electric utilities by using GenCo to serve megaload customers as early as possible. He said a Commission order denying GenCo’s requests for relief in this proceeding could inhibit NIPSCO’s ability to serve these megaload customers quickly and some of the megaload customers considering Indiana or northern Indiana specifically, may look elsewhere for their projects.

Mr. Parisi said having GenCo construct, own, and operate the generation facilities and related assets is in the public interest because: (1) it isolates the risk associated with serving megaload customers from NIPSCO’s current customer base; and (2) it brings the benefits of this economic development from megaload customers to Indiana. He explained that the provisions of Ind. Code ch. 8-1-8.5 that GenCo requests Commission decline to exercise jurisdiction under are not applicable or have limited application. He said other sections are unnecessary given the sophistication of the megaload customers. Exemption from the various financing provisions is important to attract the capital necessary, do so quickly enough, and provide flexibility to accomplish the needed speed-to-market. He said declination would assure speed-to-market, which is necessary to attract these megaload customers. The Commission’s exercise of jurisdiction under many of the chapters or sections identified in Attachment A to the Petition is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). He explained that megaload customers are sophisticated and will demand reliable service at competitive prices. Therefore, he said declination of the sections identified in Attachment A to the Petition would be beneficial for GenCo and its customer (NIPSCO) and would promote energy utility efficiency as contemplated by Ind. Code §§ 8-1-2.5-5(b)(2) and (3). He said the Commission will continue to maintain visibility into NIPSCO which would be the only customer of GenCo. Further, he said exercise of Commission jurisdiction would inhibit GenCo and NIPSCO from competing with others in this space as contemplated by Ind. Code § 8-1-2.5-5(b)(4). He explained that it is important that NIPSCO be able to attract megaload customers while insulating current NIPSCO customers from

any attendant risks. He said this is the type of alternative to traditional regulatory policies and practices contemplated by Ind. Code. ch. 8-1-2.5.

Mr. Parisi said GenCo is seeking declination of Ind. Code 8-1-8.5 (the “CPCN Statute”) because the primary purpose for a certificate of public convenience and necessity (“CPCN”) is to protect customers from unnecessary capital expenditures by determining that a proposed project is needed. NIPSCO will be GenCo’s only customer, so Mr. Parisi said this protection is unnecessary. Ind. Code 8-1-8.5-2 requires a public utility to obtain a CPCN before beginning construction of any facility for the generation of electricity. Mr. Parisi said this requirement would be an obstacle to providing the speed-to-market that megaload customers seek. He said allowing GenCo to undertake construction activities without a CPCN is reasonable because NIPSCO’s retail customers will not be responsible for costs GenCo incurs. He opined that the Commission will have authority to review and approve the contractual arrangements between NIPSCO and GenCo, and NIPSCO and megaload customers, so declination is appropriate. Finally, Mr. Parisi testified it is his understanding that granting declination of the requirement to obtain a CPCN is typical in Commission declination proceedings filed by Independent Power Producers (“IPPs”).

B. OUCC and Intervenor’s Cases-in-Chief.

i. OUCC Case-in-Chief. OUCC witness Brian R. Latham, Electric Division Director, testified that while he is not opposed to the isolating structure underlying GenCo’s request, he recommended GenCo’s declination request be denied because Petitioner has not met its burden to demonstrate that declination is in the public interest under the four criteria in Ind. Code § 8-1-2.5-5(b). Mr. Latham was primarily concerned that GenCo did not provide enough information to prove that NIPSCO’s current customers will not suffer any financial harm if the Commission grants GenCo’s requests.

Mr. Latham also testified that GenCo’s request is not a typical declination request for two reasons. Firstly, he stated that requests for declination of Commission jurisdiction are typically for a specific generation project, such as a solar or wind farm. Here, GenCo’s declination request is for a wholesale generation company, and the extent and propriety of the generation plans are not yet clearly defined. Secondly, he stated that GenCo is an affiliate of NIPSCO and both companies are wholly owned subsidiaries of NIPSCO Holdings II LLC. He said that while declination of utility affiliates is not common, these types of arrangements are usually proposed joint ventures, where a utility affiliate forms a joint venture with a third party to own generation, and the energy generated is then sold back to the utility. He said the difference is that these joint venture arrangements involve a known generation facility already under development. He testified in this proceeding, the affiliation presented is unprecedented. He raised concerns about potential ramifications if GenCo issues debt that is collateralized by NIPSCO’s assets or ratepayers. Mr. Latham testified that GenCo has not determined what credit support it will receive from NiSource or other affiliates, so it is unknown how bankruptcy at GenCo would affect the NiSource corporate structure, NIPSCO, and NIPSCO’s customers. He found it troubling that a regulated utility could control significant unregulated load that, if sent into the wholesale market, could disrupt fair competition.

Mr. Latham listed his concerns regarding protection of NIPSCO's current customers. He stated debt issued for GenCo's property, plant, and equipment will, presumably, be issued by GenCo, leaving NIPSCO and its parent company's assets unencumbered. However, he said debt cross collateralization between GenCo and NIPSCO or debt issued by the parent company could lead to NIPSCO ratepayers being responsible for GenCo debt. Mr. Latham further testified that if NIPSCO ratepayers become responsible for GenCo debt, NIPSCO may need to raise its rates to avoid creditor control of NIPSCO's assets. Mr. Latham recommended the Commission ensure that NIPSCO's ratepayers are not subject to GenCo-related debt prior to approving GenCo's requests.

Mr. Latham testified to the creation of a separate entity to provide NIPSCO with the generation necessary to serve megaload customers could reduce the risk of burdening NIPSCO's other customers investment expenses, but GenCo did not provide enough information to make that protection certain. He testified that while part of the reason for this lack of information is because the specific arrangements between NIPSCO and GenCo and the special contracts between NIPSCO and the megaload customers will be presented to the Commission in future proceedings, the broad unknowns concerned him. He stated that, because of this lack of substantive information, GenCo has failed to show its proposal meets the four factors under Ind. Code § 8-1-2.5-5.

Mr. Latham responded to GenCo's explanation that it meets the Ind. Code § 8-1-2.5-5(b)(1) consideration that declining jurisdiction would be in the public interest because competitive forces or regulation by other regulatory bodies make Commission jurisdiction unnecessary or wasteful. He stated thoughtful regulatory analysis should not be sacrificed to address projected load growth or give one utility a competitive advantage. He said GenCo's explanation also does not address the entire statutory section, and too little information was provided on the operations of GenCo. He contends that the language used by GenCo to describe arms-length negotiation with NIPSCO is open-ended and subject to interpretation. Mr. Latham addressed Mr. Parisi's statement that competitive forces will demand that NIPSCO provide reliable service to megaload customers at competitive prices. Mr. Latham said this statement refers more to NIPSCO's ability to compete for business from megaload customers and the price it will charge. He testified there was no discussion of the competitive forces that will apply to GenCo in the wholesale market. Further, he said GenCo does not explain how any of the statutes under which it is seeking declination are addressed by other regulatory bodies and that render the Commission's jurisdiction unnecessary and wasteful. Mr. Latham said that while GenCo said in its petition that it will obtain required FERC approvals, Mr. Parisi did not discuss FERC approvals in her testimony. Mr. Latham explained that the OUCC routinely evaluates how local regulations will affect a generation facility in declination of jurisdiction cases. He testified that GenCo did not explain how it will address local issues or finance its projects and commitments. Mr. Latham was particularly concerned about how NIPSCO would respond if GenCo did not meet its obligation to serve NIPSCO. In a worst-case scenario, he said NIPSCO may struggle to obtain sufficient generation to meet its load obligations. Based on the lack of information about GenCo's operation, ringfencing, competitive forces, financing, and regulation by other bodies, he recommended the Commission find GenCo has not shown that declination is in the public interest as required by Ind. Code § 8-1-2.5-5(b)(1).

Regarding the requirements under Ind. Code § 8-1-2.5-5(b)(2), Mr. Latham testified that Mr. Parisi has not shown that granting GenCo's requested declination of jurisdiction will directly result in economic benefit to Indiana. He stated Mr. Parisi concludes there will be benefits without

providing sufficient support or explanation as to why granting the requested declination of jurisdiction, specifically, would provide the benefits.

Regarding the public interest requirement under Ind. Code § 8-1-2.5-5(b)(3), Mr. Latham testified that Mr. Parisi only references competitive forces as promoting energy utility efficiency. He testified it is unclear how the requested declination of jurisdiction would promote energy utility efficiency.

Regarding the public interest requirement under Ind. Code § 8-1-2.5-5(b)(4), Mr. Latham said GenCo has not shown that exercise of Commission jurisdiction would inhibit Petitioner from competing with similar providers. He testified that Mr. Parisi does not discuss how GenCo will be competing with similar providers, such as other wholesale generators, or how declination will inhibit GenCo's competition. Mr. Latham explained Mr. Parisi said an advantage of declination would be the ability to provide "speed-to-market" for generation, as GenCo would avoid the time necessary to obtain a CPCN from the Commission. However, he said this does not explain how the Commission's jurisdiction would inhibit GenCo from competing with functionally similar energy service.

Mr. Latham then explained that in the event the Commission grants GenCo's request for declination, there are several statutes that GenCo has requested declination where the OUCC recommends the Commission retain jurisdiction. These include Ind. Code § 8-1-2-47, Ind. Code § 8-1-2-51, and Ind. Code §§ 8-1-2-76 through -80.

In conclusion, Mr. Latham testified GenCo has not met the requirements under Ind. Code § 8-1-2.5-5 to show that its request is in the public interest. He testified that if the Commission grants GenCo's declination request, the OUCC recommends the Commission retain jurisdiction under several statutes to preserve public insight into GenCo's operation and allow the Commission to investigate GenCo.

ii. CAC Case-in-Chief. Ted Thomas, Founder of Energize Strategies, testified that GenCo has not demonstrated that technological or operating conditions make the exercise, in whole or in part, Commission jurisdiction unnecessary or wasteful. He said he is concerned that GenCo has not provided adequate information or details about its operating conditions. He said that in other declination-of-jurisdiction matters, the Commission regularly reviews information about the Petitioner's intended operations, and evaluates the sponsor's experience in developing, constructing, and operating energy projects. He testified in other recent examples, the Commission described the sponsor's project development experience. He noted that while the Petitioner had promised to operate the project in a manner consistent with good utility practice, GenCo states that it has no assets, does not know how it will be staffed, and it has not provided adequate information about its approach to project procurement, construction, or operation.

Mr. Thomas testified that the Commission also considers how the generation construction projects will be financed. But, here, he explained GenCo has not disclosed information about how it will finance future generation projects. He testified that GenCo has stated that its financing structure is still being determined, and that decisions regarding the financing of GenCo facilities

will be made in the future. He testified that GenCo has also declined to rule in or rule out the prospect of forming a joint venture with an independent entity. Further, Mr. Thomas stated GenCo declined to offer any projection of its capital structure, stating that decisions regarding GenCo's capital structure will also be made in the future.

Mr. Thomas testified that GenCo's "ringfencing" proposal between GenCo, NIPSCO, and NiSource is inadequate.

Mr. Thomas said GenCo has not demonstrated that competitive forces would render the exercise of jurisdiction by the Commission unnecessary or wasteful. He testified in other declination of jurisdiction cases, the Commission has looked to competitive forces in wholesale power markets and the need for an entity to attempt to compete in said markets without regulatory impediment. Mr. Thomas testified GenCo has not identified the competitive forces that would serve as a check to its market power. Additionally, he said GenCo stated that it would sell power competitively into wholesale markets only if it has excess power generation not used by the needs of NIPSCO data center customers.

Mr. Thomas said GenCo did not demonstrate that the extent of regulation by other state or federal regulatory bodies would render the exercise of jurisdiction by the Commission unnecessary or wasteful. Mr. Thomas testified that GenCo did not cite regulations by other state bodies that would render the Commission's exercise of jurisdiction unnecessary or wasteful. In the Petition, GenCo briefly mentioned that it intends to seek approval from FERC for participation in the wholesale market, later clarifying that this refers to authorization to engage in market-based wholesale power transactions under 18 C.F.R. Part 35, Subpart H.15. Mr. Thomas said that FERC review of such transactions would not obviate the need for the Indiana Commission's jurisdiction over GenCo's decisions to construct or acquire new generation, which is the primary topic at issue here. He testified the Commission's jurisdiction would also maintain ongoing visibility into GenCo's operations, which is necessary and prudent.

Mr. Thomas opined that GenCo has not demonstrated that the declination of the Commission jurisdiction will benefit the energy utility, the energy utility's customers, or the state. He testified GenCo focuses on the potential benefits of bringing megaload customers to Indiana on an expedited basis. He testified in his view, both NIPSCO and NIPSCO's retail customers would benefit from strict Commission oversight over GenCo's generating projects, as the Commission could ensure that the construction and operation are completed efficiently and safely with a transparent method of cost recovery. Mr. Thomas testified the magnitude of risk at issue here is different than that which is typical in a declination case. He stated GenCo has not attempted to constrain its declination proposal temporally or to a specific number of projects, meaning it could encompass a large amount of costs in the future. He pointed out that a typical declination case is limited to a specific project or projects and is not open-ended as is proposed here.

Mr. Thomas further testified that GenCo has not adequately explained how NIPSCO's retail customers would benefit from its proposed structure. He stated NIPSCO states that it expects that GenCo may use competitive procurement to obtain the generation resources needed to serve the requirements of NIPSCO's megaload customers. He said the potential time saved by foregoing a subsequent declination proceeding is not an adequate benefit, because NIPSCO's customers

benefit from transparency and the Commission's decision-making.

Mr. Thomas stated GenCo has not demonstrated that the Commission declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency. He testified in his review of prior declination of jurisdiction cases, he found that to analyze energy utility efficiency, the Commission often looks to whether the Commission's regulation would be duplicative of other regulatory bodies or could cause inefficiencies in a facility's development or operation. He testified that the Commission often notes testimony stating that declination will allow a petitioner to fully devote its resources to complying with the requirements of federal, local, and other state regulatory agencies. But here Mr. Thomas explained he has not found within GenCo's filing (nor is he generally aware of) additional regulatory bodies that would duplicate the oversight of generation construction and operation that the Commission would exercise. For example, FERC's role would be limited to approving wholesale power purchase agreements ("PPAs"), not monitoring actions on the ground. Mr. Thomas further testified GenCo appears to conflate the concept of energy utility efficiency with the sophistication of megaload customers; supposed "competitive forces" that somehow would apply in the case of a monopoly retail electric utility (NIPSCO); and a purported need for speed-to-market. He stated these are creative interpretations of efficiency, but he does not see why the nature of new retail customers that GenCo's wholesale supply service could support contributes to GenCo's efficiency as a utility. Mr. Thomas testified efficiency must mean something more than the obvious point that a utility can save time by evading regulatory review; otherwise, every declination request would be meritorious.

Mr. Thomas further testified that GenCo has not demonstrated that the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment. He stated indeed, the lack of Commission oversight here would inhibit competition with other providers of functionally similar energy services or equipment. Mr. Thomas testified that by allowing GenCo to build and/or acquire an indefinite number of future projects with no Commission review, GenCo could avoid any competitive bidding process utilizing other developers as either the owner or construction contractor. He said GenCo has declined to commit in discovery responses to use competitive bidding in its future project development. Mr. Thomas testified it is difficult to say what sort of "energy services or equipment" GenCo provides or will provide, as it presently has no assets, but he testified, he assumes GenCo will, in its activities on the ground, resemble a typical dedicated power developer. He stated, still, he should note that the IPPs who have received declinations of jurisdiction are not affiliated with – nor are they the monopoly wholesale supplier to – a retail utility.

Additionally, Mr. Thomas testified NIPSCO has made it clear that GenCo would not have any competitors to provide contracted power to NIPSCO to meet megaload customers' retail needs – the very opposite of competition. He testified GenCo also stated in discovery that it has not performed any analysis of competition with respect to other energy providers to megaload customers. He further testified he did not see how the absence of Commission jurisdiction would unleash GenCo to be a robust competitor in the power development market.

Mr. Thomas testified GenCo's proposal would give GenCo an unfair competitive advantage compared to other Indiana utilities and utilities in other states that do not have this special declination status. He testified that everyone else must play by the Commission's rules and, to his knowledge, no other Indiana utility has proposed a similar declination arrangement. He testified Indiana Michigan Power Company ("I&M"), for example, projects even larger megaload growth, yet it is following the Commission rules and typical practice and procedure.

Mr. Thomas testified regarding what other steps the Commission can take to balance the risk and reward between GenCo and NIPSCO customers. He testified the Commission should condition approval of GenCo's declination request on NIPSCO having a right to match any offer to purchase GenCo assets and establish a process for Commission review of sales of GenCo assets with stakeholder input. This would offer some protection to NIPSCO's customers with respect to the value of any assets disposed of by GenCo.

Mr. Thomas further testified there are several risks that can be partially but not fully mitigated. He testified there are risks that are mitigated by the GenCo concept. He explained that transmission and distribution service will be provided to megaload customers in the same manner as existing customers, the risk of an unjustifiable cost shift has been somewhat mitigated. However, he said NIPSCO has not explained how it will ensure its transmission and distribution cost allocations will be timely updated to match what could be rapidly changing proportional usage across customer classes. He stated costs will go up to serve additional load, so it is critical that these increased costs are appropriately apportioned to the correct customers in a timely manner. Also, because transmission and distribution costs are fixed, more kilowatt hours to spread over the fixed costs provides some benefit to non-megaload NIPSCO customers, so existing customers should be timely credited for this benefit.

Mr. Thomas testified GenCo has not demonstrated that its requested relief would serve the public interest under Ind. Code § 8-1-2.5-5. Additionally, while the application accurately identifies some of the major potential risks to NIPSCO's non-megaload customers and expresses an intention to protect those customers from the identified risks, what is missing are the mechanisms and binding commitments needed to mitigate the risks to the extent possible and to balance risk and reward in that not all risks can be mitigated. Mr. Thomas testified that the Commission and all stakeholders should have a good understanding of what will happen if stranded asset risk materializes and what will happen if the market supports a substantial speed premium such that GenCo's financial success exceeds expectations. He testified if risk and reward are balanced between GenCo and non-megaload customers through the types of binding conditions discussed in his testimony, and if there is a good understanding of what will happen in a variety of good and bad scenarios, then the application with the proposed modifications could be in the public interest.

iii. LaPorte Case-in-Chief. Michael R. O'Connell, Principal Consultant for Midwest Energy Consulting LLC, opined that the declination request should not be approved because it would be anti-competitive and provide NIPSCO with an unfair advantage. Mr. O'Connell suggested two alternatives to the GenCo structure: utilize NIPSCO's existing Rate 531 or create a new tariff-based rate. He argued there are two risks posed to NIPSCO and its ratepayers by the GenCo structure: (1) existing NIPSCO ratepayers potentially bearing the costs

associated with stranded generation assets or increased financing costs and (2) current ratepayers not being adequately compensated for the substantial value they effectively provide to GenCo, or benefitting from the additional load growth within NIPSCO's service territory.

iv. Industrial Group Case-in-Chief. Michael P. Gorman, Managing Principal with Brubaker & Associates, Inc., testified that the proposed structure should not be approved as proposed. He testified specifically, there needs to be clear separation between NIPSCO, megaload customers, and GenCo, to reduce NIPSCO's risk. He stated, under the proposal, NIPSCO's risk is expanded because it faces the default risk of both GenCo and megaload customers. Hence, he said, the proposal for an essentially unregulated GenCo affiliate increases NIPSCO's investment risk instead of reducing that risk. Mr. Gorman explained the specific concerns with NIPSCO's proposal to develop an unregulated GenCo affiliate to serve megaload customers.

Mr. Gorman testified regarding protections he believes are necessary and appropriate to limit the scope of GenCo operations to the context Petitioner presented as the reason for the proposed structure. He testified that at a minimum, the assurances and limits recited by witness Parisi need to be explicitly incorporated as binding terms and conditions for any grant of relief in this case. In particular, GenCo's operations should be subject to at least the following: (1) GenCo should be the supplier of capacity and/or energy only for new megaload customers, expressly excluding existing NIPSCO customers or any expansion of operations or facilities by existing NIPSCO customers; (2) NIPSCO will be GenCo's only customer, and GenCo will not use its assets or service arrangements with NIPSCO to support competitive services to other customers in competitive markets; (3) NIPSCO will not transfer to GenCo any existing generation assets supporting service to non-megaload customers, and GenCo will not bid on or build any future or replacement capacity to serve non-megaload customers; and (4) GenCo's assets will be limited to generation resources, and GenCo will not own any substations, interconnection equipment to retail customers, or any transmission facilities.

