

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC)
SERVICE COMPANY FOR APPROVAL OF)
PETITIONER'S 7-YEAR PLAN FOR ELIGIBLE) CAUSE NO. 44370
TRANSMISSION, DISTRIBUTION AND)
STORAGE SYSTEM IMPROVEMENTS,)
PURSUANT TO IND. CODE § 8-1-39-10(a).)

PETITION OF NORTHERN INDIANA PUBLIC)
SERVICE COMPANY FOR (1) APPROVAL OF A)
TRANSMISSION, DISTRIBUTION AND)
STORAGE SYSTEM IMPROVEMENT CHARGE)
("TDSIC") RATE SCHEDULE, (2) APPROVAL) CAUSE NO. 44371
OF PETITIONER'S PROPOSED COST)
ALLOCATIONS, (3) APPROVAL OF THE)
TIMELY RECOVERY OF TDSIC COSTS) APPROVED: DEC 16 2015
THROUGH PETITIONER'S PROPOSED TDSIC)
RATE SCHEDULE, AND (4) AUTHORITY TO)
DEFER APPROVED TDSIC COSTS, PURSUANT)
TO IND. CODE CH. 8-1-39.)

ORDER OF THE COMMISSION ON REMAND

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

On July 19, 2013, Northern Indiana Public Service Company, ("NIPSCO") filed a Petition, docketed as Cause No. 44370, for approval of a 7-year plan for eligible transmission, distribution and storage system improvements ("7-Year Electric Plan"), pursuant to Ind. Code § 8-1-39-10(a). On the same day, NIPSCO filed a separate Petition, docketed as Cause No. 44371, for: (1) approval of a Transmission, Distribution and Storage System Improvement Charge ("TDSIC") Rate Schedule, (2) approval of NIPSCO's proposed cost allocation, (3) approval of the timely recovery of TDSIC costs through NIPSCO's proposed TDSIC Rate Schedule, and (4) authority to defer approved TDSIC costs, pursuant to Ind. Code Ch. 8-1-39. On February 17, 2014, the Commission issued its Orders in Cause Nos. 44370 and 44371.

In Cause No. 44370, the Commission held: (1) the projects contained in Year 1 of NIPSCO's 7-Year Electric Plan are "eligible transmission, distribution, and storage system improvements" within the meaning of Indiana Code § 8-1-39-2; (2) municipal lighting projects are eligible for TDSIC treatment as economic development projects when selected in accordance with certain factors; (3) the project categories contained in Years 2 through 7 of NIPSCO's 7-Year Electric Plan are presumed "eligible transmission, distribution, and storage system

improvements” within the meaning of Indiana Code § 8-1-39-2, subject to further definition and specifics being provided through the plan update proceedings; (4) the 7-Year Electric Plan is reasonable subject to the modifications within the Order; (5) NIPSCO’s proposed definitions of key terms for purposes of interpreting Indiana Code Ch. 8-1-39 are approved; and (6) NIPSCO’s proposed process for updating major changes to the 7-Year Electric Plan in sub-docket proceedings is approved.

In Cause No. 44371, the Commission: (1) authorized NIPSCO to implement its TDSIC Rate Schedule pursuant to Ind. Code § 8-1-39-9(a) to effectuate the timely recovery of 80% of eligible and approved capital expenditures and TDSIC costs; (2) ordered NIPSCO to use a full weighted average cost of capital, including zero-cost capital, to calculate pretax return; (3) authorized NIPSCO to defer post in service TDSIC costs, including carrying costs, on an interim basis until such costs are recognized for ratemaking purposes through NIPSCO’s proposed TDSIC mechanism or otherwise included for recovery in NIPSCO’s base rates in its next general rate case; (4) approved NIPSCO’s proposed allocation of transmission and distribution project costs; (5) authorized NIPSCO to defer 20% of eligible and approved capital expenditures and TDSIC costs and to recover such deferred expenditures and TDSIC costs in its next general rate case; and (6) authorized NIPSCO to adjust its authorized net operating income to reflect any approved earnings associated with the TDSIC for purposes of Ind. Code § 8-1-2-42(d)(3). The Commission also held that, for purposes of satisfying Ind. Code § 8-1-39-14, NIPSCO’s proposed calculation that compares the increase in TDSIC revenue in a given year with the total retail revenues for the past 12 months is consistent with the TDSIC statute. 44371 Order at 20.

On March 13, 2014, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Notice of Appeal relating to the 44371 Order. On March 19, 2014, the NIPSCO Industrial Group (“Industrial Group”) filed Notices of Appeal relating to both the 44371 Order and the 44370 Order. On April 28, 2014, the Court of Appeals issued an order to consolidate the appeals of the OUCC and the Industrial Group. On April 8, 2015, the Court of Appeals of Indiana issued a published opinion reversing in part, affirming in part, and remanding the 44370 Order and 44371 Order (“Appellate Order”). *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 31 N.E.3d 1, 3-4 (Ind. Ct. App. 2015).