Mr. Gorman also testified that the proposal for the Commission to waive nearly all its regulatory jurisdiction over GenCo is not reasonable. He testified the petition proposes extremely limited Commission oversight of GenCo. This includes no obligation that GenCo make its books, records, and sources of revenue available to the Commission for inspection and analysis. He stated because GenCo will have PPAs or similar agreements with NIPSCO, NIPSCO will rely on those agreements to comply with its special contract obligation with megaload customers. GenCo's books and records must be subject to regulatory scrutiny so NIPSCO and affected parties can assess GenCo's financial strength and ability to meet its PPA obligation to NIPSCO. Mr. Gorman testified that GenCo needs to be able to prove it has sufficient PPA counter-party credit standing and presents no more than an acceptable level of default risk. If GenCo is at liberty to refuse to make its books and records available to NIPSCO, the Commission and other parties, it will put NIPSCO at risk of default on meeting its special contract service obligations, which can also threaten NIPSCO's ability to serve all retail ratepayers at just and reasonable rates. Mr. Gorman testified further, entirely waiving the CPCN process for GenCo as proposed may well place NIPSCO's financial position at risk. He stated NIPSCO will have an obligation to serve megaload customers under the terms of the Commission-approved special contract, and NIPSCO will expect to be able to recover the cost of providing service under the special contract from the applicable

retail customers. Hence, GenCo's ability to meet its generation supply PPA obligations is critical to NIPSCO, which in turn is also important in protecting NIPSCO's ability to meet its service obligation to all retail customers and thus to support the public interest.

v. **CGA Case-in-Chief.** Emily R. Piontek, Regulatory Associate, CGA, testified that the Petition does not serve the public interest as contemplated in Ind. Code §§ 8-1-2.5-5(b)(1), (2), and (4) of the declination statute. She said that neither competitive forces nor regulation by other governmental bodies renders the exercise of Commission jurisdiction unnecessary or wasteful; that Commission declination as sought by Petitioner would not benefit the customers of its energy utility affiliate, NIPSCO, nor the state of Indiana; and that Commission jurisdiction over GenCo's activities does not materially or unreasonably inhibit the Petitioner.

Ms. Piontek explained that CGA does not oppose all aspects of GenCo's request. She explained that the Petitioner's appeal for recognition as an "energy utility" and a "public utility," for the purpose of separating resource procurements (and the associated financial risks) made on behalf of its affiliate NIPSCO's megaload customers from NIPSCO's non-megaload retail customers, is an admirable goal and an imperative of the public interest.

Ms. Piontek testified that CGA recognizes that some of the regulatory relief requested by GenCo may be appropriate, serve the public interest, and/or satisfy the intent of Ind. Code § 8-1-2.5-5. However, CGA objects to the request for regulatory relief from 17 of the 51 statutes set forth in the Petitioner's Attachment A. Ms. Piontek testified that Petitioner has failed to justify its need for the Commission to decline jurisdiction for all its future generating projects. She explained how GenCo would not be inhibited from competing with other IPPs in vying to serve NIPSCO's megaload customers. Furthermore, she testified that the Petition raises more questions than it answers because the Petitioner has not presented key details nor through discovery. Ms. Piontek suggested that the Commission find that GenCo does not offer appropriate safeguards in exchange for the regulatory relief sought.

Ms. Piontek also recommended solutions to respond to the urgent challenge presented by megaload customers. She also recommended that the Commission should require NIPSCO and GenCo to file annual reports demonstrating that the decision remains in the public interest. She said the Commission could require GenCo to provide NIPSCO with an update on its generation planning process for inclusion in the NIPSCO Integrated Resource Plan ("IRP").

vi. **Takanock Case-in-Chief.** Kenneth Davies, founder and CEO of Takanock, testified that it is important for the Commission to hear about the difficult experience that Takanock has had in dealing with NIPSCO to obtain electric service at Takanock's data center site. Mr. Davies believes GenCo's proposal is anticompetitive.

vii. **DX Hammond Case-in-Chief.** David Pavlik, Managing Member of Decennial Group, LLC, testified that DX Hammond has been working with NIPSCO since early 2023 on the expansion of the Digital Crossroads Campus. Mr. Pavlik testified that any uncertainty of delivery or delay in securing the required generation assets will jeopardize plans to expand the Digital Crossroads Campus and the resulting investments and benefits to the Northwest Indiana region. Mr. Pavlik stated DX Hammond seeks to continue its current path of development and

believes that the outcome of this proceeding may affect that development path.

C. GenCo Rebuttal. GenCo witness Parisi responded to the other parties' positions relating to: (1) the appropriate scope of this proceeding; (2) the public interest standard under which the Commission should evaluate GenCo's request; (3) certain clarifications and commitments as to (a) the scope of GenCo's operations, (b) the Commission's oversight, and (c) the relationship between GenCo and NIPSCO; and (4) why it is appropriate for the Commission to decline jurisdiction under the CPCN Statute.

Mr. Parisi first commented that while there are divergent interests among the OUCC and the other intervenors, no party disputed that Indiana and Northwest Indiana are the focus of significant megaload customer interest. He said that there appears to be general alignment that a regulatory strategy needs to be deployed to address this opportunity. He testified that given this interest, NIPSCO has developed a megaload strategy and the first step in that strategy is approval of GenCo's requested limited declination in this proceeding. He testified that GenCo established in its case-in-chief filing that approval of the requested limited declination of jurisdiction will serve the public interest. He said that nothing raised by the OUCC or intervenors changes that GenCo's request is in the public interest.

Mr. Parisi also pointed out that the stakeholders who generally represent retail customers' interests (the OUCC, Industrial Group, CAC, and LaPorte) are mostly focused on recommendations that they believe will further the goal of protecting retail customers' interests. He stated that while the other intervenors (Takanock, DX Hammond, and CGA) mostly focused on protecting data center customers (a type of megaload) and IPPs, this is not what this proceeding is about. Rather, he said, the focus should be to find a path forward that approves GenCo's request in this proceeding so that NIPSCO can further develop and present its megaload strategy to the Commission for approval.

Mr. Parisi said that review and approval of GenCo's declination is a necessary step before more clarity on NIPSCO's overall megaload strategy can be finalized and presented to the Commission. He cited to the Commission's February 27, 2025 Docket Entry. He stated that rather than frame all their issues to this limited declination request, parties have attempted to expand the scope to include NIPSCO. He said that NIPSCO is not a party not seeking any relief in this proceeding.

Mr. Parisi stated that while he can appreciate the parties' desire to have a full understanding of NIPSCO's overall megaload strategy, NIPSCO cannot fully know how to craft megaload customer special contracts and PPAs between NIPSCO and GenCo ("NIPSCO-GenCo PPAs") until it knows how it can use the GenCo structure. He said it is these agreements that will allow NIPSCO to address issues outside of the scope of this proceeding.

Mr. Parisi testified that despite this overreach, NIPSCO has committed to file any megaload customer special contracts and NIPSCO-GenCo PPAs in future proceedings. Future proceedings, he said, will be the venues at which many of these issues should be addressed. He also testified that GenCo commits to align the amount of generation it develops with reasonably anticipated needs of NIPSCO's megaload customers. He also discussed further clarifications and

commitments GenCo is willing to make to its declination request and intended structure to address some of the issues raised by the OUCC and intervenors.

Mr. Parisi explained that Takanock witness Davies is correct that ordering NIPSCO to make a tariff offering (including opening access to the market akin to NIPSCO Rate 531) is not what this proceeding is about. He said that would be a request to issue a directive to NIPSCO, not GenCo. He said GenCo was formed in recognition that the service requirements for data centers are very different from those of any other customers.

He said that having GenCo construct, own, and operate the generation facilities and related assets reasonably isolates and mitigates the risk associated with these potential customers from NIPSCO's current customer base while bringing the benefits of this unprecedented economic development to NIPSCO's customers and to Indiana. He testified that the exemptions from the various provisions of the CPCN Statute outlined in Petition Attachment A are to eliminate provisions that have limited application to this structure. He said that these exemptions are also requested to assure speed-to-market, which is necessary to attract megaload customers.

Mr. Parisi testified that the Commission will continue to maintain visibility into NIPSCO as the only customer of GenCo. He said the Commission will also retain approval authority each time a megaload customer special contract or NIPSCO-GenCo PPA is brought to the Commission for approval.

Mr. Parisi testified that GenCo's requested limited declination of jurisdiction in this proceeding will enable NIPSCO to support Indiana's efforts to position itself to compete effectively with other states to attract this economic development by providing a vehicle for speed-to-market, which is critical to these megaload customers. He stated that it is important that NIPSCO be able to attract these customers and reasonably insulate current NIPSCO customers from any attendant risks.

Mr. Parisi further testified that the standard for approval of GenCo's requested relief is set forth in Ind. Code § 8-1-2.5-5(a), which requires a determination that "the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both." Therefore, whether the public interest requires declination is the ultimate finding the Commission must make. He set out the enumerated factors the Commission is to consider. These factors, he said, are to be "considered" but are not elements that GenCo must prove.

Mr. Parisi testified that GenCo offered evidence related to each of these factors in its case-in-chief, but it is not mandatory that the Commission issue an affirmative finding with respect to each of the four factors. He testified that GenCo's approach has been to seek limited declination by listing specific statutes for which declination has been sought. For each such statute, he said GenCo enumerated the factors that support the required Commission determination of the public interest.

Mr. Parisi responded to a variety of opinions on potential safeguards or requirements that several parties believe should be put in place if the Commission were to ultimately grant GenCo's declination request. He testified the proposed requirements to be placed on GenCo generally fell into two categories. On the one hand, there were the traditional "consumer parties" (such as the OUCC, CAC, and Industrial Group) who regularly participate in NIPSCO's regulatory proceedings and who largely focused their testimony on concerns related to protection of NIPSCO and its current customers. On the other hand, certain parties (such as CGA and Takanock) did not, in his opinion, focus on protection of NIPSCO and its current customers and instead focused on their own corporate interests in opposing GenCo's declination request.

He clarified that it is not to say the non-consumer parties raised no issues that should be evaluated by the Commission. But, he said, for purposes of evaluating whether GenCo's declination request is in the public interest, he focused on safeguards and requirements that the consumer parties believe should be put in place if the Commission approves GenCo's request, as these relate most directly to the Commission's evaluation of the public interest.

Mr. Parisi responded to OUCC witness Latham stating that the primary factor he recommends be considered is whether NIPSCO's current customers are protected from any financial harm or responsibility associated with GenCo. Mr. Latham suggested a careful weighing of the purported benefits against the risks. Industrial Group witness Gorman similarly expressing two primary concerns related to (1) a need for clear separation of NIPSCO and GenCo, and (2) an alleged increased risk to NIPSCO and its customers under GenCo's proposal. He said NIPSCO would face the risk of GenCo defaulting on its contract with NIPSCO, in addition to the traditional risk that a customer could default on a special contract with NIPSCO. LaPorte witness O'Connell was concerned about the possibility that NIPSCO customers could bear the costs associated with stranded generation assets.

Mr. Parisi responded to recommended requirements or safeguards proposed by the OUCC and Industrial Group to be placed on GenCo (and to a certain extent, NIPSCO). He testified that the various proposals offered by the consumer parties generally fell into three categories: (1) the scope of GenCo and its operations; (2) the Commission's ongoing oversight of GenCo and its activities; and (3) the interaction and relationship between GenCo and NIPSCO. He stated that from GenCo's perspective, the first two categories are most directly relevant to GenCo's declination request, but to be responsive to what GenCo heard from stakeholders, he also addressed the third category.

Mr. Parisi testified that GenCo's purpose is straightforward—it is proposed as a vehicle to develop the generation resources NIPSCO reasonably anticipates will be necessary to ultimately be used by NIPSCO to serve load from megaload customers, and to do so in a way that reasonably and appropriately protects NIPSCO and its customers from potential risks related to the significant capital investment that is expected to be necessary. He stated the size of potential generation additions and the speed at which potential customers desire to take service are unlike anything he has experienced in his many decades in the energy industry, which is also a key reason why GenCo was created, and declination of certain Commission jurisdiction is being sought, including specific declination under the CPCN Statute.

In response to Industrial Group witness Gorman stating that this could be the first step in deregulating NIPSCO's power production, Mr. Parisi stated that neither GenCo nor NIPSCO have any desire to deregulate the generation functions for utilities in Indiana. Similarly, in response to CGA witness Piontek's claim that GenCo could be used to capture an outsized share of the wholesale power market, he confirmed that GenCo has no desire or plans to become an IPP. He said GenCo does not plan to provide energy or capacity to any utility other than NIPSCO, or otherwise materially overbuild its generation portfolio to capture a share of the MISO wholesale power market.

First, Mr. Parisi testified GenCo will only have one customer, NIPSCO, which will naturally limit the size and scope of GenCo's generation investment and operations, as NIPSCO will not have the ability to enter into PPAs for an infinite amount of energy capacity and will only seek to contract with GenCo for the energy and capacity it reasonably expects to need to serve its megaload customers. Thus, Industrial Group witness Gorman's request that NIPSCO be GenCo's only customer and that GenCo not attempt to attract other customers in competitive markets is a commitment GenCo has already made.

Second, Mr. Parisi testified that while NIPSCO will be GenCo's only customer, GenCo and NIPSCO commit that GenCo will only supply energy and capacity for NIPSCO's megaload customers and not existing non-megaload customers. However, he stated that GenCo and NIPSCO will not foreclose the possibility that they could enter into an agreement related to provision of energy and/or capacity for non-megaload customers. He said there could be a time in the future when doing so would be beneficial to NIPSCO's current customers, and the companies do not want to foreclose this potential. He explained that if the companies desire to do so at some point in the future, they will need to file a separate request with the Commission for approval at that time.

Third, Mr. Parisi testified that GenCo commits that the generation under its control will be tailored to NIPSCO's anticipated megaload needs, guided by NIPSCO's ongoing IRP process and informed by customer negotiations and Commission-approved special contract demand. He stated that this is not to say that there will not be periods of time during which GenCo's available generation may exceed the needs of NIPSCO's megaload customers, especially because resources necessarily must be brought online in advance of customers taking service or increasing their load ramp. He stated GenCo will also be looking at a combination of capacity, energy, and carbon-free energy requirements of NIPSCO's megaload customers as it plans for and procures generation resources. He testified that this commitment is offered in response to testimony of various parties, who express concerns that GenCo could be used as a vehicle to create a large IPP or otherwise may expand the scope of its operations far beyond provision of service to NIPSCO to meet NIPSCO's megaload customer needs, which is not GenCo's intent.

Fourth, Mr. Parisi testified that GenCo commits to providing capacity that is inclusive of the MISO planning reserve margin requirements, which will ensure that the NIPSCO-GenCo PPA covers the full load requirements of megaload customers, as discussed by CAC witness Thomas.

Finally, in response to Industrial Group witness Gorman, Mr. Parisi testified that if GenCo develops behind-the-meter-generation service offerings, it will be each customer's decision as to whether they have interest in contracting with GenCo for such service. He stated this is not a retail service that NIPSCO would offer; neither would it be a service GenCo would provide to NIPSCO via a PPA. Instead, it would be a customer-driven decision, both with respect to if it has a desire for behind-the-meter-generation and if it desires to work with GenCo to provide such generation.

Mr. Parisi responded to OUCG witness Latham's request that the Commission retain jurisdiction over three statutes that were part of GenCo's declination request: (1) Ind. Code § 8-1-2-47, which relates to the Commission's authority to adopt reasonable rules and regulations governing inspections, tests, and audits; (2) Ind. Code § 8-1-2-51, which relates to the Commission's general investigative authority; and (3) Ind. Code §§ 8-1-2-76 through -80, relating to a public utility's need for Commission approval of a public utility's plan(s) to issue debt.

Mr. Parisi stated that while GenCo disagrees it is necessary for the Commission to retain jurisdiction under Ind. Code § 8-1-2-47 since the Commission will maintain general audit authority under Ind. Code § 8-1-2-49, GenCo is willing to remove its request for declination under Ind. Code § 8-1-2-47.

With respect to Ind. Code § 8-1-2-51, as pointed out above, the Commission will have approval authority and ongoing authority with respect to any NIPSCO-GenCo PPAs and NIPSCO megaload customer special contracts. Mr. Parisi testified that this, in combination with the other sections of jurisdiction the Commission will retain, is sufficient. He stated that declination of jurisdiction does not necessarily have to carry on in perpetuity; but, rather, the Commission, the OUCG, or any person with proper standing to file a complaint, can initiate proceedings to revisit the determination of declination pursuant to Ind. Code § 8-1-2.5-7 should circumstances warrant.

With respect to debt issuances under Ind. Code §§ 8-1-2-76 through -80, Mr. Parisi testified GenCo is not aware of any instance where the Commission has required debt issuances to be reported under a declination order. He also stated that since NIPSCO and its customers will not be financially responsible for GenCo's generation investments, GenCo does not believe Commission jurisdiction needs to be retained.

Mr. Parisi then responded to CGA witness Piontek's testimony that the Commission should retain jurisdiction related to clean coal technology, energy efficiency, and to investigate, regulate rates and charges, address complaints, and enforce statutes. As to the clean coal technology requirements, Mr. Parisi testified that since GenCo has no coal-fired generation, there is no need to retain jurisdiction over clean coal technology. He also testified that with respect to energy efficiency and rates and charges, since GenCo will not serve customers at retail, that jurisdiction is simply not applicable and should be declined.

Mr. Parisi addressed one of the concerns raised by several parties relating to how GenCo and NIPSCO will interact with each other, considering the plans expressed by GenCo to enter into PPAs with NIPSCO and the fact that they are affiliated companies. He testified there are two primary commitments GenCo is willing to make to address these issues. First, it has always been GenCo's expectation that affiliate guidelines would be created to govern its relationship with

NIPSCO and that such guidelines would be filed with the Commission and made available to interested stakeholders. He stated that GenCo has not yet developed and executed such guidelines, as it does not currently know the extent to which its planned scope of operations may be impacted by a Commission order approving its declination request, assuming the Commission ultimately does so. He testified that assuming approval of GenCo's declination request, GenCo and NIPSCO will work together to develop such guidelines and will submit them to the Commission—which would occur no later than the time at which the first NIPSCO-GenCo PPA is presented to the Commission for approval.

Mr. Parisi also testified GenCo will enter into separate service agreements with NIPSCO and NiSource Corporate Services Company stating that it is very likely that the agreement between GenCo and NiSource Corporate Services Company will largely mirror the current agreement between NIPSCO and NiSource Corporate Services Company agreement, as NiSource Corporate Services Company utilizes materially similar agreements for all its operations companies. He stated these agreements would address things such as the scope of services to be provided, compensation for such services, the allocation of costs to GenCo, and the bases for such cost allocation. He testified that this service agreement will be filed with the Commission no later than the date the first NIPSCO-GenCo PPA is presented to the Commission for approval. He also testified that, consistent with the request of Industrial Group witness Gorman, GenCo is also willing to file these agreements either in a docketed proceeding (such as when a PPA is presented) or in a 30-day filing—and will not simply provide notice to the Commission that they have been executed.

Mr. Parisi testified that the scope of this proceeding is limited to GenCo's request for limited declination of jurisdiction and is not about future megaload customer special contracts (which GenCo will not even be a party to) or future NIPSCO-GenCo PPAs. He stated that to the extent either type of agreement is executed, it will be independently presented to the Commission for review and approval under the applicable legal standard—and interested stakeholders will have the opportunity to intervene and participate in these proceedings. Mr. Parisi testified that in the spirit of cooperation and to address concern raised by Industrial Group witness Gorman, GenCo is willing to commit to submit all NIPSCO-GenCo PPAs to the Commission for approval. Such PPAs are affiliate contracts for energy and capacity and will also be required to be approved by the Federal Energy Regulatory Commission before becoming effective. He testified GenCo and NIPSCO are open to submission of PPAs in the same filing as a related megaload customer special contract but can commit to submit PPAs and related megaload customer special contracts to the Commission at approximately the same time, so they can be concurrently evaluated.

Mr. Parisi also responded to specific requests from stakeholders limiting the scope of GenCo operations that GenCo is not willing to commit to. First, Industrial Group witness Gorman proposes that: (1) NIPSCO will not transfer any existing generation assets supporting service to non-megaload customers to GenCo, and GenCo will not bid on or build any future or replacement capacity to serve non-megaload customers; and (2) GenCo's assets will be limited to generation resources. He said GenCo will not own any substations, interconnection equipment to retail customers or any transmission facilities. He stated that GenCo understands this latter request to mean that the Industrial Group does not want GenCo owning or operating transmission and substation equipment that is part of the broader electric grid, and not that they are opposed to

GenCo owning customer-facing substations. Mr. Parisi testified that GenCo has no plans to own any substation-type equipment, other than customer substations. With respect to the former request, Mr. Parisi testified GenCo is willing to commit that it will not purchase any NIPSCO asset absent explicit authorization from the Commission to do so. He stated that while GenCo currently has no plans to purchase any current NIPSCO assets, at some point in the future, it could be that doing so would present a benefit or cost savings to NIPSCO and its non-megaload customers.

CAC witness Thomas proposes that the Commission condition approval of GenCo's declination request on NIPSCO having a right to match any offer to purchase GenCo assets. He suggests the Commission establish a process for review of sales of GenCo assets with stakeholder input. He said this would offer some protection to NIPSCO's customers, with respect to the value of any assets disposed of by GenCo. He testified that with the structure and commitments presented in GenCo's case-in-chief and in rebuttal, GenCo is limiting and mitigating NIPSCO customers' risk. He stated it would be unreasonable to mandate that GenCo first offer any assets to NIPSCO, unless there is an accompanying guarantee of cost recovery from current NIPSCO customers, which GenCo is not seeking.