On May 26, 2015, the Indiana Office of Utility Consumer Counselor (“OUCC”), the NIPSCO Industrial Group (“Industrial Group”), United States Steel Corporation (“U.S. Steel”) and NIPSCO (the “Settling Parties”) filed a Stipulation and Settlement Agreement (the “Settlement Agreement”) in Cause No. 44370 and Cause No. 44371 to resolve all issues raised and addressed by the Appellate Order on remand to the Commission.

On September 23, 2015, the Commission issued an Order in Consolidated Cause Nos. 44370 and 44371 in which it declined to approve the Settlement Agreement and ordered NIPSCO to refund monies collected through Rider 688 (“Order on Remand”).

On September 29, 2015, the Settling Parties filed a Verified Petition for Rehearing and Reconsideration or, Alternatively, Commission Clarification and Guidance requesting the Commission to reopen the record to accept into the evidentiary record the revised testimony and clarification that TAD-Remand Exhibit 1 is an integral part of NIPSCO’s electric 7-Year Plan

and find that the plan meets the requirements of Ind. Code ch. 8-1-39, and approve the global settlement within sixty days. Alternatively, the Settling Parties requested that if the Commission does not believe this clarification will meet the requirements of Ind. Code ch. 8-1-39 and allow the Commission to approve the 7-Year Plan, the Commission should provide the Parties with guidance as to what additional types of information and/or level of detail should be added to the plan to meet the requirements of Ind. Code ch. 8-1-39.

On October 9, 2015, the Commission issued a docket entry granting Parties' Verified Petition for Rehearing and Reconsideration or, Alternatively, Commission Clarification and Guidance.

An evidentiary hearing was held in this matter on October 28, 2015, at 1:30 p.m., in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. NIPSCO, the OUCC, Municipal Utilities, Industrial Group, and U.S. Steel appeared and participated at the hearing. No members of the general public were present or sought to testify.

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

1. Notice and Jurisdiction. These consolidated causes are pending before the Commission pursuant to the Appellate Order, which reversed in part, affirmed in part, and remanded the 44370 Order and 44371 Order. Notice of the hearing in these Causes was given as required by law. NIPSCO is a "public utility" within the meaning of Ind. Code §§ 8-1-39-4 and 8-1-2-1 and is an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2 and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana. Accordingly, the Commission has jurisdiction over NIPSCO and the subject matter of this proceeding.

2. Settlement Agreement. The terms of the Settlement Agreement are as follows:

A. All Settling Parties will vigorously defend this Settlement Agreement at the Commission.

B. All Settling Parties will vigorously defend any Commission order approving this Settlement Agreement in its entirety should such order be appealed by a non-settling party.

C. Nothing in this Settlement Agreement precludes any party from taking a contrary position in any other proceeding, provided that no party will deny the enforceability of, or attempt to deprive any other party of the benefit of, any provision in this Settlement Agreement.

D. The record in Cause No. 44370 will be re-opened to: (a) clarify that in all future TDSIC filings, the level of detail in Petitioner's Exhibit No. TAD-R1, submitted as a rebuttal exhibit in Cause No. 44370, will be provided in NIPSCO's direct case; (b) submit the most current list of 2014 and 2015 projects into the record (i.e., Petitioner's Exhibit No. 1-A,

Exhibit Electric Plan Update-2 (Confidential) filed in Cause No. 44371-TDSIC-2); (c) clarify that in all future TDSIC filings, for the underground cable replacement, transmission and distribution line replacement, and economic development, programs described in the prefiled direct testimony of Timothy A. Dehring in Cause No. 44370 (Section IV, pages 25-34 which provided the explanation of these programs and projects in detail), NIPSCO will provide updated estimated costs for each program by year; and (d) submit the most current version of Petitioner's Exhibit No. TAD-R1 (i.e., Petitioner's Exhibit No. 3-C (Confidential) filed in Cause No. 44371-TDSIC-2), sorted by year, removing projects that are not expected to be replaced during the 7-Year Plan (i.e., no year).

E. NIPSCO agrees to cease collecting the current Electric TDSIC-1 factors on or about June 1, 2015.

F. All monies that have been collected through NIPSCO's Rider 688 (Adjustment of Charges for Transmission, Distribution and Storage System Improvement Charge) pursuant to the Commission's November 25, 2014 Order in Cause No. 44371-TDSIC-1 will be refunded with interest at the rate of 6 percent via Rider 688 upon approval of this Settlement Agreement to the rate classes from whom NIPSCO collected the monies.

G. NIPSCO agrees that rather than implementing a new TDSIC factor to recover costs incurred in connection with its current 7-Year Electric Plan, NIPSCO will defer, as a regulatory asset, 100% of all TDSIC costs, as defined in Ind. Code § 8-1-39-7, incurred since March 1, 2014 in connection with its 2014 and 2015 eligible transmission, distribution, and storage system improvements, in a manner consistent with the current deferral of 20% of the costs approved in Cause No. 44371, until such capital expenditures and TDSIC costs, including depreciation, allowance for funds used during construction, and post in service carrying costs are recovered as part of a general rate case, consistent with the requirements of Ind. Code § 8-1-39-9(b).