In response to arguments from CAC witness Thomas and LaPorte witness O'Connell seeking to force GenCo to give a portion of its earnings to NIPSCO's customers, Mr. Parisi testified such arguments are outside the scope of this proceeding, as GenCo has not presented any transaction or revenue recovery to the Commission. He stated that nothing prohibits CAC and LaPorte from raising these arguments in the proper forum at the proper time, but this declination proceeding is neither of those.

In response to Industrial Group witness Gorman and CGA witness Piontek's objection to GenCo's request for declination with respect to the CPCN requirements set forth in the CPCN Statute, Mr. Parisi testified the CPCN Statute does not generally apply to the activities in which GenCo will be engaged. He stated that to understand why, it is important to understand the regulatory policies inherent in the CPCN Statute. He stated the CPCN Statute requires prior approval of the acquisition or construction of generation and establishes the elements that must be proved to receive that prior approval. In addition to public convenience and necessity, these elements include, but are not limited to, a finding of the best estimate of costs, consistency with the utility's IRP, and consideration of arrangements for power with other electric utilities, as well as other methods of providing service. In return, the energy utility is then assured recovery of and on the approved costs that are incurred in reliance on the CPCN, even if the unit is abandoned before being placed in service. This is the quid pro quo inherent in the CPCN Statute, in return for requiring prior approval, the energy utility is assured recovery of its costs even if the cost to develop the generation increases for reasons outside the utility's control, generation is never placed into service, etc.

Mr. Parisi testified GenCo will have no retail customers, proposes to not be subject to the requirement to submit an IRP to the Commission, does not and will not have "other arrangements" for power, and will only provide service at wholesale. As such, he testified GenCo will not provide the retail service falling within the Commission's jurisdiction for which it could have "other methods" to provide. Mr. Parisi testified that, most importantly, GenCo will have no assurance of cost recovery through retail rates but, rather, will only receive recovery of its costs through

payments from NIPSCO through a NIPSCO-GenCo PPA, which will only be entered into if NIPSCO executes a megaload customer special contract.

Mr. Parisi testified that both that megaload customer special contract and the NIPSCO-GenCo PPA will be submitted to the Commission for approval in a docketed proceeding. He stated that forcing GenCo to obtain prior approval of the construction is to impose the “quid” of the CPCN Statute without providing the “quo.” He also stated there is a later proceeding (approval of the megaload customer special contract and NIPSCO-GenCo PPA) before GenCo will receive any ability for cost recovery.

Mr. Parisi testified the Commission will have oversight over GenCo’s construction of generation. He disagreed with CGA witness Piontek’s characterization of GenCo’s request as being “unbounded or blanket” and Industrial Group witness Gorman’s assertion that GenCo would be able to construct generation resources without any need to obtain a CPCN and without certification process or oversight by the Commission. He stated that GenCo has no cost recovery mechanism until a NIPSCO-GenCo PPA is approved. He explained that GenCo ultimately will need a PPA for all generation that it builds. Thus, the Commission will ultimately have the opportunity to review the cost recovery associated with all GenCo generation. He stated that if GenCo spends money on generation that is not ultimately backed by an approved NIPSCO-GenCo PPA, NIPSCO’s retail customers will not be paying any of those costs. Mr. Parisi testified that it is for this reason that the CPCN Statute is an example of one statute over which jurisdiction should be declined.

Mr. Parisi also testified the Commission’s exercise of jurisdiction will be unnecessary and wasteful and will inhibit NIPSCO’s ability to attract megaload customers to Indiana due to competition with other providers of retail service. Specifically, he stated it would be problematic were GenCo to be required to obtain a CPCN, as the prohibition of Ind. Code § 8-1-8.5-2 that construction cannot begin until a CPCN has been issued would apply, which would be a material hurdle to timely development and procurement of needed generation resources, which would impact GenCo’s ability to attract megaload customers—for the benefit of the State of Indiana, NIPSCO, and its customers.

Mr. Parisi testified that the purpose of the CPCN Statute is to protect both the energy utility and retail customers when new generation is proposed. He said this purpose is not fulfilled by Commission jurisdiction over GenCo. He testified that retail customers will be adequately protected by the Commission’s exercise of jurisdiction when it approves the NIPSCO-GenCo PPA, and that approval will also be the source of recovery for GenCo. Further, there is a need for speed-to-market in attracting megaload customers to Indiana. Mr. Parisi testified it is not in the public interest to layer a docketed proceeding of up to 240 additional days (or even a 150-day period as suggested by Mr. Gorman), as this would delay GenCo’s ability to develop necessary generation and would provide retail customers with no additional protections beyond those already provided by approval of the NIPSCO-GenCo PPA in a future, separate proceeding.

Mr. Parisi testified GenCo is willing to commit to providing the Commission with information about the generation it intends to construct in the event declination is granted as requested by GenCo in this proceeding. He testified that to provide additional visibility beyond

the megaload customer special contract and NIPSCO-GenCo PPA filings, GenCo is committing to provide certain reporting metrics in this proceeding, subject to confidentiality if GenCo determines such protection is necessary. First, GenCo commits to making a compliance filing in this Cause at least 30 days in advance of beginning construction for each asset or group of assets GenCo is sourcing to serve any individual megaload customer (the “Construction Compliance Filing”). The Construction Compliance Filing will provide details relating to the size, fuel source, and location of the generation asset(s). Second, GenCo commits to make semi-annual compliance filings to identify any changes to the information included in the Construction Compliance Filing and provide construction progress updates for all ongoing generation assets, such as progress related to generation interconnection, permitting, zoning, etc. (the “Semi-Annual Update Compliance Filing”). He explained that GenCo would make its initial Semi-Annual Update Compliance Filing 90 days following the issuance of an order in this Cause.

Mr. Parisi testified the opportunity presented by megaload customers is unlike anything previously experienced in the industry. Attracting and serving these types of customers has the potential to lead to tremendous benefits for Indiana, NIPSCO, and its customers, but there are also accompanying challenges. He stated GenCo is being proposed in direct response to these challenges, including enabling the development of needed generation resources more quickly than under traditional regulation while providing reasonable and appropriate protections to NIPSCO and its customers. He said Indiana, and Northwest Indiana in particular, will sit in a unique position compared to the rest of the country in addressing load growth of this nature, both protecting traditional customers from the most significant cost risks while enabling unforeseen economic growth in the region.

Mr. Parisi stated GenCo intentionally tailored its declination request to address the need for speed-to-market but to also allow the Commission to maintain an appropriate level of oversight of GenCo’s operations. He stated that with the clarifications and commitments GenCo has provided in his rebuttal testimony, when evaluated under the appropriate legal standard, approval of GenCo’s request for limited declination of jurisdiction is in the public interest and should be approved.

D. NIPSCO Cross-Answering Evidence. NIPSCO witness Tchapo Napoe, Vice President and Treasurer Corporate Finance for NiSource Inc. addressed the other parties’ testimonies regarding financial risks and impacts on NIPSCO that they allege are presented from the creation and use of GenCo to own and operate major capital investments related to interconnecting and serving megaload customers. He explained that NIPSCO is focused on ensuring that its existing retail customers are reasonably protected from risks related to serving megaload customers. Mr. Napoe stated that neither GenCo nor NIPSCO have promised absolute customer protection from any and all potential risks, which would be an unreasonable standard for either company to be held to, but, instead, the appropriate standard here is for the Commission to evaluate whether GenCo’s proposal is in the public interest, and an aspect of that is whether NIPSCO and its customers are reasonably and appropriately protected from any known, potential risks posed by this arrangement.

Mr. Napoe testified this concern can largely be addressed and mitigated by ensuring that the revenue NIPSCO recovers under a special contract with a megaload customer is priced at a level that, once NIPSCO pays GenCo under a separate PPA, provides GenCo sufficient revenue to cover its costs, including its financing costs. He stated this would materially reduce the risk of any default and thereby greatly mitigate the risks raised by OUCC witness Latham and LaPorte witness O'Connell. He also confirmed that this is the way NIPSCO and GenCo are approaching the PPA between the parties and the special contract NIPSCO intends to enter into with a megaload customer.

Mr. Napoe then responded to Industrial Group witness Gorman that GenCo's proposal will lead to NIPSCO entering into a PPA with GenCo and that this increases risk to NIPSCO, as NIPSCO will now be signing a special contract with a potential megaload customer, as well as a PPA with GenCo; stating that NIPSCO will now face default risk for both contracts.

Mr. Napoe first noted that Mr. Gorman fails to acknowledge that if NIPSCO were not proposing to utilize GenCo, NIPSCO itself would be directly undertaking the obligation to build, own, finance, and operate a significant amount of generation. He testified the risks associated with direct NIPSCO ownership of generation are what NIPSCO is mitigating by the creation and use of GenCo. He stated it is NIPSCO's intent and expectation that the terms of any special contract it enters with a megaload customer will correspond with the terms of a corollary PPA between NIPSCO and GenCo, as much as reasonably possible. He testified that this strategy significantly and materially mitigates any potential risk NIPSCO faces from entering into a PPA with GenCo, as well as any potential risk from the overall structure GenCo is proposing.

Mr. Napoe testified that each special contract and PPA will separately and independently be presented to the Commission for approval. He explained that each time this occurs, the Commission and interested parties will be presented with the information and evidence necessary to evaluate both agreements, and for the Commission to ultimately determine whether the agreements are just and reasonable and in the public interest.

Mr. Napoe summarized Mr. Gorman's argument that NIPSCO's PPAs with GenCo will create a debt equivalent financial obligation to NIPSCO which will impact NIPSCO's leverage risk and NIPSCO's cost of service to non-megaload customers. Mr. Napoe acknowledged that it is certainly possible that, in the future, a credit rating agency could evaluate a future NIPSCO-GenCo PPA and impute some level of debt to NIPSCO. However, he pointed out that what Mr. Gorman did not acknowledge is that currently, no credit rating agency has imputed any level or amount of debt to NIPSCO in relation to any of the PPAs NIPSCO currently has with IPPs or with joint venture owners of generation projects, making Mr. Gorman's concern speculative at best.

Mr. Napoe also testified that in addition to failing to recognize that this kind of debt imputation is not happening today for NIPSCO and focusing on a hypothetical that only may occur in the future, Mr. Gorman has not attempted to quantify if this would be material if it did eventually happen, or weigh it against the benefits that GenCo has explained are underlying this filing. He stated the proposed transaction structure is in the public interest and provides reasonable and appropriate protections from financial risk for NIPSCO and its customers.

Mr. Napoe confirmed that NIPSCO agrees with the commitments offered by GenCo in its rebuttal testimony and agrees to be bound by such commitments to the extent they relate to or impact NIPSCO. Specifically, the following commitments GenCo is offering relate to or impact NIPSCO: (1) NIPSCO intends only to enter into PPAs with GenCo for energy and capacity reasonably necessary to serve its megaload customers; (2) NIPSCO will file special contracts with the Commission for approval; (3) GenCo and NIPSCO will file PPAs with the Commission for approval; (4) NIPSCO and GenCo will enter into affiliate guidelines which will be filed with the Commission; and (5) NIPSCO and GenCo will enter into one or more services agreements establishing shared services and allocation of costs between NIPSCO and GenCo, which will also be filed with the Commission.

5. Settlement Agreement.

A. Overview.

i. Settling Parties' Testimony. Mr. Parisi, on behalf of GenCo and NIPSCO, described the circumstances leading to the Settlement Agreement. He explained that from the beginning of this proceeding, GenCo has been open about its willingness to engage with other parties in informal discussions to better understand their concerns. He explained that in his rebuttal testimony, offered on behalf of GenCo, he clarified the intent behind GenCo's creation and the scope of its planned operations, including confirming that GenCo did not intend to become an IPP or to create a de-regulated market in Indiana. He said he also offered various commitments to address many concerns raised by the parties. He explained that following submission of rebuttal testimony by GenCo and cross-answering testimony by NIPSCO, GenCo had informal conversations with several parties to the proceeding whose testimony reflected a desire for additional clarity about the commitments, as well as a desire for additional commitments or "guardrails" related to GenCo and/or the GenCo-NIPSCO relationship. He explained that following the all-party settlement meeting, GenCo and NIPSCO had additional settlement conversations with several parties. He said ultimately, GenCo, NIPSCO, and NIPSCO Industrial Group were able to reach agreement on the terms of the Settlement, which was the result of arms-length negotiations, and which is now being presented to the Commission for approval.

Mr. Parisi explained that the Settling Parties agree the Settlement Agreement resolves all disputes, claims, and issues that are directly relevant to GenCo's request for an Order from the Commission declining to exercise its jurisdiction over certain aspects of GenCo's purchase, ownership, development, financing, construction, and operation of generating facilities and related assets.

Mr. Parisi testified that the Settlement Agreement is intended to address the concerns and arguments raised by the NIPSCO Industrial Group and a number of common concerns raised by other parties.

Mr. Parisi reiterated that a number of parties raised issues that are beyond the scope of this proceeding. Mr. Parisi explained that the Settling Parties use the term "all parties," in the Settlement Agreement rather than just the "Settling Parties" in subsection (c) to make clear that, assuming Commission approval of the Settlement, all parties will retain the ability to raise any

argument and take any position with respect to the substantive matters in future proceedings.

Mr. Parisi opined that the Settlement Agreement reflects a balancing of interests consistent with the regulatory compact and is supported by substantial evidence. As indicated by the Settlement Agreement and the discussion of the terms, GenCo (and to a lesser extent, NIPSCO) has made additional, material commitments beyond those offered in rebuttal testimony.

ii. Settlement Opposition Testimony. OUCC witness Michael W. Deupree, Consultant from Acadian Consulting Group, testified that the OUCC opposes approval of the Settlement Agreement and the declination request. Mr. Dupree contended the Settlement Agreement does not address all the OUCC's concerns and in fact exacerbates some of the concerns the OUCC noted in its direct testimony. Specifically, Mr. Deupree noted the Settlement Agreement reduces the definition of "megaload customer" from 100 MW to 50 MW, which could expand the pool of affected load. And, he said, the new definition eliminates the reference to the customers being served by GenCo being data center customers or customers seeking new service that are not already served by NIPSCO. Mr. Deupree recommended that if the Commission does not reject the Settlement Agreement, it should modify the definition of megaload customer to exclude existing NIPSCO customers. Mr. Deupree also expressed concern with GenCo exercising the power of eminent domain, with GenCo having no need for Commission approval of GenCo's generation resources as "reasonable and necessary" to meet NIPSCO's expected load growth. He said that there should be greater specificity on how GenCo will tailor its generation to meet NIPSCO's megaload needs. Mr. Deupree continued to recommend denial of GenCo's request as not consistent with the public interest. Alternatively, he recommended the Commission address the concerns raised. He suggested the Commission also retain jurisdiction under a number of statutes discussed in OUCC witness Latham's testimony to preserve necessary public insight into and oversight of aspects of GenCo's overall operations.

On behalf of LaPorte County, Mr. O'Connell claimed that while the Settlement Agreement offers additional clarity regarding GenCo's scope of operations, marginally improves transparency and oversight compared to GenCo's original request, and includes further commitments concerning GenCo-NIPSCO affiliate guidelines, GenCo remains a partially deregulated entity structured primarily to enhance investor profits.

On behalf of CAC, Mr. Thomas opposed the Settlement Agreement and continued to oppose the declination request. He claimed there are unaddressed shortcomings and risks identified in his direct testimony that were not addressed by the Settlement Agreement. He presented additional concerns he has given the terms of the Settlement Agreement.

Ms. Piontek, on behalf of CGA, explained that her overarching recommendation is that the Commission find the GenCo strategy in general, and the Settlement Agreement in particular, are inconsistent with current Indiana law considering the passage of House Bill 1007, now Indiana Public Law 217 (2025), which was added as Ind. Code ch. 8-1-7.9 ("HB 1007"). She said, accordingly, the Settlement Agreement should be rejected and GenCo's petition denied.

Mr. Davies, on behalf of Takanock, recommended the Settlement Agreement be rejected and GenCo's petition denied. He said NIPSCO has an obligation to serve its customers, including megaload customers. He said the GenCo structure is a black box because no megaload customer interested in coming to Indiana knows if or when it can get service from NIPSCO and GenCo. It leaves megaload customers to negotiate for service against a monopoly without any Commission oversight. This creates uncertainty and ambiguity, which in turn creates a business risk.

iii. Settlement Reply Testimony. Mr. Parisi explained that there is recognition by some parties that the Settlement addresses some of the concerns or issues raised in their cases-in-chief. Mr. Parisi also pointed out that several parties reiterated their prior testimony and the concerns raised therein.

iv. Commission Discussion and Findings. For the reasons we explain below, the Commission is approving the Settlement Agreement thereby authorizing GenCo, as a public utility and energy utility, to operate consistent with the terms of the Settlement Agreement and this Order.⁴

The Settlement Agreement is organized into five main sections: (1) General Commitments and Reservation of Rights, (2) Limitations on GenCo's Scope of Operations, (3) Commission Oversight, (4) General Principles for Affiliate Guidelines and (5) the Settling Parties' Commitments. Additionally, the Settlement Agreement includes Exhibit A, which is a revised version of "Attachment A" to GenCo's Verified Petition (in clean and redlined format), which the Settling Parties indicated is intended to reflect the scope of GenCo's requested declination, as modified in its rebuttal testimony and the Settlement Agreement. We will discuss each of these sections of the Settlement Agreement and our related findings below.

B. General Commitments and Reservation of Rights (Settlement Agreement Section A.1.).

i. Settling Parties' Testimony. Mr. Parisi explained that Section A.1.(a) confirms that GenCo and NIPSCO agree to be bound by all terms of the Settlement Agreement. Section A.1.(a) also includes a recitation and summary of the commitments made by GenCo and NIPSCO in rebuttal and cross-answering testimony, respectively. Sub-section (b) states that all future filings and submissions will be subject to appropriate confidentiality protections, and sub-section (c) confirms that parties' rights are reserved with respect to future proceedings before the Commission. He explained that while it may appear to be just a boilerplate term, the Settling Parties were intentional in including subsection (c), which states: "All rights of all parties shall be reserved as related to all future proceedings, including, but not limited to, special contract and PPA approvals, except with respect to processes and procedures adopted in this Agreement." He explained that various arguments were raised about issues that are beyond the scope of this proceeding, and there are some relatively limited terms that address future proceedings—such as the requirement for GenCo-NIPSCO PPAs to be filed with the Commission,

⁴ The Settling Parties further identified scrivener's errors in Settlement Agreement Exhibit A at the hearing and prefiled corrections. That is the Agreement the Commission is approving and is provided and incorporated with this Order.

and timelines for procedural schedules for review of GenCo generation assets. He said use of “all parties” (not just the “Settling Parties”) in sub-section (c) is intended to make clear that, assuming Commission approval of the Settlement Agreement, all parties will retain the ability to raise any argument and take any position with respect to the substantive matters in future proceedings, such as when a PPA or special contract is presented to the Commission for approval.

ii. **Settlement Opposition Testimony.** Mr. Deupree discussed the term “tailored” in Sec. A.1.(a)(i)(3). He said GenCo should provide a specific limitation on the amount of generation it will construct, purchase, or lease, as a specific percentage of load NIPSCO will meet, including any MISO planning reserve margin requirements. Mr. Deupree also opined that because GenCo’s request is not tied to a specific generation project, GenCo is, effectively, asking to be given the broad powers of a public utility without any Commission oversight. This is not typical for declinations.

Mr. Thomas cited the Supreme Court of Indiana opinion in *Solarize Indiana, Inc. v. Southern Indiana Gas and Electric Co. d/b/a Vectren Energy Delivery of Indiana, Inc.*, 182 N.E.3d 212 (Ind. 2022). He said this opinion carries implications for how standing is assessed in regulatory proceedings before the Commission, and raises concerns about whether a party involved in contract appeal proceedings could challenge an interested stakeholder’s entitlement to initiate such an appeal.

iii. **Settlement Reply Testimony.** Mr. Parsi explained that the term “tailored” speaks for itself. Nevertheless, he explained it means that GenCo cannot intentionally overbuild its generation portfolio and that what GenCo proposes to be built must be grounded in NIPSCO’s IRP. Through review of the IRP and special contracts that NIPSCO reasonably anticipates will be presented to the Commission, both the Commission and interested parties will have the ability to challenge the size of GenCo’s generation portfolio if they believe it is beyond the bounds of reasonableness.

iv. **Commission Discussion and Findings.** The non-settling parties’ opposition to this section of the Settlement Agreement was limited. The Commission finds that the term “tailored” is sufficiently defined given the context of its use. As it is, the word in this context can be interpreted and applied in future proceedings contemplated by the Settlement. As to the concerns about standing in future appeals, that will be addressed by the appellate courts, in the event there are such appeals. The courts, not the Commission, decide whether litigants before them have standing. The Settlement Agreement presents a reasonable reservation of rights that extends to any party, not just a Settling Party. The Commission finds this section of the Settlement Agreement is reasonable and should be approved. This portion of the Settlement Agreement may serve to provide a procedural framework for future actions, underscoring the importance of the agreed-upon general commitments and reservation of rights in this section of the Settlement Agreement.

C. **Limitations on GenCo’s Scope of Operations (Settlement Agreement Section A.2.).** Mr. Parisi testified that Section A.2.(a) makes clear that GenCo operations will be limited to serving as the energy/capacity provider to NIPSCO and NIPSCO’s customers through PPAs for purposes of allowing NIPSCO to serve new megaload entities as retail customers under

Commission-approved special contracts. He said it also clarifies that GenCo will not be prohibited from participating in the wholesale market using existing, non-committed capacity or energy. He said sub-section (c) also offers a definition of the term “megaload customer,” which is any non-residential, non-municipal, or non-small commercial customer who is seeking service for at least 50 MW of firm service and whose characteristics or expected, final demand would mean they are unable to qualify for service under Rates 524, 531, 532 or 533.

He said it also makes allowance for the potential need for a megaload customer to take temporary service under an existing NIPSCO rate schedule. He explained that in the event this occurs, NIPSCO will be required to take in account the temporary use of its legacy assets in its immediately subsequent electric base rate case and make appropriate adjustments, including, but not limited to: (1) making appropriate adjustments in the cost-of-service study for use of the assets; (2) correcting for class overearning, if any, as a result of incremental revenues associated with load not reflected in the most recently established base rate case; and (3) addressing any issues as may be appropriate by prior commitments reflected in the settlements approved in Cause Nos. 45159, 45772, and 46120.

Mr. Parisi explained that sub-section (b) states that GenCo’s procured capacity will be planned to meet its PPA obligations to NIPSCO and resource adequacy requirements/planning reserve requirements, guided by NIPSCO’s ongoing IRP process and informed by customer negotiations and Commission-approved special contract demand. This is intended to act as a safeguard to ensure GenCo does not materially overbuild its generation portfolio and that what it plans for and builds, are directly informed by NIPSCO’s expected energy and capacity needs.

He said sub-section (c) states that NIPSCO and GenCo will not enter into a PPA unless NIPSCO has executed at least one special contract with a megaload customer, as NIPSCO would otherwise not have a need to utilize GenCo’s assets to serve megaload customers. Because there will likely be times when GenCo has some additional generation capacity beyond what NIPSCO has contracted for, sub-section (d) clarifies that revenues from any excess energy and capacity sales will be addressed, as applicable, in the terms of special contracts between NIPSCO and any megaload customer; permissible agreements with any electing existing customer; and/or in PPAs between NIPSCO and GenCo.

Mr. Parisi testified that subsection (e) places guardrails on any transfer of assets between GenCo and NIPSCO or contractual arrangements that are intended to serve non-megaload customers. Mr. Parisi explained that although GenCo has consistently stated that its primary purpose is to provide for NIPSCO’s needs to serve megaload customers, there may be potential scenarios in the future where GenCo assets could be a cost-effective and prudent choice to serve NIPSCO’s current, non-megaload customers. Mr. Parisi testified that he does not believe the Commission (or other stakeholders) would want to foreclose this opportunity if it is in the best interest of customers, but because of the affiliate relationship between GenCo and NIPSCO, both companies were willing to agree to certain guidelines that must be followed before such action can be taken.

Mr. Parisi explained that sub-section (i) provides that revisions to current NIPSCO tariff provisions can be made in a 30-day filing, which is currently allowed, but clarifies that if NIPSCO intends to offer a new rate schedule or tariff solely to serve megaload customers in the future, the 30-day process cannot be used. Instead, an independent, docketed proceeding would be required. He said also, if NIPSCO has a pending electric base rate case, this provision requires that a new rate schedule or tariff solely to serve megaload customers must be offered as part of that base rate case. He said NIPSCO does not currently intend to offer a new “megaload tariff,” but there could come a time where it is appropriate to do so.

Mr. Gorman explained that the Settlement Agreement limits the scope of GenCo’s operations in several ways. He said first, it reflects a specific agreement that GenCo will be primarily limited in its operations to serving as a provider of energy and capacity to megaload customers through PPAs with NIPSCO subject to Commission review. The Settlement Agreement explicitly makes this status of operations a binding commitment. This effectively addresses the concern that GenCo could operate as a speculative entity in the wholesale market or otherwise take excessive risks and potentially construct or acquire excess generation to support competitive sales in the wholesale market. He explained that GenCo will be allowed to utilize its resources in other ways under limited circumstances and subject to interrelated checks and controls meant to ensure any such usage is incidental to GenCo’s core operations. He explained that it is also important to note that this arrangement leads to the efficient use of resources, as it is unlikely that there will ever be an exact match between megaload customer needs and the capacity of GenCo’s resource portfolio. In the absence of this provision, then, that mismatch would lead to the underutilization of generation resources. With the provision, however, GenCo can make efficient use of its full portfolio. He said that, importantly, this use then benefits the customers for whom the resource is being utilized with margins from such sales being controlled by terms of agreements between NIPSCO and its customers, or NIPSCO and GenCo. He explained that in short, absent the Settlement, GenCo could have economic incentive to speculatively construct more capacity than necessary to meet the needs of NIPSCO’s megaload customers. Mr. Gorman said he and others, identified this as a root concern with GenCo’s initial filing. Under the Settlement, however, the degree of excess capacity and associated risk are both limited, while GenCo is still able utilize uncommitted capacity in defined circumstances. This is a reasonable, efficient, economical outcome.

Mr. Gorman also explained that the Settlement Agreement also addresses the possibility that, although NIPSCO wants to rely on GenCo to provide the capacity to serve megaload customers, there may be situations where that is not possible. Specifically, the Settlement Agreement recognizes that in some cases temporary service under NIPSCO’s existing large general service, commercial and industrial rates may be necessary or desirable. In cases where the prospective customer otherwise qualifies for the rate and such service is provided to a megaload customer, NIPSCO has committed, through the Settlement Agreement, to take account of temporary use of its legacy assets through its service offerings in the immediately subsequent electric base rate case and to make appropriate adjustments. The precise circumstances of any arrangement will dictate how the use of NIPSCO’s system should be reflected. Having reviewed the language in the Settlement Agreement, however, and understanding that the circumstances in which temporary service under NIPSCO’s service offerings may vary significantly such that not every contingency can be addressed specifically, he believes the Settlement Agreement makes

adequate and reasonable provisions for existing retail customers in the event such service is extended.

i. Excess Capacity and Generation and Transfer of Assets (Settlement Agreement Sections A.2.(b), (c), and (e)).

a. Settlement Opposition Testimony. Mr. O’Connell argued that Section 2 expands GenCo’s scope by expressly allowing excess energy and capacity to be offered to other non-mega load NIPSCO retail customers. He also expressed concern that Rate 531 customers now have access to GenCo, which will provide electricity at potentially below-market prices.

Ms. Piontek testified that Sections A.2.(b) and A.3.(c) largely satisfies the concerns over IRP declination raised in her direct testimony. However, she claimed regulatory oversight would be undermined whenever GenCo and NIPSCO enter into a PPA for the purpose of serving NIPSCO’s non-megaload customers, an arrangement she says Mr. Gorman characterizes as a means to avoid the “underutilization of generation resources” and make “efficient use of its full portfolio.” She explained that she disagrees with Mr. Gorman’s characterization. She believes GenCo should reasonably strive to match generation procurement with megaload demand as the Settlement Agreement dictates under A.2.(b) and (c). She said if any excess generation results despite GenCo’s best efforts at alignment, the utility should do what IPPs do, which is to offer those resources into the wholesale market or bid for off-takers by responding to requests for proposals issued by NIPSCO or another utility. She also said Sections A.2.(b), (c), and (e) only in limited part fully satisfy the concerns over the potential for excess generation because this Settlement Agreement term stops short of specifying whether the PPA entered into between the affiliates will be directly and only responsive to the particular special contract(s). For Section A.2.(c), NIPSCO and GenCo should not be allowed to enter into PPAs for generation beyond what is necessary to serve NIPSCO’s megaload customer(s) as specified by executed special contract(s) between NIPSCO and megaload customer(s).

Ms. Piontek explained regarding Section A.2.(e), the Settlement Agreement states merely that such an arrangement must “be demonstrated to be a cost-effective resource decision” without specifying how such demonstration would be made, and only that it would be “subject” to third-party review without requiring such a review. In her opinion, under no circumstances should GenCo be granted non-competitive access to the non-megaload customer base of a regulated utility. She stated that for Section A.2.(e)(v), NIPSCO and GenCo should not be allowed to enter into PPAs for resources meant to serve NIPSCO’s non-megaload customers unless those resources are selected through an open, competitive process managed by an independent third-party. She also claimed the Settlement Agreement undermines the competitive power market because the Settlement Agreement contains no provision requiring NIPSCO or GenCo to utilize competitive bidding when acquiring resources meant to serve NIPSCO’s megaload customers. The Settlement Agreement also explicitly permits NIPSCO and GenCo to enter into agreements to serve NIPSCO’s non-megaload customers when applicable conditions of Section A.2.(e) are met but does not require NIPSCO to utilize competitive bidding for any GenCo resources meant to serve those non-megaload retail customers through PPAs. She said Settlement Agreement term A.2.(e)(v) merely states vaguely that such energy and capacity purchases must be cost-effective.

Mr. Thomas testified the Settlement Agreement does not address his concerns about the sale of GenCo assets. He alleged the negotiating parties will not allocate the potential benefits from a “fire sale” on generation to non-megaload NIPSCO customers; they will allocate those potential benefits among themselves. This leaves the Commission with the choice of making a material alteration to a negotiated agreement or leaving the public interest to private negotiation and requiring ratepayers to bear risks which could be mitigated in the ways proposed by the non-settling parties. Additionally, the Commission should retain jurisdiction over generation units for the life of the unit so as to make sure that contracts entered into after expiration of the initial contract are also in the public interest. He recommended the Commission: (1) cap the purchase price of any generation unit purchased by NIPSCO from GenCo at the unrecovered plant balance; (2) provide a right for NIPSCO to match any offer made for GenCo assets; and (3) retain jurisdiction over generation units upon the expiration of contracts between NIPSCO and megaload customers.

Mr. Thomas said he was concerned about Settlement Agreement paragraph A.2.(e)(vii). He claimed it is unclear whether the Settlement Agreement proposes to expand Rate 531 requirements to non-Rate 531 customers or whether this term is meant only to apply to Rate 531 but failed to explicitly state as much. If it only applies to Rate 531, it would not be in the public interest to approve such a term that gives discriminatory access to surplus power and electricity at potentially lower costs to a small set of large industrial customers, especially when NIPSCO’s residential customers are already paying the highest electric bills in the state for 1,000 kilowatt hours of monthly usage.

b. Settlement Reply Testimony. Mr. Parisi reiterated his settlement testimony, outlining the provisions in Section A.2.(e) of the Settlement Agreement. He confirmed that the primary purpose for GenCo’s creation is to serve megaload customers and that under the Settlement Agreement, GenCo would not be permitted to intentionally overbuild its generation portfolio to serve a non-megaload customer. He also noted, however, that NIPSCO and GenCo did not want to foreclose the potential use of excess generation capacity for the benefit of NIPSCO’s non-megaload retail customers. He said he has also explained that even if GenCo does not intentionally overbuild its capacity portfolio, there may be times when it has resources available which NIPSCO can utilize to meet the needs of its retail load.

Mr. Parisi testified that he agrees with Mr. Gorman’s statement that this would be an efficient use of those resources. He explained that with that said, for sake of clarity, it is important to emphasize that in this case, neither NIPSCO nor GenCo are asking the Commission to prejudge that any special contract or PPA to be filed in the future—for serving megaload or non-megaload customers—is acceptable. He explained that GenCo and NIPSCO have repeatedly taken the opposite position and reaffirmed that the two entities want the Commission to independently review each PPA, special contract, or other contractual arrangement between NIPSCO and GenCo, and the Settlement Agreement does not change that. The Settlement Agreement simply does not foreclose the opportunity to present such an arrangement to serve non-megaload retail customers to the Commission in the future. He said if the Commission approves this term in the Settlement Agreement and NIPSCO presents a PPA to be utilized to serve non-megaload customers, the Commission will have the right to reject it if it is not in the public interest. Ultimately, Mr. Parisi stated, it is because there are potential benefits to NIPSCO’s other customers that GenCo and

NIPSCO do not want to completely foreclose the Commission's ability to evaluate such an arrangement in the future.

c. Commission Discussion and Findings. Under the terms of the Settlement Agreement, GenCo would only be authorized to provide NIPSCO with the energy and capacity necessary to support NIPSCO's provision of retail service to its megaload customers. The Settlement Agreement does not provide authorization for NIPSCO to serve non-megaload retail customers with generation procured from GenCo. The Settlement Agreement does not authorize the transfer of any assets between NIPSCO and GenCo. With Commission approval, it merely preserves the optionality to do so should circumstances warrant and sets out the conditions under which any such arrangement would be brought to the Commission for review. Importantly, any transfer or arrangement of assets allowable under the Settlement would still need to be presented for review in an independently docketed proceeding before the Commission. Leaving this option open is preferred because, under the right circumstances, customer benefits might be achieved. Accordingly, we reject the arguments against these terms.

As for allegations of discriminatory access to GenCo capacity and energy by Rate 531 Tier 3 customers under the Settlement, we disagree there is such discrimination. The Settlement articulates the conditions which will allow for possible use of GenCo assets in the wholesale market. Rate 531 (now Rate 631) is a rate structure that we have approved on multiple occasions. Tier 3 allows customers to direct the procurement of their energy needs using self-selected wholesale suppliers. Should a future request be made to the Commission regarding such transactions becoming retail, we will rely on the evidence presented at that time to decide whether the transaction is discriminatory. Regarding the currently approved tariffs, we decline to prejudge any potential discriminatory effects until such evidence is before us.

ii. Definition of "megaload" (Settlement Agreement Section A.2.(c)).

a. Settlement Opposition Testimony. Several Parties expressed concern with the Settlement Agreement's definition of "megaload." OUCC witness Deupree asserted that changing the definition of "megaload" from 100 MW to 50 MW and removing the requirement to be a new customer provides a potential advantage to Rate 531 customers as they could qualify for megaload service through GenCo and not contribute to NIPSCO's system costs. CAC witness Thomas also expressed concern about the Settlement Agreement's definition of "megaload" customer and believes it should be 100 MW instead of 50 MW. Takanock witness Davies testified that the definition of "megaload" customer does not match definition in House Bill HB 1007 which defines a "large load customer." CGA witness Piontek also testified that the Settlement Agreement's definition of megaload customers is inconsistent with the definition of "large load customer" under HB 1007. She recommended the definition in the Settlement Agreement should be modified to match.

b. Settlement Reply Testimony. Mr. Parisi explained the purpose of the inclusion of customers with 50 MW instead of requiring a 100 MW threshold. He said 50 MW was chosen for use in the definition in Section A.2.(a)(ii) to expand the protection to NIPSCO's current retail customers provided through the GenCo structure. He disagreed with CGA witness Piontek and noted that while it is fair to point out that HB 1007 includes a definition for

“large load customers,” that definition is explicitly limited to customers meeting specific criteria where a utility elects to utilize the approval and recovery pathways provided in HB 1007. Mr. Parisi said no provision in HB 1007 provides that it is controlling, and the statute itself makes clear it is not an exclusive approval mechanism.

In responding to the concerns OUCG witness Deupree raised about the definition not referring specifically to “data centers” or to “new customers,” Mr. Parisi said NIPSCO has the ability today to enter into a special contract with any customer, whether new or existing. Nothing in the Settlement Agreement impacts that. He confirmed that with the exception of DX Hammond, NIPSCO is not currently working or negotiating with any other existing customer to potentially be served under a special contract. This includes, but is not limited to, any existing customer served under Rate 531. He explained that there are other potential large load customers who may seek to locate in NIPSCO’s service territory and whose load could put a strain on NIPSCO’s capacity to serve them without utilizing GenCo. Moreover, the definition of “megaload customer” indicates that it applies to customers whose final load or characteristics mean they would not fit within or qualify for service under an existing tariff. All the referenced NIPSCO tariffs, except Rate 531, have a maximum service level of 10 MWs.

In response to the concerns raised by the other parties, Mr. Parisi presented a modification to the definition of “megaload customer” for purposes of the Settlement Agreement. He said after discussion with the Industrial Group, the Settling Parties are willing to revise the definition of megaload customer to replace 50 MW with 100 MW.

c. Settlement Hearing Testimony. During cross-examination by counsel for the OUCG at the hearing, Mr. Parisi said that in the case where a Rate 531 customer stops taking Rate 531 service and enters into a special contract with NIPSCO, he did not believe that NIPSCO could serve the customer with GenCo assets. He further clarified that qualifying as a megaload customer is a two-part test, where the customer is at least 100 MW and does not qualify for service under a current Tariff rate schedule, which is why a customer eligible for service under Rate 531 (or another rate schedule) would not qualify as a megaload customer and, therefore, could not be served under a special contract utilizing GenCo assets.

d. Commission Discussion and Findings. We find it is neither unreasonable nor required for the GenCo structure definition of “megaload customer” to match the HB 1007 definition for “large load customers.” As shown in Ind. Code §§ 8-1-7.9-10 and -17(b) and (c), that definition is explicitly limited to the approval and recovery pathways provided in HB 1007, and no provision of the legislation provides that it is controlling beyond the statute itself. Importantly, the statute makes clear it is not an exclusive approval mechanism, and, in fact, expressly states that it does not infringe upon the rights of utilities to pursue alternative solutions to meet large customer demand, including use of Ind. Code ch. 8-1-2.5.

The Settling Parties confirmed the definition of “megaload” would not apply to existing customers that are served under NIPSCO’s tariffs, responding to concerns expressed by the non-settling parties. Based on the representation of the Settling Parties, the Commission finds no reason to revise the definition provided in the Settlement Agreement, and this portion of the Settlement Agreement is so approved.

D. Commission Oversight (Settlement Agreement Section A.3.) Mr. Parisi explained the terms included in sub-sections (a) and (b) of Section A.3. He said these two sub-sections state, respectively, that PPAs between NIPSCO and GenCo will be subject to Commission approval and that when seeking approval of special contracts, NIPSCO will disclose the financial terms related to the provision of retail electric service, including those between the customer and GenCo, if any such terms exist. He explained the terms included in sub-section (c). He said sub-section (c) states that for both IRP purposes and for purposes of resource adequacy reports required by Ind. Code § 8-1-8.5-13, NIPSCO will be responsible for accounting for megaload customer load and that it will also account for its contractual arrangements for capacity with GenCo in doing so. It is appropriate for NIPSCO to do so, and for GenCo to be relieved of any such requirement, since GenCo will have no retail customers or load obligations to serve.

Mr. Parisi then explained the terms included in sub-sections (d), (e), (f), and (g). He said speed-to-market is something GenCo has emphasized throughout this proceeding, and sub-section (d) supports this need by allowing GenCo to take pre-acquisition and pre-construction steps before making filings at the Commission. He said any such financial obligations will not be recoverable from NIPSCO's non-megaload customers and would only be recoverable from megaload customers if that customer has agreed to be responsible in a special contract. Subsection (e) confirms that GenCo and NIPSCO will not object to third-party discovery directed to them in any proceeding on the basis that they are not a party to a particular proceeding. Subsections (f) and (g) are intended to be directly responsive to concerns raised by OUCC witness Latham. Mr. Parisi explained that specifically, GenCo has limited its overall declination request and is conceding to more, ongoing Commission jurisdiction under Ind. Code §§ 8-1-2-50 through -60 and 8-1-2.5-7. Also, rather than seeking complete declination under Ind. Code §§ 8-1-2-76 through -80, GenCo has committed to make informational compliance filings with the Commission within 30 days of each time GenCo issues debt, which is intended to allow the Commission and other interested parties, including the OUCC, to understand GenCo's financial commitments related to debt.

Mr. Parisi then explained how sub-sections (h) and (i) address Commission insight into and oversight of GenCo and its generation resources and explained why these provisions are important. He explained that at least two parties (Industrial Group and CGA) offered testimony arguing that the Commission should require GenCo to obtain a CPCN for its generation resources, which he responded to in his rebuttal testimony. He testified that GenCo offered certain compliance filings in response to concerns raised by other parties. He explained however, as part of the settlement process, and as a concession to provide greater comfort to the parties about the level of Commission oversight of GenCo's generation decisions and operations, GenCo was willing to include these two provisions. In combination, GenCo believes they will provide substantially more insight into GenCo's planned generation and allow an appropriate level of Commission oversight of GenCo's operations, further supporting GenCo's request that the Commission decline jurisdiction under the CPCN Statute.

He then explained that under sub-section (h), NIPSCO and GenCo will be required to make an annual informational filing with the Commission ("Annual Informational Filing"). The Annual Informational Filing will provide the Commission with information about: (1) GenCo generation resources committed, anticipated, and under evaluation; (2) the total megaload customer demand under special contracts that has been filed with or approved by the Commission; (3) how the load

will be reliably served by NIPSCO using the GenCo generation; (4) the current cost estimate for each identified generation asset; and (5) any updates to a previous Annual Informational Filing, including the final cost of generation assets that have reached commercial operation since the previous filing. He said it also clarifies that to the extent the final cost of a generation resource has increased from what was initially reported in an Annual Informational Filing, this cost increase may be sought for recovery from megaload customers under the terms of a Commission-approved special contract(s) but may not be sought for recovery from NIPSCO's other customers. Based on the sensitivity of cost information to both GenCo and the potential customers NIPSCO will be contracting with and using the GenCo generation to serve, this provision also confirms that information related to the cost of generation can be designated as highly confidential and competitively sensitive.

Mr. Parisi testified that although GenCo is continuing to seek declination of the CPCN Statute, GenCo is committing to have the Commission review its generation assets before beginning construction under sub-section (i). He said specifically, prior to the construction, purchase, or lease of a generation asset (or group of generation assets), GenCo will make a filing with the Commission. Through the filing, GenCo will seek either (1) approval of the generation resource(s) as reasonable and necessary to serve expected load growth, or (2) declination of the Commission's jurisdiction provided by the CPCN Statute as in the public interest. He explained that for either filing type, NIPSCO and/or GenCo will present evidence to demonstrate that the resource(s) are reasonable and necessary to serve load growth consistent with the Settlement Agreement. He explained that in terms of the information contained in the filings, either filing type will contain: (1) an identification of the expected location and estimated cost of each generation resource; (2) information supporting the reasonable expectation that the load growth justifying the resource(s) will appear; (3) information supporting the conclusion that absent the investment, GenCo will be unable to meet its obligations to NIPSCO related to the reasonable expected load growth; and (4) the steps GenCo has taken to avoid exercise of the power of eminent domain. He testified that the Settling Parties have agreed to support a procedural schedule for either type of filing that would have a Commission order issued not more than 120 days after the filing of a petition and supporting testimony. This schedule is about the average time in which the Commission issues an order in a typical declination of jurisdiction proceeding. If there is a need for issuance of an order under a shorter procedural schedule, GenCo also has the opportunity to demonstrate this fact and seek issuance of an order in not more than 90 days.

Mr. Parisi explained that because it will be seeking review by the Commission of each generation resource or group of resources, GenCo seeks to retain eminent domain authority, but only for purposes of the resources that will be developed by GenCo and contracted for by NIPSCO for use to serve NIPSCO's retail customer load. Finally, PPAs, special contracts, and other proceedings related to GenCo's construction, purchase, or lease of a generation asset, or group of generation assets, may be, but do not need to be, brought in a consolidated case, unless GenCo intends to seek an expedited order, in which case, the approval or declination proceeding must be separate.

Mr. Gorman explained that there are several provisions in the Settlement Agreement which work together to ensure Commission, and public, oversight remains in place with respect to GenCo's core functions. In particular, GenCo has agreed to obtain approval, or a specific

declination, from the Commission with respect to the construction, purchase or lease of resource(s) to ensure the expenditure is consistent with what is needed to serve NIPSCO's megaload customers. This process will require GenCo to support the filing by identifying the proposed cost, that the expected load growth will occur, and that the resource addition is necessary to meet GenCo's obligations to NIPSCO as the provider of capacity/power. That need will be, further, demonstrated by annual filings from NIPSCO and GenCo which provide valuable information about GenCo's resource plans, the committed customer load, and the cost of the expected investment in generation resources. Mr. Gorman said the public process at the Commission contemplated by the Settlement Agreement provides a further safeguard to GenCo's commitments as to the scope of its operations. He explained that the Settlement Agreement provides mechanisms by which the Commission and other interested parties can review GenCo's actions and confirm that the company is acting consistent with its core purpose rather than expanding its operations without connection to a defined plan and articulated need. Mr. Gorman testified that GenCo previously emphasized the importance of its ability to develop generation resources quickly so as not to impede economic development within NIPSCO's service territory; while other parties, including the Industrial Group, emphasized the importance of a review process. The timelines proposed in the Settlement Agreement, in Mr. Gorman's opinion, represent a reasonable compromise between the competing positions.

He also discussed additional safeguards contained in the Settlement Agreement. He said GenCo has explicitly agreed to remain subject to the Commission's investigative powers, as well as re-affirming that the declination and alternative regulatory plan contemplated in the case will remain subject to later investigation and revocation. He testified that GenCo's agreement to submit information about issuances of debt to the Commission, together with the other controls on GenCo, substantially reduces the risk to NIPSCO and its other retail ratepayers as a result of debt issuances supporting GenCo's operations.

i. Eminent Domain.

a. Settlement Opposition Testimony. OUCG witness Deupree testified that the Commission should not approve the declination nor should the Commission allow GenCo to have eminent domain authority. He explained that if the Commission does not have jurisdiction over the facility, then the appropriate local regulatory bodies should have authority to regulate the facility, such that GenCo does not have the ability to exercise eminent domain without regulatory oversight. He stated if the Commission declines jurisdiction while authorizing GenCo to retain eminent domain authority, then GenCo has the ability to do exactly this without regulatory oversight or compliance with all local regulations. He opined it also creates a disadvantage for other entities seeking declination by allowing GenCo to retain this authority while eliminating it for other entities. Takanock witness Davies makes a similar claim about the lack of local control and exercise of condemnation powers. CAC witness Thomas also testified that eminent domain authority should be denied.

b. Settlement Reply Testimony. Mr. Parisi testified that in response to concerns raised by other parties, including the Industrial Group, the Settlement limits GenCo's exercise of eminent domain to cases where the asset will be used to serve NIPSCO's retail customer load and the Commission has approved the construction of the generation asset.

Mr. Parisi stated eminent domain is not being retained so that GenCo can compete with IPPs in the wholesale market. He said because GenCo is primarily focused on obtaining the generation necessary to serve NIPSCO's megaload retail customers, eminent domain is only being retained to the extent that NIPSCO would have the authority if NIPSCO were building the generation itself. Mr. Parisi also explained that the parties are incorrect that the retention of eminent domain authority creates an unfair competitive advantage with respect to IPPs. He asserted these parties are ignoring the purpose of the GenCo structure. GenCo was not formed so that it could enter the wholesale power markets and compete with IPPs. There are, in fact, provisions within the Settlement Agreement which curtail GenCo's ability to do so, including the provisions which tie GenCo's resource acquisition to NIPSCO's need to serve megaload customers such as making those acquisitions to reflect NIPSCO's IRP load forecasts and known contract negotiations. Moreover, GenCo has agreed, as part of the Settlement Agreement, to subject resources to review and approval, in a manner that was not initially contemplated in this filing, to ensure it remains focused on the primary purpose underlying its formation rather than activity in the wholesale markets.

Mr. Parisi testified that as NIPSCO and GenCo have stated throughout this proceeding, GenCo was formed because NIPSCO wants to insulate, as best it can, its retail customer base from the risks of serving megaload customers. Without GenCo, NIPSCO would not be obtaining the power to serve megaload customers through PPAs with IPPs. He also explained that under the Settlement Agreement (Section A.3.(f)), GenCo will remain subject to Commission investigations and complaints by the OUCC or others, consistent with Ind. Code §§ 8-1-2-50 through -60. He said IPPs are typically not subject to the Commission's investigation and complaint jurisdiction, and this means a condemnation action complaint could be filed at the Commission. He further claimed a landowner would have the ability to enforce the Settlement Agreement term limiting GenCo's condemnation powers. The condemnation powers are only for purposes of the resources that will be developed by GenCo and contracted for by NIPSCO for use to serve NIPSCO's retail customer load.

Mr. Parisi also testified that these arguments ignore the recent Indiana Supreme Court decision in *Duke Energy Indiana v. City of Noblesville*, 234 N.E.3d 173 (Ind. 2024). He explained that there is no longer a blanket exemption or immunity for public utilities from local regulations; instead, there is the more limited ability for a public utility to file a complaint with the Commission to challenge the reasonableness of the local regulation. He stated GenCo must comply with reasonable local regulations but would have the ability, as proposed, to file a challenge to unreasonable ones. Nothing in the Settlement Agreement changes that. Per Mr. Parisi, GenCo's intention is to work with localities in the development of electric generation facilities, just as NIPSCO does today. But in the event GenCo is unable to do so and unreasonable restrictions or requirements are placed on GenCo, he asserted it is appropriate for GenCo to retain the ability to challenge such regulations before the Commission and potentially have them overturned.

Mr. Gorman explained that GenCo has agreed to limit any exercise of eminent domain to those circumstances where a generation asset has gone through the approval or declination process at the Commission, and in doing so, GenCo must also provide information about how it attempted to avoid the exercise of eminent domain. He opined that by tying any exercise of eminent domain to only instances where Commission approval has been secured, GenCo is putting itself on a level

playing field with other non-retail providers.

c. Settlement Hearing Testimony. During cross-examination and redirect examination at the hearing, Mr. Parisi was questioned about GenCo's proposal to retain eminent domain authority and the distinction between a typical declination request by an IPP and the request from GenCo. He testified that GenCo has been proposed to ensure the financial protection of NIPSCO's non-megaload, retail customers and asserted that eminent domain should not be lost by using GenCo to do so. He also clarified that an IPP could request to retain eminent domain authority or the same scope of a declination that GenCo seeks—which would then be evaluated on the merits by the Commission. When questioned by counsel for the OUCC, Mr. Parisi acknowledged the Commission's decision in *In re Complaint of Johnson County Concerned Citizens*, Cause No. 45943 (IURC 1/31/2024), in which the Commission indicated it will not take action that directly conflicts with condemnation proceedings pending in state court. On redirect examination, he opined that a potentially aggrieved party would, however, be able to file a complaint at the Commission if they believed GenCo was not abiding by the terms of the Settlement Agreement or otherwise was not operating in accordance with the law or the Commission's approval, as GenCo has agreed that the Commission will retain its full investigatory authority.

d. Commission Discussion and Findings. Eminent domain is a statutory power conferred by the State upon public utilities pursuant to Ind. Code § 8-1-8-1 whose exercise is subject to procedures within the state court system, as likewise set out in statute. In the typical declination proceeding involving an IPP, the petitioner has not requested to retain its eminent domain authority. We recognize that in the typical declination proceeding, the IPP requests (and we grant) nearly complete declination of our jurisdiction. However, as we have noted above, and as discussed by Mr. Parisi in his prefiled testimony and at the hearing, this is not the typical IPP declination proceeding. It is undisputed that NIPSCO would retain full authority to exercise eminent domain if it were to seek issuance of CPCNs for the types of generation facilities GenCo intends to construct. We also acknowledge that GenCo will be building generation that is explicitly tailored to serve NIPSCO's megaload retail customers and that GenCo has been proposed as a means to protect NIPSCO's non-megaload retail customers from potential financial risk. Importantly, the commitments included in A.3.(i) of the Settlement Agreement create a connection between the use of eminent domain and service to NIPSCO retail customers and a Commission process to ensure such connection that previous declination orders did not. Specifically, A.3.(i) requires that, before obtaining generation assets, GenCo either: (1) seek an order from the Commission finding the generation resources are reasonable and necessary to serve expected load growth or (2) seek a declination of jurisdiction from the Commission under Ind. Code § 8-1-8.5 as in the public interest. Further, GenCo will retain eminent domain authority only for purposes of the resources that will be developed by GenCo and under a contract with NIPSCO for use to serve NIPSCO's retail customer load. These clauses of the Settlement Agreement make it clear that eminent domain authority remains subject to future review by the Commission, so we find that preserving the flexibility to exercise eminent domain as stated in the Settlement Agreement is reasonable.

ii. **GenCo Generation Approval Process.**

a. **Settlement Opposition Testimony.** Ms. Piontek opined that Section A.3.(i) does not fully satisfy CGA's concerns with the scope of GenCo's request for regulatory relief from project approval. She claimed the Settlement Agreement proposes an entirely new project approval filing which is less comprehensive than a CPCN application or request for declination of Commission jurisdiction from Ind. Code ch. 8-1-8.5 would be. She said Mr. Parisi failed to justify the merits of this proposed new filing for any reason other than speed. Ms. Piontek said GenCo's strategy is unnecessary given HB 1007. She said the Settlement Agreement has GenCo providing less information than the "robust" expedited generation resource plan under HB 1007. She testified that at minimum, the Commission should reject the abbreviated approval process proposed in the Settlement Agreement and instead require GenCo to utilize existing legal avenues for all project approvals.

Mr. Thomas expressed dissatisfaction with the project-specific approval structure proposed in the Settlement Agreement as well, arguing it does not include an evaluation of the factors that the Commission normally considers for new power generation projects under CPCNs. He also discussed the new expedited generation resource plan under HB 1007 (Ind. Code §§ 8-1-7.9-18 and -19) and said the Settlement Agreement does not ask the Commission to consider any of these factors under the reasonable and necessary review pathway. NIPSCO has disclaimed any intent to utilize this new statutory channel for review of projects to meet megaload customer needs, and presumably GenCo will rely on the Settlement Agreement's sparse approval standard for its new projects. He also expressed dissatisfaction that NIPSCO does not intend to use the approval of a project to serve a large load customer under HB 1007 in lieu of an expedited generation resource plan or a CPCN.

Mr. Davies discussed his preference for the HB 1007 expedited generation resource pathway. Mr. Davies also took issue with a statement in Gorman's settlement testimony (at 5) that there's a "level playing field" with IPPs now because GenCo has to get the Commission's approval for each generation project. Mr. Davies opined that the Commission should require NIPSCO to use competitive procurement to serve megaload customers. He said requiring NIPSCO to procure generation via true market competition is the only meaningful way to ensure NIPSCO is serving its customers with least-cost resources. At a minimum, NIPSCO should be required to use an open and independent requests for proposals process before being allowed to purchase extra GenCo capacity for its non-megaload customers.

Mr. Deupree testified regarding Section A.3(i), that if GenCo is seeking declination of Commission jurisdiction, there is no need for Commission approval of GenCo's generation resources as reasonable and necessary, and this portion of the Settlement Agreement should be rejected. Mr. Deupree also argued that it is important the Commission be clear that there is not an expectation or inference that GenCo receives any authority or responsibility through the determination that its generation resources are reasonable and necessary.

b. **Settlement Reply Testimony.** Mr. Parisi testified that it is fair for witnesses to note that the proposed generation approval pathway under the Settlement Agreement is different than what is currently required under the CPCN Statute or HB 1007, but he

also stated that this should be no surprise, as GenCo’s request for relief in this proceeding is specifically to be relieved of certain aspects of the Commission’s jurisdiction under the CPCN Statute. In demonstrating this, he quoted directly from a discovery response GenCo to the CAC. When asked to “provide the legal authority that the Settlement Agreement relies on to propose a new, non-statutory Commission approval structure for generation projects of a public utility via this quoted Settlement Agreement provision,” GenCo responded as follows:

Ind. Code § 8-1-2.5-5 provides authority for the “commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both.” (Emphasis added.) The Commission has broad discretion whether to completely or partially decline any aspect of its jurisdiction, which includes discretion to not require any future review of a generation resource or to require some review of a generation resource that is not as extensive as that required under Ind. Code § 8-1-8.5. As shown in Settlement Agreement Exhibit A, Revised Petition Attachment A, p. 14, this is not a “new, non-statutory Commission approval structure”; this is a partial declination of jurisdiction.

GenCo-NIPSCO Ex. 1-S-R at 22. He also explained that Section B.3.(i) was included in the Settlement Agreement in direct response to concerns raised by various parties in their direct testimony about complete declination of jurisdiction for generation projects, and the admittedly more limited review provided under the Settlement is a reasonable compromise. He also cited Section 17(c) of chapter 7.9 of HB 1007, which provides: “This chapter does not preclude an energy utility from petitioning the commission under, or in conjunction with, other applicable statutes, including: (1) IC 8-1-2-24; (2) IC 8-1-2-42; (3) IC 8-1-2.5; (4) IC 8-1-8.5; (5) IC 8-1-8.8; or (6) IC 8-1-39; for approval of a project to meet the needs of large load customers.” He then testified that the use of an alternative regulatory plan and a request for declination under Ind. Code ch. 8-1-2-59 and use of special contracts under Ind. Code ch. 8-1-2-24 are explicitly called out in HB 1007 as appropriate means “to meet the needs of large load customers.”

c. Settlement Hearing Testimony. During cross-examination at the hearing, Mr. Parisi testified that use of the phrase “reasonable and necessary” was a result of Settlement Agreement negotiations and was not intended to create a new, non-statutory legal standard for review and approval of generation projects. He also confirmed that the approval GenCo may obtain under Section A.3. of the Settlement Agreement will not be a “preapproval” of any kind that could be later used by GenCo or NIPSCO to seek cost recovery from its non-megaload customers. Instead, any potential use of GenCo assets to serve non-megaload customers would be independently presented to the Commission in the future, consistent with the terms of the Settlement Agreement.

d. Commission Discussion and Findings. The Commission has previously declined jurisdiction for specific projects with respect to the CPCN Statute. *See Indianapolis Power & Light Company d/b/a AES Indiana*, Cause No. 45729 (IURC 10/21/2022). Indeed, under Ind. Code § 8-1-2.5-5, the Commission has the authority to decline jurisdiction “in whole” under the CPCN Statute, and the statute also explicitly provides for the Commission to partially decline to exercise our jurisdiction. While the approval process in the Settlement

Agreement is not the same as any other statutory process, such as the standard CPCN process, an alternative is within the scope of the Commission's statutory authority.

When combined with the ongoing review of generation resources under Section A.1.(a) (Construction Compliance Filings) and the provisions of the Settlement Agreement that require GenCo's acquisition activities to reflect NIPSCO's expected load growth as shown in the IRP and negotiation processes, the Settlement Agreement appropriately balances the interests of GenCo in receiving expedited project review with the interests of other stakeholders in assuring transparency and access to relevant and important information when the Commission is reviewing a proposed generation project for approval. GenCo shall comply with all reporting requirements and otherwise follow the approval process for any future projects in accordance with the Settlement Agreement. Accordingly, the Commission approves this Section of the Agreement.

Consistent with Settlement Agreement and Mr. Parisi's testimony, the Commission will evaluate GenCo's future generation resources as "reasonable and necessary" for NIPSCO to meet the load obligations of its megaload customers. However, such approval shall not be construed as a preapproval of cost recovery from any of NIPSCO's non-megaload customers or prejudgment of the prudence of a decision or need for a resource by NIPSCO should NIPSCO seek future approval of use of a GenCo resource to serve its non-megaload customers. Any such use will be independently presented to the Commission in a new proceeding and will be determined based on the merits of the proposal at that time.

E. General Principles for Affiliate Guidelines (Settlement Agreement Section A.4.).

i. Settling Parties' Testimony. Mr. Parisi explained that sub-section (b) of Section A.4 notes that NIPSCO currently has written procedures that relate to FERC's Standard of Conduct and ensures that non-public transmission function information is not shared with NIPSCO's marketing function employees. Assuming approval of GenCo's application and this Settlement Agreement, he testified GenCo will begin operating as an energy utility, and in accordance with sub-section (a), NIPSCO will be required to appropriately modify its current affiliate guidelines to reflect this fact and address how NIPSCO and GenCo may (and may not) interact. A copy of these affiliate guidelines will be provided to the other Settling Parties and the OUCC in advance of their submission to the Commission to allow a reasonable opportunity for those parties to comment on the affiliate guidelines before submission.

Mr. Parisi said sub-section (c) confirms that GenCo will not have preferential access to NIPSCO assets or resources that are used for the generation, transmission, or delivery of electricity, and that access to or use of NIPSCO employees, assets, or resources will be consistent with any approved intercompany service agreement. Mr. Parisi further explained that based on the potential that GenCo may build future generation at the site of a retiring NIPSCO generation resource, this term is not to be construed to prevent GenCo from building, owning, or operating a generation resource at a site where a retiring NIPSCO generation resource is currently located. He said however, if this were to occur, any remuneration from GenCo to NIPSCO associated with the lease or sale of such land will be accounted for appropriately and credited to NIPSCO's current non-megaload retail electric customers.

Mr. Parisi further testified about sub-section (d), explaining that it confirms what GenCo and NIPSCO have noted in the proceeding, special contracts will be used by NIPSCO to serve megaload customers, but GenCo will be the means through which energy and capacity is procured by NIPSCO to provide this service. It then provides that (1) GenCo and NIPSCO will not condition or tie any other agreement with a customer to a service provided by the other, and (2) no preference will be given, or discriminatory action taken, as a result of failure to use services provided by GenCo or NIPSCO.

Mr. Parisi said sub-section (e) provides that GenCo will disclose information related to officers and directors and equity investors. This may be accomplished through reporting in a FERC Form 1, if required, or disclosure in the Annual Informational Filing required in Section 3(h). He explained that sub-section (f) requires GenCo to enter into and file with the Commission for approval of affiliate services agreements and appropriately allocate shared services functions, which is specifically intended to ensure there is no cross-subsidization and the costs of all services to the benefit of GenCo are appropriately allocated to GenCo. Subsections (g) and (h) simply state, respectively, that GenCo and NIPSCO will maintain separate financial records according to the applicable rules of accounting, which will be subject to regulatory review consistent with Ind. Code §§ 8-1-2-18, -49, -50, and -62 and that GenCo and NIPSCO will not intermingle funds. Subsection (i) completes Section 4 of the Settlement Agreement and requires that all affiliate contracts and agreements between NIPSCO and GenCo be submitted for Commission approval using a procedure similar to the Commission's 30-day filing procedure, or as part of a regularly docketed proceeding.

Mr. Gorman testified that NIPSCO and GenCo agreed to the establishment of affiliate guidelines. He explained that NIPSCO and GenCo both agreed to the development of affiliate guidelines to protect customers and competitive markets conditions. These include provisions to limit access to non-public information and separation of personnel to ensure neither GenCo nor NIPSCO obtain a competitive advantage over other providers. Mr. Gorman testified that NIPSCO and GenCo have agreed that neither can "tie" customer agreements beyond retail electric service to service by the other. He said this helps ensure that neither company can act discriminatorily against a customer who seeks to utilize services offered on the open market by other entities. The development of these guidelines is an important step in ensuring that the two companies do not interact in ways that would be detrimental to customers or competitive markets.

ii. Settlement Opposition Testimony. Mr. Davies said affiliate standards should be imposed by the Commission now, not in a future proceeding and not just "shared" but vetted in a public forum. Meaningful affiliate guidelines are in the public interest because it protects customers from a utility's tendency toward self-dealing.

iii. Commission Discussion and Findings. Several of the parties have attempted to include issues in this docket that will more properly be addressed in future dockets pursuant to the specific terms of the Settlement Agreement. We see no reason to now mandate the development and submission of actual affiliate guidelines before GenCo and NIPSCO know that the GenCo framework that has been proposed, as modified by the Settlement Agreement, is acceptable. In so finding, the Commission approves this section of the Settlement Agreement.

Consistent with the Settlement Agreement, GenCo and NIPSCO must submit to the Commission a copy of appropriately revised affiliate guidelines no later than the date on which the first GenCo-NIPSCO PPA is proposed for Commission approval.

F. Settling Parties' Commitments (Settlement Agreement Section A.5.) and Procedural Aspects and Presentation of the Settlement Agreement (Section B).

i. Settling Parties' Testimony. Mr. Parisi explained that Section 5 outlines the Settling Parties' commitments, which are to support: (1) the GenCo declination request as modified by the terms of the Settlement Agreement, and (2) the format and procedural timelines for filings outlined in the Settlement Agreement in any proceeding in which they participate. He also explained that Section B includes general terms and conditions that are consistent with the terms ordinarily included in Commission-approved settlement agreements, including a term in Section B.9. that the communications and discussions during the negotiations and conferences which produced the Settlement Agreement have been conducted on the explicit understanding that they are or relate to offers of settlement and contained the mental impressions and work product of attorneys present and shall therefore be confidential and privileged communications.

ii. Settlement Opposition Testimony. Mr. Deupree took issue with Section B.4. Mr. Deupree testified the current proceeding before the Commission does not address the recovery or allocation of any costs; therefore, it is inappropriate for the Settlement Agreement to reference that it does so. CAC witness Thomas expressed a similar concern.

iii. Settlement Reply Testimony. Mr. Parisi explained that this was a scrivener's error, an inadvertent carry-over of a traditional term in a settlement. Once the issue was raised in testimony, the Settling Parties conferred and immediately agreed to its removal. He then referred to the revised Settlement Agreement which reflects the deletion.

iv. Commission Discussion and Findings. The Commission finds no further action regarding this issue is necessary. This section of the Settlement Agreement is thus approved as revised.

G. Other Opposition.

i. Settlement Opposition Testimony. Ms. Piontek discussed her belief that the competitive market would be undermined by the lack of a requirement in the Settlement Agreement for competitive procurement for any level of generation or capacity sourced by GenCo and meant to serve NIPSCO's megaload customers or even NIPSCO's non-megaload customers. She also claimed in restricting the Rate 531 Tier 3 option to customers up to 50 MW and simultaneously moving customers at or above 50 MW into its GenCo construct, NIPSCO will effectively reduce both the pool of future customers participating in the competitive market or independently contracting with IPPs and the pool of future customers to be served via the competitive procurement process employed pursuant to NIPSCO's IRP. She recommended that if the Commission is inclined to approve the Settlement Agreement, it should require GenCo to procure a percentage of generation using competitive all-source bidding and require NIPSCO to participate in competitive bidding run by an independent third-party when utilizing GenCo assets

to serve non-megaload customers.

Ms. Piontek also claimed the Settlement Agreement undermines regulatory oversight in numerous ways, including by continuing GenCo's original request for blanket, unbounded relief from Commission jurisdiction (*i.e.*, for all presently unplanned future projects) over a sweeping range of statutes, requests which CGA finds entirely inappropriate insofar as these involve the CPCN statutes including Ind. Code § 8-1-8.7-3 (the "Clean Coal Statute") and Ind. Code § 8-1-2-64 (witnesses; depositions), Ind. Code § 8-1-2-68 (rates and charges; order fixing), Ind. Code § 8-1-2-69 (complaints against utilities; orders of commission), and Ind. Code § 8-1-2-115 (enforcement of law; recovery of forfeiture or penalties) (collectively "the Enforcement Statutes"). She further claimed if GenCo never intended to procure coal-fired generation at all, then declination from the Clean Coal Statute would be irrelevant and unnecessary. She said GenCo should seek declination on a case-by-case basis, utilize the Commission's existing CPCN process, or pursue project approval through the new expedited generation proceeding pursuant to HB 1007. She claimed regulatory oversight would be undermined based on the Settling Parties' request for indefinite relief from the Clean Coal Statute and the Enforcement Statutes. Further, regulatory oversight would be undermined insofar as GenCo assets could be utilized by NIPSCO to serve its non-megaload customers.

Mr. Thomas said the Settlement Agreement should have addressed the costs incurred to serve megaload customers being shifted to existing customers and the financial risk related to ownership of generation assets should megaload customers' demand diminish or disappear before the expiration of the useful life of the generation assets. He said the Settlement Agreement doesn't address concern about ringfencing because NIPSCO's existing retail customers could be subject to significant costs if: (1) the amounts paid by the megaload customer under the special contract are insufficient on an annual basis to cover the cost of the PPA to serve that megaload for the year, and/or (2) the duration of the special contract is shorter than the PPA which could leave NIPSCO's retail customers holding the bag if the special contract is not renewed or extended. He claimed there is insufficient detail regarding the PPAs and specific contracts. He said he is still concerned that neither NIPSCO nor GenCo specify what terms and conditions will be or commit to standardized terms across similarly situated megaload customers to address the risk that a megaload customer departs from its special contract early. He suggested that requirements similar to the tariff from I&M approved in Cause No. 46097 be utilized. Mr. Thomas said he is still concerned about the risk of a lower credit rating and higher debt costs from GenCo's use of NIPSCO's credit and testified that it is inadequate to have the parties litigate this case before the Commission is presented with the first PPA or special contract filing. He further opined that the Commission should first determine in this proceeding the customer protections necessary to serve the public interest and then let private parties negotiate in the light of the Commission directive. He also argued that NIPSCO should have a right to match any offer to purchase GenCo assets and argues that NIPSCO and GenCo should be required to address how Accumulated Deferred Income Tax will be handled in the future if there is a transfer of assets from GenCo to NIPSCO.

ii. **Settlement Reply Testimony.** In response to Ms. Piontek, Mr. Parisi reiterated that GenCo was not created to be an IPP or to compete with IPPs, and there are provisions in the Settlement Agreement that ensure this is the case. GenCo-NIPSCO Ex. 1-S-R at 31. He said while it is true that NIPSCO has historically used requests for proposals as part of its

IRP to procure generation for many projects, NIPSCO has also recently elected to self-build a 400 MW gas-fired peaking facility, which received Commission approval in Cause No. 45947 (IURC 7 10/16/2024), and if GenCo is not approved, NIPSCO has the discretion to self-build generation projects to serve megaload customer needs and to propose to utilize Construction Work In Progress ratemaking, with costs recovered from all customers under the CPCN Statute. It has no obligation to allow any IPP to compete to serve its retail load if it does not desire to do so. Mr. Parisi said the key distinction with GenCo is that it allows NIPSCO to provide needed energy and capacity in a way that protects its current customers from risk.

He also responded to Ms. Piontek by confirming that GenCo has no intention to procure coal-fired generation; however, in the unlikely event GenCo were to propose to acquire a coal-fired generation asset, any issues related to the Clean Coal Statute would be addressed in the proceedings the Settlement Agreement contemplates, as GenCo would either file an asset-specific declination request or propose Commission approval of the asset. He reiterated that, since GenCo owns no coal-fired generation and has no plans to, he fails to understand how the Clean Coal Statute would apply.

As to Mr. Thomas, Mr. Parisi explained that he largely addressed these issues in his rebuttal testimony, but reiterated that the CAC's desire to address contracts that have not been proposed and are not pending before the Commission is outside of the scope of this declination of jurisdiction proceeding—plain and simple. Despite the fact that many, if not most, declination of jurisdiction proceedings involve an underlying PPA or build transfer agreement with an Indiana utility, Mr. Parisi said he was unaware of any instance in which the Commission has addressed substantive issues related to a PPA or build transfer agreement in a declination proceeding. Instead, as is logical, the Commission waits until the PPA or build transfer agreement is presented for approval and then addresses the contract at that time. He went on to explain that he noted it would be unreasonable to mandate that GenCo first offer any assets to NIPSCO, unless there is an accompanying guarantee of cost recovery from current NIPSCO customers, which GenCo is not seeking. He also emphasized the scope of this declination proceeding. He said while the Settlement Agreement provides for the potential transfer of assets between GenCo and NIPSCO, this is by no means a certainty or even a likelihood. In the event this were to occur at some point in the future, the Commission will be presented with the relevant evidence—including related to all accounting matters—and can make its decision about a proposed transfer at that time.

iii. Commission Discussion and Findings. The non-settling parties raised various concerns about potential nuanced circumstances that are not currently existing, not contemplated by the Settlement Agreement, and are also unlikely to occur, such as the applicability of the Clean Coal Statutes. With these unlikely but potential unknowns, it is imperative to understand that the declination of jurisdiction could be altered or terminated by the Commission, either on its own motion or upon request should there be a level of significant concern as contemplated by Ind. Code § 8-1-2.5-7.

Regarding Ms. Piontek's concerns about competitive procurement for the benefit of IPPs, we note that in this case, the Commission's public interest concerns are focused on protecting the interests of existing retail customers while meeting the demand of new retail megaload customers. The GenCo structure was created to serve this focus. Without the GenCo structure, NIPSCO would

have no obligation to satisfy its load needs through competitive procurement with IPPs. NIPSCO, like any public utility, has the discretion to self-build generation projects to serve megaload customer needs, provided it meets all applicable statutory requirements including Commission approval. NIPSCO, as noted by Mr. Parisi, recently used that discretion when it proposed to self-build a generation project in Cause No. 45947. Ind. Code § 8-1-8.5-5 imposes an obligation to competitively bid construction activities when practicable, but it does not require a public utility to solicit bids for capacity and energy from other sources. So, the competitive procurement commitment Ms. Piontek seeks is not one which already exists. And as we have noted previously, GenCo is not being created to compete with IPPs – GenCo’s resources will be tailored to serve NIPSCO’s retail megaload customers’ needs. We therefore reject Ms. Piontek’s arguments, but still caution NIPSCO that we expect it to continue to use prudent utility practices in securing agreements to serve its retail load, including considering factors, such as cost, when making decisions with respect to its resource selections.

While on redirect examination at the hearing Mr. Thomas tried to distinguish between “broader policy terms” (Transcript at D-81, line 6) that the Commission should mandate be included in all special contracts or PPAs versus terms that parties should be able to negotiate. He ultimately conceded that “I don’t think we should have a standard contract, and those kinds – that to me is of litigation that should happen contract by contract with contract specific terms[.]” Tr. at D-81, lines 1-4. Each special contract and PPA will be independently presented to the Commission for review, parties will have the opportunity to offer their perspectives and arguments about the substantive terms of such agreements at that time, and the Commission can make its decision at the point when it has an agreement before it to review. The CAC’s concerns regarding cost recovery and discriminatory treatment are hypothetical and premature at this time, and would be more appropriately raised and addressed in a regulatory filing requesting the approval of any special contract, just like the Settling Parties have recommended. For these reasons, we reject the request from Mr. Thomas to mandate certain terms and conditions that must be included in every retail special contract NIPSCO negotiates with a megaload customer, as that is beyond the scope of GenCo’s request for declination of jurisdiction.

H. Alternatives to the Settlement Agreement and GenCo Structure. The non-settling parties who oppose approval of the Settlement Agreement did not challenge the need for a regulatory strategy to address potential challenges related to serving new megaload customers, but, instead, they offered other alternative means to address their particular concerns. Some of the other parties suggested that, as an alternative, GenCo use the expedited generation resource path provided for in HB 1007. With respect to arguments about HB 1007, as provided in chapter 7.9, Section 17(c), HB 1007 “does not preclude an energy utility from petitioning the commission under, or in conjunction with, other applicable statutes, including: (1) IC 8-1-2-24; (2) IC 8-1-2-42; (3) IC 8-1-2.5; (4) IC 8-1-8.5; (5) IC 8-1-8.8; or (6) IC 8-1-39; for approval of a project to meet the needs of large load customers.” Therefore, the proposed GenCo structure and strategy is not inconsistent with or somehow foreclosed by HB 1007.

Consistent with our discussion below, we find GenCo’s declination request and overall structure (as modified in the Settlement Agreement) is a reasonable response to the opportunities and challenges NIPSCO is facing and we approve the Settlement Agreement as in the public interest and decline to mandate adoption of some other solution to the unprecedented load growth.

I. Public Interest and Ultimate Findings Approving Settlement Agreement. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana 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 Coalition v. PSI Energy*, 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 Coalition*, 664 N.E.2d at 406. Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 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 it is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2-1, and that such agreement serves the public interest.

i. Settling Parties’ Testimony. Mr. Parisi explained that the Settling Parties (1) believe that the Settlement as a whole represents a reasonable resolution of the issues in this Cause and approval of the Settlement Agreement is in the public interest, and (2) strongly encourage the Commission, after considering the evidence in support of the Settlement Agreement, to find the Settlement Agreement to be reasonable and in the public interest and promptly enter an order approving the Settlement Agreement in its entirety. He said, as noted in his rebuttal testimony, the opportunity presented by megaload customers is unlike anything previously experienced in the industry. Attracting and serving these types of customers has the potential to lead to tremendous benefits for Indiana, NIPSCO, and its customers, but there are also accompanying challenges. He said this is where GenCo comes in, as it is being proposed in direct response to these challenges, including enabling the development of needed generation resources more quickly than under traditional regulation while providing reasonable and appropriate protections to NIPSCO and its customers. Mr. Parisi testified that with the clarifications and commitments GenCo has provided in its rebuttal testimony and the Settlement Agreement, approval of GenCo’s request for limited declination of jurisdiction is in the public interest and should be approved.

Mr. Gorman testified that the Settlement Agreement is a comprehensive resolution of the issues raised in this proceeding. Specifically, the Settlement Agreement addresses concerns raised by himself and others with respect to the scope of GenCo’s requested declination of Commission jurisdiction, Commission oversight and review of critical GenCo actions, and the potential interrelationship between GenCo and NIPSCO. With appropriate safeguards addressing these concerns embedded in the Settlement Agreement, which incorporates modifications and clarifications made in GenCo’s rebuttal testimony and NIPSCO’s cross-answering testimony, as well as additional terms responsive to the issues raised by the Industrial Group, he opined that the public interest will be served by the Commission declining to exercise its jurisdiction over GenCo as a public utility in the manner and to the extent delineated in the Settlement Agreement.

Mr. Gorman further testified that in his view, the Settlement Agreement implements changes to the scope of GenCo's request which provide meaningful protections to existing ratepayers and reasonably addresses the concerns raised in this proceeding. The Settlement Agreement terms retain the objective of allowing GenCo to develop and hold the capacity resources needed to meet the demands of NIPSCO's megaload customers while protecting existing ratepayers from risk, and establishing limitations and protections responsive to the issues and concerns presented in his initial testimony. He said, in this way, the Settlement Agreement and the agreed declination are broadly supportive of a policy in Indiana to encourage economic development by attracting new business to the state, and further, will remove barriers to NIPSCO's ability to serve the new megaload customers.

ii. Settlement Opposition Testimony. Mr. Deupree testified that the proposed Settlement Agreement falls short of including the fundamental requirements necessary to show the proposal is consistent with the public interest. He recommended specific consumer safeguards be implemented if the Commission finds that GenCo has met its burden under Indiana law, including retaining jurisdiction under a number of statutes, rejecting the proposal to lower the megaload definition to 50 MW, not allowing GenCo to retain eminent domain authority, that GenCo's tailoring of generation be specifically defined, and the Settlement Agreement's reference to revenue requirement and allocation of costs be removed.

On behalf of CAC, Mr. Thomas said he did not think the proposed Settlement Agreement is in the public interest. He said it failed to address most of the fundamental concerns that were raised, and that it created some new problems. He said that the structure and power to employ eminent domain is unprecedented and requires maximum scrutiny.

Ms. Piontek, on behalf of CGA, said approval of the Settlement Agreement by the Commission would be inconsistent with articulated policy principles. She said not only does NIPSCO's GenCo strategy undermine the benefits of a competitive power market, but the particular terms of the Settlement Agreement would bypass critical standards for obtaining the declination of jurisdiction sought by the Settling Parties. She reiterated that GenCo's request for relief, and now the Settling Parties' Settlement Agreement, is not in the public interest.

Mr. Davies, on behalf of Takanock, said no megaload customer interested in coming to Indiana knows if or when it can get service from NIPSCO and GenCo. He said this leaves megaload customers to negotiate for service with a monopoly that does not have any Commission oversight and creates uncertainty and ambiguity, which in turn creates a business risk. For these reasons, Takanock recommended that the Commission reject the Settlement Agreement as it is not in the public interest.

iii. Settlement Reply Testimony. Mr. Parisi concluded his settlement reply testimony by explaining the potential impact and path forward if the Settlement Agreement is not approved by the Commission. He explained that if the Settlement Agreement is rejected, there is the more traditional approach to recovery of major capital investments. NIPSCO can file requests under the CPCN Statute and Clean Energy Statute for approval of generation projects, including the financial incentives those statutes provide, which could allow for Construction Work In Progress recovery from customers during the period when the generation project is being

constructed and before it is in service. This path also includes the much greater protection of cost recovery (with issuance of a CPCN and ongoing review) from all NIPSCO's current and future customers, as NIPSCO's entire generation portfolio would be utilized to serve its customer base. This recovery would be based on NIPSCO's regulated return on equity, which is a reasonable return under the circumstances where NIPSCO's entire customer base serves as a backstop for recovery. He noted that all of this would be acceptable to NIPSCO, but it undeniably puts incremental risk directly on current customers, even with appropriately drafted special contract terms that are intended to mitigate some of this risk and that it would also impact the speed at which generation can be developed to meet the emerging needs of megaload customers.

He explained the path proposed in this proceeding protects NIPSCO's current customer base and is encouraged by the Settling Parties. The Commission can approve the Settlement Agreement, which has limitations on GenCo's scope of operation, a higher level of Commission oversight than under traditional declination cases, project-specific review and approvals for generation assets, requirements to develop appropriate affiliate guidelines, and other protections and restrictions in place. He confirmed that this is the path NIPSCO desires to take and will take if the Settlement Agreement is approved. He also acknowledged some non-settling parties allege that the GenCo structure is being proposed for the purpose of allowing GenCo to realize returns that are higher than what NIPSCO traditionally realizes. He explained that as previously outlined, there is a path for traditional recovery of generation costs from all NIPSCO's retail customers that allows for earlier, more timely recovery of costs through mechanisms that are more certain, and there is, relatively speaking, more risk to GenCo presented from the proposed path when compared to traditional rate base recovery. For this reason, he noted that in future proceedings, GenCo is likely to request the opportunity to earn a return above NIPSCO's regulated return on equity, as the return profile of an investment should be commensurate with the risk presented. But GenCo would be at risk to appropriately manage its performance, given any counterparty will demand certain performance requirements and limits on their risk. However, as GenCo and NIPSCO have emphasized throughout this proceeding, the proposed GenCo structure is about protecting existing customers from risks associated with large capital investments in the infrastructure necessary to serve megaload customers—risks that the parties to this proceeding have acknowledged. It also serves as a vehicle to expedite development of the needed generation, which is desired by prospective megaload customers. He concluded by affirming that it is the Commission's decision whether to approve the Settlement Agreement and allow utilization of GenCo as a mechanism to protect NIPSCO's retail customers, or whether to reject the Settlement Agreement, thereby signaling to NIPSCO that traditional generation approval and cost recovery is the preferred means for NIPSCO to serve these customers, despite the risks posed to other customers from doing so.

iv. Commission Discussion and Findings. The Commission has before it substantial evidence to determine the reasonableness of the terms of the Settlement Agreement. All parties had an opportunity to participate in and monitor the settlement negotiations, and as the Settling Parties noted, the Settlement Agreement addresses many of the concerns and arguments raised by parties other than the Industrial Group. *See* GenCo-NIPSCO Ex. 1-S at 4; 7-10; and IG Ex. 1-S at 5. Nonetheless, because the Settlement Agreement is not unanimous, we will address the outstanding concerns raised by the non-settling parties which we have not elsewhere addressed in this Order.

When taken as a whole, the Settlement Agreement is a reasonable resolution to the issues raised in this proceeding and represents a fair balance between the needs and interests of GenCo, NIPSCO, and NIPSCO's customers. The Commission finds and concludes that the Settlement Agreement is supported by substantial evidence, is in the public interest, and is approved.

If the Commission finds that Petitioner is a public utility for the purposes of Ind. Code ch. 8-1-8.5, then Petitioner would be considered an "energy utility" as defined by Ind. Code § 8-1-2.5-2. The Commission may decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, including its jurisdiction under the Power Plant Act, to issue certificates of public convenience and necessity for the construction of the Facilities. For the Commission to decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, the Commission must first assert jurisdiction over Petitioner.

Ind. Code § 8-1-8.5-1(a) defines "public utility" to mean a: (1) public, municipally owned, or cooperatively owned utility; or (2) joint agency created under Ind. Code ch. 8-1-2.2. Petitioner is a limited liability company that will generate electricity for the specific purposes of ultimate consumption by NIPSCO's retail, megaload customers located in Indiana. The Commission has previously asserted jurisdiction over investor-owned public utilities pursuant to Ind. Code ch. 8-1-8.5. *See, e.g., Indianapolis Power & Light Co.*, Cause No. 43235, 2007 WL 8420716 (IURC June 13, 2007). In addition, Petitioner's property will be "used in a business that is public in nature and not one that is private." *See Foltz v. City of Indianapolis*, 130 N.E.2d 650, 659 (Ind. 1955). Petitioner's business is "impressed with a public interest" and would render service "of a public character and of public consequence and concern" as also considered in *Foltz*.

The Commission must also determine that Petitioner satisfies the definition of "public utility" found in Ind. Code § 8-1-2-1. The evidence establishes that GenCo's ownership, development, financing, construction, and operation is for the purpose of selling any power procured or generated to NIPSCO. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. *See, e.g., Benton County Wind Farm, LLC*, Cause No. 43068, 2006 WL 4400582 (IURC Dec. 6, 2006). In *Benton County*, the Commission specifically found that it had jurisdiction over a wind energy generator with wholesale operations like Petitioner's. Consequently, based upon our application of the statutes and precedents discussed herein to the facts and circumstances in this case, we find GenCo is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1 and is an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2 for purposes of the ownership, development, financing, construction, and operation of the facilities.

Ind. Code § 8-1-2.5-5 authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an "energy utility" if certain conditions are satisfied. This statute provides that the Commission may enter an order, after notice and hearing, that the public interest requires the Commission "to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over . . . the energy utility . . ." Ind. Code § 8-1-2.5-5(a). Ind. Code § 8-1-2.5-2 defines "energy utility" to mean, in part, a public utility within the meaning of Ind. Code § 8-1-2-1. As described in the Petition initiating this Cause and in the Settlement Agreement, GenCo intends to construct, own, and operate generation facilities and related assets and to enter into certain contracts with NIPSCO to enable NIPSCO to supply retail service to megaload customers

in its service territory. Since we have determined that Petitioner is a “public utility” under Ind. Code § 8-1-2-1, we find Petitioner is also an “energy utility.”

In determining whether the public interest will be served by a declination of jurisdiction, the Commission must consider the following:

(1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.

(2) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility’s customers, or the state.

(3) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.

(4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

Ind. Code § 8-1-2.5-5(b).

Further, as noted by the Commission in *Indianapolis Power & Light Co.*, Cause No. 45729 p. 13 (IURC October 21, 2022), “while the statute directs the Commission to consider the enumerated factors, the statute does not require that all factors be applicable. The Commission has previously declined jurisdiction where only a couple of statutory considerations were applicable. See e.g., *Calvary Energy Center, LLC*, Cause No. 45474, pp. 20-21 (IURC May 26, 2021).”

Further, the evidence in this Cause supports a Commission determination that it is in the public interest to decline to exercise its jurisdiction of the statutes identified in the Settlement Agreement. GenCo seeks only declination of jurisdiction of those sections that are necessary to further the public interest, anchored in the principles of: (1) protecting existing customers; (2) serving NIPSCO’s new megaload customers with speed and flexibility; and (3) maintaining NIPSCO’s financial integrity. Settlement Agreement Exhibit A lists each statute for which at least partial declination is sought and provides support for why declination is appropriate. It also specifically explains how the public interest would be served by the declination of each chapter or section as framed by the public interest considerations of Ind. Code § 8-1-2.5-5(b).

The exemptions from the various provisions of Ind. Code ch. 8-1-8.5, as further refined in the Settlement Agreement and presented in Settlement Agreement Exhibit A, are to eliminate provisions that have limited application to this structure and to assure speed-to-market. Because GenCo will not provide service at the retail level, other sections listed in Settlement Agreement Exhibit A (e.g., Ind. Code § 8-1-2-42) have no application. Other sections would be unnecessary and wasteful to apply to GenCo given the sophistication of megaload customers. Other proposed exemptions are important to quickly attract the capital necessary and to provide flexibility to accomplish speed-to-market. The Commission’s exercise of jurisdiction under many of the chapters or sections identified in Settlement Agreement Exhibit A is unnecessary as contemplated

by Ind. Code § 8-1-2.5-5(b)(1). Megaload customers will require reliable service at competitive prices and declination of many of the sections identified in Settlement Agreement Exhibit A promotes energy utility efficiency as contemplated by Ind. Code §§ 8-1-2.5-5(b)(2) and (3).

The Settlement Agreement requires certain compliance filings and additional approvals that will give the Commission visibility into important aspects of GenCo's activities. This includes independent review and approval of any proposed contract for retail service between NIPSCO and a megaload customer, any PPA (or similar agreement) between GenCo and NIPSCO intended to serve a megaload customer, and GenCo's generation resources. This level of ongoing Commission visibility into and regulation of how GenCo interacts with NIPSCO, NIPSCO's retail customers, and future megaload customers is key to our approval of the structure provided by the Settlement Agreement. This structure will afford all stakeholders and the Commission an opportunity to explore specific details in future proceedings when such evidence is presented. The full exercise of Commission jurisdiction could inhibit GenCo and NIPSCO from competing with other potential suppliers to megaload customers as contemplated by Ind. Code § 8-1-2.5-5(b)(4). The evidence shows that megaload customers are sophisticated and have many choices available to them when determining where to make developments. The requested limited declination of jurisdiction will enable NIPSCO to support Indiana's efforts to compete with other states to attract this economic development by providing a vehicle for speed-to-market, which is critical to megaload customers. It is important that NIPSCO be able to insulate current NIPSCO customers from any attendant risks while still attracting new customers. The GenCo structure is a type of alternative regulatory policy and practice contemplated by Ind. Code. ch. 8-1-2.5 that the Commission is authorized to permit.

The Commission is highly aware of and sensitive to customer concerns surrounding the potential of new megaload customers. The GenCo structure is designed to optimize the insulation of NIPSCO's broader customer base from the financial risks associated with serving megaload customers. By ringfencing the generation assets dedicated to these high demand users, GenCo will offer the opportunity to ensure that electric service costs tied to data center development and operation do not result in costs to other ratepayers. While the model's effectiveness will depend on future special contracts such as PPAs submitted to the Commission, it reflects a forward-looking approach to risk mitigation.

The Commission finds that it is in the public interest to decline to exercise jurisdiction under the Statutes noted in the attachment to the Settlement Agreement, Joint Exhibit 1-S-R.

6. Effect of Settlement Agreement. The Settlement Agreement is not to be used as precedent in any other proceeding or for any other purpose except to the extent necessary to implement or enforce its terms; consequently, with regard to future citation of the Settlement Agreement or of this Order, we find our approval herein should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849 at *7-8 (March 19, 1997).

7. Confidential Information. On April 14, 2025, NIPSCO and GenCo filed Motions for Protection and Nondisclosure of Confidential and Proprietary Information in this Cause, which were supported by affidavits showing that certain information to be submitted to the Commission

was trade secret information as defined in Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. In a Docket Entry dated May 1, 2025, the Presiding Officers found the information should be held confidential on a preliminary basis. After reviewing the information and consideration of the affidavit, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29 and shall be held as confidential and protected from public access and disclosure by the Commission.

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

1. The Settlement Agreement, a copy of which is attached to this Order, is approved.
2. Petitioner is a “public utility” within the meaning of Ind. Code §§ 8-1-8.5-1 and 8-1-2-1 and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2.
3. The Commission declines to exercise its jurisdiction under the statutes identified in Settlement Agreement Exhibit A over Petitioner and its construction, operation, and financing of the Facilities, except as specifically stated within this Order.
4. Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the Facilities without further Order of the Commission.
5. Petitioner shall comply fully with the terms of this Order and submit to the Commission all information and reports required by the terms of this Order and/or the approved Settlement Agreement under this Cause.
6. The information filed by Petitioner and NIPSCO in this Cause pursuant to the Motion for Protection and Nondisclosure of Confidential and Proprietary Information is confidential pursuant to Ind. Code § 5-14-3-4, is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission.
7. This Order shall be effective on and after the date of its approval.

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

APPROVED: SEP 24 2025

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

_____ on behalf of
Dana Kosco
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NIPSCO GENERATION)
LLC FOR CERTAIN DETERMINATIONS BY THE)
COMMISSION WITH RESPECT TO ITS) CAUSE NO. 46183
JURISDICTION OVER PETITIONER'S ACTIVITIES)
AS A NON-RETAIL GENERATOR OF ELECTRIC)
POWER.)

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into as of this 14th day of May, 2025, by and between NIPSCO Generation LLC (“GenCo”), Northern Indiana Public Service Company LLC (“NIPSCO”), and the NIPSCO Industrial Group (“Industrial Group”),¹ (collectively the “Settling Parties”) and individually “Settling Party”). The Settling Parties, solely for purposes of compromise and settlement and having been duly advised by their respective staff, experts, and counsel, stipulate and agree that the terms and conditions set forth below represent a fair, just, and reasonable resolution of the issues in this Cause, subject to their incorporation by the Indiana Utility Regulatory Commission (“Commission”) into a final, non-appealable order (“Final

¹ The Industrial Group is comprised of Accurate Castings Inc., BP Products North America, Inc., Cleveland Cliffs Steel LLC, Linde, Marathon, and US Steel Corporation.

Order”)² without any modification or further condition that is not acceptable to any Settling Party. If the Commission does not approve this Agreement, in its entirety, the entire Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

A. Settlement Terms and Conditions

The Settling Parties agree this Agreement resolves all disputes, claims, and issues directly related to GenCo’s request for an Order from the Commission declining to exercise its jurisdiction over certain aspects of GenCo’s purchase, ownership, development, financing, construction, and operation of generating facilities and related assets currently pending in Cause No. 46183 as among the Settling Parties.

The Settling Parties agree that matters for which GenCo requested relief in this Cause that are not addressed herein, but were expressly supported by testimony, are resolved as GenCo proposed, or if modified in rebuttal, as modified in rebuttal without waiving the right to challenge such resolution prospectively except as facts and circumstances may allow. The Settling Parties have included as Exhibit A to this Agreement a revised version of “Attachment A” to GenCo’s Verified Petition (in clean and redline format), which is intended to reflect the scope of GenCo’s requested declination, as modified in its rebuttal testimony and this Agreement.

² “Final Order” as used herein means an order issued by the Commission as to which no person has filed a Notice of Appeal within the 30-day period after the date of the Commission order.

1. General Commitments and Reservation of Rights.

(a) GenCo and NIPSCO agree to be bound by all commitments listed below, as well as all commitments from GenCo's rebuttal testimony and NIPSCO's cross-answering testimony, as modified by this Agreement.

(i) The following commitments were offered by GenCo in Witness Parisi's rebuttal testimony: (1) any future megaload customer special contracts or NIPSCO-GenCo power purchase agreements ("PPAs") will be filed with the Commission;³ (2) NIPSCO will be GenCo's only customer and GenCo will not attempt to attract other customers in competitive markets;⁴ (3) generation under GenCo's control will be tailored to NIPSCO's anticipated megaload needs, guided by NIPSCO's ongoing integrated resource planning ("IRP") process and informed by customer negotiations and Commission-approved special contract demand;⁵ (4) GenCo will provide capacity that is inclusive of the Midcontinent Independent System Operator, Inc. ("MISO") planning reserve margin requirements, which will ensure that the NIPSCO-GenCo PPA covers the full load requirements of megaload customers;⁶ (5) if GenCo develops behind-the-meter-generation service offerings, it will be each customer's decision as to whether they

³ Parisi Rebuttal at 9, lines 6-8; at 33, lines 9-10.

⁴ Parisi Rebuttal at 23, lines 12-14; see also at 24. This commitment has been clarified and modified by the terms in Section A.2 of this Agreement, specifically Sections A.2.(a) to 2.(e).

⁵ Parisi Rebuttal at 25, lines 1-4. See Section A.1.(b) of this Agreement.

⁶ Parisi Rebuttal at 26, lines 3-6. See Section A.1.(b) of this Agreement.

have interest in contracting with GenCo for such service;⁷ (6) GenCo is willing to remove its request for declination under Ind. Code § 8-1-2-47;⁸ (7) GenCo and NIPSCO will work together to develop affiliate guidelines and will submit them to the Commission— which would occur no later than the time at which the first NIPSCO-GenCo PPA is presented to the Commission for approval;⁹ (8) GenCo will also enter into separate service agreements with NIPSCO and NiSource Corporate Services Company (“NCSC”) and file them with the Commission;¹⁰ (9) GenCo and NIPSCO are open to submission of PPAs in the same filing as a related megaload customer special contract but commit to submit PPAs and related megaload customer special contracts to the Commission at approximately the same time, so they can be concurrently evaluated.¹¹

With respect to compliance filings, GenCo will make a compliance filing in this Cause at least 30 days in advance of beginning construction for each generation asset or group of generation assets GenCo is sourcing to serve any individual megaload customer (the “Construction Compliance Filing”). The Construction Compliance Filing will provide details relating to the size, fuel

⁷ Parisi Rebuttal at 26, lines 8-15. See Section A.1.(f) of this Agreement.

⁸ Parisi Rebuttal at 28, lines 1-2. This commitment has been clarified by the terms in Section 4 of this Agreement.

⁹ Parisi Rebuttal at 30, line 16 through 31, line 2. This commitment has been clarified by the terms in Section 4 of this Agreement.

¹⁰ Parisi Rebuttal at 31, lines 3-5. See Section A.3.(f) of this Agreement.

¹¹ Parisi Rebuttal at 33, lines 10-14. See Section A.2.(h) of this Agreement.

source, and location of the generation asset(s). GenCo is also willing to make semi-annual compliance filings to identify any changes to the information included in the Construction Compliance Filing and provide construction progress updates for all ongoing generation assets, such as progress related to generation interconnection, permitting, zoning, etc. (the "Semi-Annual Update Compliance Filing"). GenCo would make its initial Semi-Annual Update Compliance Filing 90 days following the issuance of an order in this Cause.¹²

(ii) The following commitments were offered by NIPSCO in Witness Napoe's cross-answering testimony:¹³ (1) NIPSCO intends only to enter into PPAs with GenCo for energy and capacity it reasonably expects to need to serve its megaload customers;¹⁴ (2) NIPSCO will file special contracts with the Commission for approval; (3) GenCo and NIPSCO will file PPAs with the Commission for approval; (4) NIPSCO and GenCo will enter into affiliate guidelines, which will be filed with the Commission; and (5) NIPSCO and GenCo will enter into one or more services agreement establishing shared services and allocation of costs between NIPSCO and GenCo, which will also be filed with the Commission.

¹² Parisi Rebuttal at 40, line 15 through 41, line 9.

¹³ Napoe Cross-Answering at 9.

¹⁴ This commitment has been clarified and modified by the terms in Section A.2 of this Agreement.

(b) All the commitments, filings, and, submissions pursuant to this Settlement Agreement or committed to in testimony will be subject to appropriate confidentiality protections.

(c) All rights of all parties shall be reserved as related to all future proceedings, including, but not limited to, special contract and PPA approvals, except with respect to processes and procedures adopted in this Agreement.

2. Limitations on GenCo's Scope of Operations.

(a) Subject to agreed limitations and clarifications contained in this Settlement Agreement, GenCo operations will be limited to serving as the energy and capacity provider to NIPSCO and NIPSCO's customers through PPAs for purposes of allowing NIPSCO to serve new megaload entities as retail customers under Commission-approved special contracts. NIPSCO will be GenCo's only customer.

(i) This term shall not prohibit GenCo from participating in the wholesale market using existing, non-committed capacity or energy, subject to such regulatory approvals as may be required.

(ii) For purposes of this Agreement, GenCo's declination, and NIPSCO's future service offerings, a "megaload customer" means any non-residential, non-municipal, or non-small commercial customer who is seeking service for at least 100 megawatts of firm service and whose characteristics or

expected, final demand would mean they are unable to qualify for service under Rates 524, 531, 532 or 533 (as those rate schedules may be modified from time to time). Notwithstanding this definition, a megaload customer may request and receive service on a temporary basis under one or more of those rate schedules, provided they would otherwise qualify for service under the requested schedule. In the event that one or more megaload customer does take temporary service under Rates 524, 531, 532, 533, or pursuant to a Commission-approved special contract with terms similar to one or more of those rate schedules, NIPSCO will take in account the temporary use of its legacy assets in its immediately subsequent electric base rate case and make appropriate adjustments, as necessary.

(b) All capacity procured by GenCo will be planned to meet PPA obligations and resource adequacy requirements and planning reserve requirements, guided by NIPSCO's ongoing IRP process and informed by customer negotiations and Commission-approved special contract demand.

(c) NIPSCO and GenCo will not enter into a PPA unless NIPSCO executes a special contract with a megaload customer, meaning that NIPSCO and GenCo will not enter into PPAs unless there is at least one executed special contract under which NIPSCO would have an obligation to serve a megaload customer.

(d) Revenues from any excess energy and capacity sales will be addressed, as applicable, in the terms of special contracts between NIPSCO and any megaload customer, permissible agreements with any electing existing customer, and/or in a PPA between NIPSCO and GenCo.

(e) NIPSCO and GenCo may not transfer assets between themselves, or enter into agreements for purposes of service to non-megaload retail customers (e.g., PPAs), unless the following conditions, as applicable, are met:

- (i) All affiliate guidelines are adhered to.
- (ii) Only existing assets are involved (meaning that GenCo would not intentionally build, or plan to build, new assets intended to serve non-megaload customers).
- (iii) Any transfer is approved by the Commission in a regularly docketed proceeding.
- (iv) In the case of an asset transfer by NIPSCO to GenCo, NIPSCO must recognize a reduction in any undepreciated plant balance/amortized asset balance and make appropriate adjustments to retail rates.
- (v) In the case of an agreement between NIPSCO and GenCo to utilize GenCo assets to serve NIPSCO's non-megaload retail customers (such as through a PPA), GenCo may offer only energy and/or capacity which is

demonstrated to be a cost-effective resource decision and subject to review by a third-party evaluator.

(vi) In the case of an agreement transferring GenCo assets to NIPSCO, NIPSCO must demonstrate that the resource has been selected as part of an open, competitive process run by an independent third-party.

(vii) If GenCo has planned capacity after meeting its obligations to NIPSCO to serve NIPSCO's megaload customers and any other retail customers through an approved PPA, and if NIPSCO and GenCo adhere to all affiliate guidelines, any such excess capacity may be offered to existing retail customers (including for load expansions) only at the customer's sole discretion, but NIPSCO must be a signatory to any such agreement and must remain the sole provider of retail electric service to such customer, consistent with the requirements of Rate 531.

(f) GenCo may compete with other potential suppliers to construct behind the meter installations for new or existing customers.

(g) GenCo will not own substations or transmission assets, except: (i) the type necessary to interconnect to the grid; and (ii) with the consent of the megaload customer(s), new substations which are solely for purposes of serving one or more megaload customers.

(h) Any substations or transmission assets constructed by GenCo or NIPSCO solely for a megaload customer will be the cost responsibility of the megaload customer for which they are constructed.

(i) Revisions to NIPSCO's existing tariffs to accommodate megaload customers may be presented for approval in the Commission's 30-day filing process, but new rate schedules or tariffs designed solely for megaload customers must be presented in a general electric base rate case or in a dedicated proceeding. However, if an electric base rate case is pending, any new rate schedules or tariffs must be filed as part of the pending electric base rate case. In no case may existing customers be required to take service under a new or revised tariff.

3. Commission Oversight.

(a) All NIPSCO-GenCo PPAs to be used by NIPSCO to provide service to megaload customers or non-Rate 531 Tier 3 customers will be subject to affiliate guidelines and approval by the Commission in a regularly docketed proceeding.

(b) Subject to appropriate provisions to prevent public disclosure of confidential information, all special contracts between NIPSCO and megaload customers will disclose the financial terms related to the provision of retail electric service, including those between the customer and GenCo, if any.

(c) The load associated with megaload customers will be accounted for in NIPSCO's IRP process, and any forecasted use of GenCo assets or agreements, as well as any already-approved NIPSCO-GenCo PPAs, will be included in NIPSCO's IRP and reported to the Commission in annual reports required under Ind. Code § 8-1-8.5-13 (e.g., HEA 1520).

(d) With adequate notice to the affected customer(s) who have cost responsibility in relation to a special contract, GenCo may take pre-acquisition/pre-construction steps (such as reserving equipment, submitting interconnection applications to MISO, etc.) without any filing to the Commission, provided that no costs are passed on to NIPSCO's retail customers, except through special contract terms with a megaload customer(s).

(e) GenCo and NIPSCO will not object to third-party discovery directed to them in any proceeding solely on the grounds that they are not a party to a particular proceeding. Each will use best efforts to timely respond (according to the applicable procedural schedule) to discovery.

(f) GenCo will remain subject to Commission investigations and complaints by the Indiana Office of Utility Consumer Counselor ("OUCC") or others, consistent with Ind. Code §§ 8-1-2-50 through 60 and 8-1-2.5-7.

(g) GenCo will not seek full declination over Ind. Code §§ 8-1-2-76 through -80, relating to a public utility's need for Commission approval of a public utility's plan(s) to issue debt. Specifically, GenCo will make an informational compliance filing within 30 days of each time GenCo issues debt.

(h) NIPSCO and GenCo will jointly make an annual informational filing with the Commission ("Annual Informational Filing") that is intended to provide the Commission with information about (i) GenCo generation resources committed, anticipated, and under evaluation; (ii) the total megaload customer demand under special contracts that has been filed with or approved by the Commission; (iii) a demonstration of how the load will be reliably served by NIPSCO using the GenCo generation; (iv) the current cost estimate for each identified generation resource; and (v) any updates to a previous Annual Informational Filing, including the final cost of generation resources that have reached commercial operation since the previous filing. To the extent that the final cost of a generation resource has increased from what was initially filed in an Annual Informational Filing, this cost increase may be sought for recovery from one or more megaload customer(s) under the terms of a Commission-approved special contract(s), but the cost increase may not be sought for recovery from NIPSCO's other customers. Information related to the cost of generation can be designated as highly confidential and competitively sensitive.

(i) Prior to the construction, purchase, or lease of a generation asset, or group of generation assets, GenCo will make a filing seeking either (i) approval of the generation resource(s) as reasonable and necessary to serve expected load growth, or (ii) declination of the Commission's jurisdiction provided by Ind. Code § 8-1-8.5 as in the public interest. For purposes of either filing type, NIPSCO and/or GenCo will present evidence to demonstrate that the resource(s) are reasonable and necessary to serve load growth, consistent with this Agreement. Either filing type will contain: (1) an identification of the expected location and estimated cost of each generation resource; (2) information supporting the reasonable expectation that the load growth justifying the resource(s) will appear; (3) information supporting the conclusion that absent the investment, GenCo will be unable to meet its obligations to NIPSCO related to the reasonable expected load growth; and (4) the steps GenCo has taken to avoid exercise of the power of eminent domain. Subject to Commission approval, the Settling Parties participating in the proceeding agree to support a procedural schedule for either type of filing that would have a Commission order issued not more than 120 days after the filing of a petition and supporting testimony. However, to the extent Commission review and issuance of an order on an expedited basis is necessary, GenCo (and/or NIPSCO, as necessary) may seek approval of a procedural schedule that would have a Commission order issued not more than 90 days after the filing of a petition and supporting testimony. If GenCo has reasonably demonstrated that issuance of an order on an expedited basis is

necessary, the other participating Settling Parties shall not unreasonably withhold their support of GenCo's request for an expedited procedural schedule. GenCo will retain eminent domain authority only for purposes of the resources that will be developed by GenCo and contracted for by NIPSCO for use to serve NIPSCO's retail customer load. Finally, PPAs, special contracts, and other proceedings related to GenCo's construction, purchase, or lease of a generation asset, or group of generation assets, may be, but do not need to be, brought in a consolidated case, unless GenCo intends to seek an expedited order, in which case the approval or declination proceeding must be separate.

4. General Principles for Affiliate Guidelines

(a) NIPSCO and GenCo agree to the implementation of reasonable affiliate guidelines consistent with the points set forth in this Section 4, which will be submitted to the Commission. NIPSCO and GenCo will provide a copy of their affiliate guidelines to the Settling Parties and the OUCC in advance of submission to the Commission and provide a reasonable opportunity for those parties to comment on the affiliate guidelines before submission.

(b) NIPSCO currently has written procedures to implement controls and ensure compliance with the Federal Energy Regulatory Commission's ("FERC") Standards of Conduct – Written Procedures Implementing the FERC Standards of Conduct - Chief FERC Compliance Officer – that are most directly focused on ensuring that non-public

transmission function information is not shared with NIPSCO's marketing function employees. NIPSCO will revise these procedures to account for the creation and operations of GenCo and ensure that non-public transmission function information is not shared with GenCo's marketing function employees.

(c) GenCo will not have preferential access to NIPSCO assets or resources that are used for the generation, transmission, or delivery of electricity, and access to or use of NIPSCO employees, assets, or resources will be consistent with any approved intercompany service agreement. However, this term will not be construed to prevent GenCo from building, owning, or operating a generation resource at a site where a retiring NIPSCO generation resource is currently located. Any remuneration from GenCo to NIPSCO associated with the lease or sale of such land shall be accounted for appropriately and credited to NIPSCO's current retail electric customers.

(d) GenCo will be the means through which generation is going to be procured by NIPSCO to serve its megaload customers, and approval of a NIPSCO-GenCo PPA is expected to be a condition to effectiveness of the special contract with any megaload customer. However, GenCo and NIPSCO will not condition or tie any other agreement with a customer beyond the provision of retail electric service to a service provided by the other. Examples of such agreements include, but are not limited to, energy management services, operation and maintenance of customer-owned generation

or substations, etc. No preference will be given, or discriminatory action taken, as a result of failure to use services provided by GenCo or NIPSCO.

(e) To the extent required by FERC, GenCo will comply with the reporting requirements of FERC Form 1, including disclosing relevant information related to officers and directors and equity investors. However, if GenCo determines that a FERC Form 1 is not required, GenCo will disclose its officers and directors and equity investors in the Annual Informational Filing required in Section 3(h) above.

(f) Any use of NiSource shared services functions will be allocated to NIPSCO and GenCo in such a manner as to ensure, to the extent practical, there is no cross-subsidization and the costs of all services to the benefit of GenCo are appropriately allocated to GenCo. Such services will be subject to shared services agreements, which will be submitted to the Commission for approval using a procedure similar to the Commission's 30-day filing procedure, or as part of a regularly docketed proceeding. If such filing contains confidential information, it may still be filed with a request for approval within 30 days.

(g) GenCo and NIPSCO will maintain separate financial records according to the applicable rules of accounting. GenCo records will be subject to regulatory review consistent with Ind. Code § 8-1-2-18, -49, -50, and -62.

(h) GenCo and NIPSCO will not intermingle funds.

(i) All affiliate contracts and agreements between NIPSCO and GenCo will be submitted for Commission approval using a procedure similar to the Commission's 30-day filing procedure, or as part of a regularly docketed proceeding. If such filing contains confidential information, it may still be filed with a request for approval within 30 days.

5. Settling Parties' Commitments.

The Settling Parties commit that they: (a) will support the GenCo declination request as modified by the terms of this Agreement; and (b) will support the format and procedural timelines for filings outlined in this Agreement in any proceeding in which they participate.

B. Procedural Aspects and Presentation of the Agreement

1. The Settling Parties acknowledge that a significant motivation to enter into this Agreement is the simplification and minimization of issues to be presented in the proceeding.

2. The Settling Parties agree to jointly present this Agreement to the Commission for approval in this proceeding and agree to assist and cooperate in the preparation and presentation of supplemental testimony as necessary to provide an appropriate factual basis for such approval. All evidence which has been prefiled by the Settling Parties will be admitted into the record. All Settling Parties waive cross-

examination on all witnesses of other Settling Parties but reserve the right to ask questions of any witness who may be cross-examined by a non-settling party.

3. 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 modification of a material condition deemed unacceptable to any Settling 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 contains any unacceptable modifications. If the Agreement is withdrawn, the Settling Parties agree that the terms herein shall not be admissible in evidence or cited by any party in a subsequent proceeding. In the event the Agreement is withdrawn, the Settling Parties will request an Attorneys' Conference to be convened to establish a procedural schedule for the continued litigation of this proceeding.

4. The Settling Parties acknowledge that this Agreement addresses all issues in the proceeding and includes compromises upon the part of each Settling Party. The Settling Parties agree that this Agreement and each term, condition, amount, methodology, and exclusion contained herein (a) reflects a fair, just, and reasonable resolution and compromise for the purpose of settlement and (b) is agreed upon without prejudice to the ability of any party to propose a different term, condition, amount, methodology, or exclusion in any future proceeding. As set forth in the Order in *Re*

Petition of Richmond Power & Light, Cause No. 40434, the Settling Parties agree and ask the Commission to incorporate as part of its Final Order that this Agreement, and any Final 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 has entered into this Agreement solely to avoid future disputes and litigation with attendant inconvenience and expense.

5. The Settling Parties stipulate that the evidence of record presented in this Cause constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any finding of fact and conclusion 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.

6. 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; and further represent and agree that each Settling Party has had the opportunity to review all evidence in this proceeding, consult with attorneys and experts, and is otherwise fully advised of the terms.

7. 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 any portion of the Final Order by any person not a party to this Agreement.

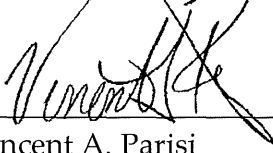
8. The provisions of this Agreement shall be enforceable by any Settling Party before the Commission or in any court of competent jurisdiction.

9. The terms set forth in this Agreement are the complete and final agreement among the Settling Parties. The communications and discussions during the negotiations and conferences which produced this Agreement have been conducted on the understanding that they are or relate to offers of settlement and contained the mental impressions and work product of attorneys present and shall therefore be confidential and privileged communications.

ACCEPTED AND AGREED this 14th day of May, 2025.

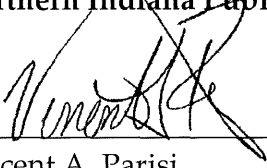
[SIGNATURE PAGES FOLLOW]

NIPSCO Generation LLC

A handwritten signature in black ink, appearing to read "Vincent A. Parisi", is written over a horizontal line.

Vincent A. Parisi
President and Chief Executive Officer
NIPSCO Generation LLC

Northern Indiana Public Service Company LLC

A handwritten signature in black ink, appearing to read "Vincent A. Parisi", is written over a horizontal line. The signature is stylized and somewhat cursive.

Vincent A. Parisi

President, Chief Operating Officer, and Chief Executive Officer
Northern Indiana Public Service Company LLC

NIPSCO Industrial Group



Joseph P. Rompala
Counsel, NIPSCO Industrial Group

Settlement Agreement Revised Exhibit A
 Revised Petition Attachment A
 Limited Declination of Jurisdiction
 Over NIPSCO GenCo

<u>Indiana Code Ch. or §</u>	<u>Section Title</u>	<u>Public Interest Explanation</u>	<u>Revision Explanation</u>
8-1-2-5	Joint use of facilities; failure of parties to agree; resolution by commission	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). NIPSCO GenCo will be a non-retail provider, and its only customer will be NIPSCO.	
8-1-2-15	Books, accounts, papers, or records; removal from state; directors; residence	Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) and will promote energy utility efficiency as contemplated by Ind. Code § 8-1-2.5-5(b)(2) & (3). Commission will continue to have ability to review books and records whether in the state or not and will also have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-32	Standard commercial units of product or service	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be a non-retail provider, and its only customer will be NIPSCO. Further, because this structure is to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will	

Settlement Agreement Revised Exhibit A
 Revised Petition Attachment A
 Limited Declination of Jurisdiction
 Over NIPSCO GenCo

<u>Indiana Code</u> <u>Ch. or §</u>	<u>Section Title</u>	<u>Public Interest Explanation</u>	<u>Revision Explanation</u>
		demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-33	Standard measurements for units of product or service	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-34	Meters and measuring appliances; specifications and standards	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is	

Settlement Agreement Revised Exhibit A
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<u>Indiana Code</u> <u>Ch. or §</u>	<u>Section Title</u>	<u>Public Interest Explanation</u>	<u>Revision Explanation</u>
		being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-34.5	Customer service; determination of complaints	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-35	Meters and measuring appliances; testing	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-	

Settlement Agreement Revised Exhibit A
 Revised Petition Attachment A
 Limited Declination of Jurisdiction
 Over NIPSCO GenCo

<u>Indiana Code</u> <u>Ch. or §</u>	<u>Section Title</u>	<u>Public Interest Explanation</u>	<u>Revision Explanation</u>
		2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-38	Filing schedule of rates and charges	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	

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8-1-2-39	Filing schedule of rates and charges; rules and regulations to accompany	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility’s customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-40	Copies of schedule; public inspection	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility’s customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces	

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		will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-41	Schedule of joint rates and charges; printing	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-42	Changes in schedules	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is	

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		being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-42.3	Calculation of relevant period; determination of reduction; exception	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-42.5	Periodic review of rates and charges; commission to post summary of reviews of electricity suppliers on Internet web site	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will	

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		continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-42.7	Designation of test period; temporary implementation of rates and charges; extension of time; reconciliation of rates and charges	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-45	Rate schedules; changes in form	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-46	Classification of service; commission may allow water or wastewater utility to establish customer assistance program	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
			GenCo is withdrawing its request for declination of this

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			section. See Parisi Rebuttal at 28, lines 1-2.
			GenCo is withdrawing its request for declination of this section and is conceding jurisdiction with respect to Ind. Code §§ 8-1-2-50 through 60 and 8-1-2.5-7. See Settlement Agreement at Section A.3.(f).
			GenCo is withdrawing its request for declination of this section and is conceding jurisdiction with respect to Ind. Code §§ 8-1-2-50 through 60 and 8-1-2.5-7. See Settlement Agreement at Section A.3.(f).
			GenCo is withdrawing its request for declination of this section and is conceding jurisdiction with respect to Ind. Code §§ 8-1-2-50 through 60 and 8-1-2.5-7. See

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			Settlement Agreement at Section A.3.(f).
		.	GenCo is withdrawing its request for declination of this section and is conceding jurisdiction with respect to Ind. Code §§ 8-1-2-50 through 60 and 8-1-2.5-7. See Settlement Agreement at Section A.3.(f).
8-1-2-64	Witnesses; depositions	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1) since the Commission retains right to re-open this proceeding to investigate if declination should be reclaimed. If such a decision is made, it would bring with it this investigatory power at that time.	
8-1-2-68	Rates and charges; order fixing	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is	

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		being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-69	Complaints against utilities; orders of commission	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). NIPSCO GenCo will be a non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-71	Rate schedules; changes	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-	

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		2.5-5(b)(2). NIPSCO GenCo will be non-retail provider, and its only customer will be NIPSCO. Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-72	Orders; rescission; modification	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-2-76 through 80	§76 Stocks, bonds, commercial paper, and other evidences of indebtedness; limitations upon authority to issue; §77 Stock; consideration; discount or premium; §78 Stocks, bonds, commercial paper, and other evidences of indebtedness; authority to issue; §79 Securities;	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). Declination will promote energy utility efficiency as contemplated by Ind. Code § 8-1-2.5-5(b)(3). Exercise of Commission jurisdiction inhibits an energy utility (NIPSCO) from competing as contemplated by Ind. Code § 8-1-2.5-5(b)(4). NIPSCO GenCo	GenCo will make informational compliance filings within 30 days of each time GenCo issues debt but otherwise seeks declination of these sections. See Settlement Agreement at Section A.3.(g).

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	issuance; approval; fraud; offense; and §80 Stocks, bonds, commercial paper, and evidences of indebtedness; certificate of authority for issuance	will only have one customer (a public utility). Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Seeking financing approval will slow down the speed to market necessary to attract megaload development, which would inhibit NIPSCO from competing with other states for these types of customers.	
8-1-2-115	Enforcement of law; recovery of forfeitures or penalties	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-4-1	Maturity dates	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). Declination will promote energy utility efficiency as contemplated by Ind. Code § 8-1-2.5-5(b)(3). NIPSCO GenCo will only have one customer (a public utility). Further, because this structure is being set up to	

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		support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Commission will continue to have visibility into NIPSCO as the only customer of NIPSCO GenCo.	
8-1-8.5-2, 2.1, 3, 4, 5, 5.5, 6, 6.5, 7, & 8	§2 Necessity for certification; §2.1 Retirement, sale, or transfer of electric generation facility; notice; commission consideration and investigation; recovery of accelerated depreciation; §3 Analysis of needs; integrated resource plans; hearings; report; §4 Considerations for commission's review of petition; impact of federal phaseout mandates; provision of electric utility service with attributes specified in state policy; §5 Estimate of costs; hearing	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). Declination will promote energy utility efficiency as contemplated by Ind. Code § 8-1-2.5-5(b)(3). Exercise of Commission jurisdiction inhibits an energy utility (NIPSCO) from competing as contemplated by Ind. Code § 8-1-2.5-5(b)(4). NIPSCO GenCo will only have one customer (a public utility). Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service and that the pricing be competitive. Seeking CPCN approval will slow down the speed to market necessary to	GenCo seeks declination of these sections but has agreed to submit annual informational filings about generation resources and to seek Commission review or a declination of jurisdiction for generation resources. See Settlement Agreement at Sections A.3.(h) and A.3.(i). GenCo has also committed to annual "construction compliance filings." See Parisi Rebuttal at 40-41. Any transfer of generation assets between NIPSCO and GenCo will be consistent with

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	on application; granting of certificate; findings; utility specific proposals; construction of large generating facilities; competitive bidding; §5.5 Review of continuing need for facility under construction; modification or revocation of certificate; consideration of state policy; §6 Review of construction; force and effect of certificate approved under review; election to defer review; §6.5 Rates; recovery of costs; §7 Exemptions from certification requirements; report to commission of proposed construction required; and §8 Construction of chapter; valuation of property	attract megaload development, which would inhibit NIPSCO from competing with other states for these types of customers.	the requirements in Settlement Agreement at Section A.2.(e). Eminent domain may only be utilized by GenCo regarding a resource or resources that have been either approved by the Commission or granted a declination of the Commission's jurisdiction, as required under the Settlement Agreement at Section A.3.(i). In the context of either filing type, approval or declination of jurisdiction, GenCo must sufficiently describe the steps GenCo has taken to avoid the exercise of the power of eminent domain. Because GenCo will have no retail customers, GenCo will not submit IRPs, but NIPSCO will include load associated with megaload customers and contracts with GenCo for

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			generation in NIPSCO's IRPs. See Settlement Agreement at Section A.3(c).
8-1-8.5-9	Energy efficiency programs; opt out by industrial customers; prohibition against extending or renewing energy efficiency programs established under DSM order	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). Declination will promote energy utility efficiency as contemplated by Ind. Code § 8-1-2.5-5(b)(3). Exercise of Commission Jurisdiction inhibits an energy utility (NIPSCO) from competing as contemplated by Ind. Code § 8-1-2.5-5(b)(4). NIPSCO GenCo will only have one customer (a public utility). Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service.	
8-1-8.5-10	Energy efficiency goals and programs; evaluation, measurement, and verification; recovery of	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-	

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	program costs; opt out by industrial customers	2.5-5(b)(2). Declination will promote energy utility efficiency as contemplated by Ind. Code § 8-1-2.5-5(b)(3). Exercise of Commission Jurisdiction inhibits an energy utility (NIPSCO) from competing as contemplated by Ind. Code § 8-1-2.5-5(b)(4). NIPSCO GenCo will only have one customer (a public utility). Further, because this structure is being set up to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service.	
8-1-8.5-13	Legislative findings; definitions; public utilities' annual resource planning report to commission; three-year forecast; contents; commission's review; investigation; order to acquire or construct resources; information in commission's annual report	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1). Declination will be beneficial for the energy utility and the energy utility's customer (NIPSCO) as contemplated by Ind. Code § 8-1-2.5-5(b)(2). Declination will promote energy utility efficiency as contemplated by Ind. Code § 8-1-2.5-5(b)(3). Exercise of Commission Jurisdiction inhibits an energy utility (NIPSCO) from competing as contemplated by Ind. Code § 8-1-2.5-5(b)(4). NIPSCO GenCo will only have one customer (a public utility). Further, because this structure is being set up	Because GenCo will have no retail customers, GenCo will not submit reports under 8-1-8.5-13 (HEA 1520), but NIPSCO will include load associated with megaload customers and contracts with GenCo for generation in NIPSCO's reports under this section. See Settlement Agreement at Section A.3.(c).

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		to support a sophisticated utility customer (NIPSCO) to serve sophisticated customers (megaloads), the competitive forces will demand reliable service. Additionally, if jurisdiction is declined and NIPSCO GenCo is relieved of this requirement, the Commission will still have insight into NIPSCO GenCo's resources through the annual reporting of NIPSCO, as it does with NIPSCO's other contracted resources.	
8-1-8.7	Clean Coal Technology	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1).	
8-1-40-16, 17 & 19	Electricity supplier's petition for rate for excess distributed generation; annual submission of updated rate; Commission's review of rate petition; notice and hearing; approval of rate; calculation; and Electricity supplier's petition to commission for recovery of energy delivery costs attributable to distributed	This is unnecessary and wasteful as contemplated by Ind. Code § 8-1-2.5-5(b)(1).	

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	generation customers; approval; findings by commission		