H. The deferred amounts will be allocated pursuant to the allocation approved in the subsequent general rate case proceedings.

I. NIPSCO will file an electric general rate case proceeding by December 31, 2015.

J. NIPSCO will file a new 7-Year Electric TDSIC Plan following the filing of its next electric general rate case proceeding.

K. All parties reserve their rights to raise any issues in NIPSCO's next electric general rate case and new 7-Year Electric TDSIC Plan filing.

L. The Settling Parties will file this Settlement Agreement, supportive testimony and a joint proposed order that incorporates the terms above with the Commission.

3. Summary of Evidence.

A. Settling Parties' Direct Testimony.

Frank A. Shambo, Vice President, Regulatory and Legislative Affairs for NIPSCO, provided evidence that the Settlement Agreement, a copy of which was attached as Petitioner's Exhibit No. Remand-1-A, is in the public interest. Mr. Shambo testified the Settlement Agreement is intended to resolve how all issues addressed in the Appellate Order should be handled on remand to the Commission. He stated the basic framework of the Settlement Agreement is that the Settling Parties agreed to refrain from filing a Petition to Transfer the Appellate Order to the Indiana Supreme Court, the TDSIC Orders would be remanded to the Commission and a Settlement Agreement between the Settling Parties would be submitted to the Commission to resolve all issues on remand.

Mr. Shambo identified the substantive terms of the Settlement Agreement and testified NIPSCO agreed to (1) pay reasonable attorneys' fees to the Industrial Group and U.S. Steel and (2) provide the OUCC up to \$200,000 for purposes of retaining a cost of service expert for NIPSCO's next general rate proceeding.

Mr. Shambo explained that NIPSCO will calculate the total moneys collected from its Rider 688 – Adjustment of Charges for Transmission, Distribution and Storage System Improvement Charge and apply interest to these amounts, at the rate of 6%, from the date of collection through the date the Commission issues a Final Order in this Remand Proceeding ("Return Amount"). He explained that (1) NIPSCO will refund the Return Amount over a six month period to the rate that paid the total moneys, (2) the credit should begin the first day of the billing cycle following an Order approving the Settlement Agreement, (3) after the six month period, the Rider 688 factors would be set to \$0, and (4) any reconciliation based upon volumetric variations would be included in the first Electric TDSIC tracker proceeding following the issuance of an Order in NIPSCO's 2015 electric rate case. Finally, Mr. Shambo explained why the Settlement Agreement is in the public interest.

Kurt W. Sangster, Vice President, Major Projects of NIPSCO, provided testimony to (1) clarify that in all future TDSIC tracker filings the level of detail in Petitioner's Exhibit No. TAD-R1 (Confidential), submitted as a rebuttal exhibit in Cause No. 44370, will be provided in NIPSCO's direct case; (2) submit the most current list of 2014 and 2015 projects into the record (i.e., Exhibit Electric Plan Update-2 (Confidential) filed in Cause No. 44371-TDSIC-2); (3) clarify that in all future TDSIC filings, NIPSCO will provide updated estimated costs by year for the underground cable replacement, transmission and distribution line replacement, and economic development programs described in the prefiled direct testimony of Timothy A. Dehring in Cause No. 44370 (Section IV, pages 25-34 which provided the explanation of these programs and projects in detail); and (4) submit the version of Petitioner's Exhibit No. TAD-R1 (i.e., Petitioner's Exhibit No. 3-C (Confidential) filed in Cause No. 44371-TDSIC-2), sorted by year, removing projects that are not expected to be replaced during the 7-Year Plan (i.e., no year).

Mr. Sangster also sponsored (i) NIPSCO's cost estimate support for each 2014 and 2015 individual project (excluding programs) in a similar level of detail as the "Material and Labor Estimate" (i.e., as supplied by NIPSCO in Cause No. 44371-TDSIC-2 and labeled as "Audit Package 1-014 Confidential"); (ii) unit cost evidence similar to Petitioner's Exhibit No. TAD-4 (Confidential) submitted in Cause No. 44370 (also submitted as Petitioner's Exhibit No. 3-D (Confidential) in Cause No. 44371-TDSIC-2) broken down by material, labor, storage, freight and handling information; and (iii) for programs, unit cost information broken down by material and labor.

Mr. Sangster testified Remand Exhibit Electric Plan Update-2 (Confidential) is based on NIPSCO's most recent updated plan filed in Cause No. 44371-TDSIC-2 (i.e. Exhibit Electric Plan Update-2 (Confidential)) and includes a listing of projects and cost estimates for all seven years of the plan. He stated that, consistent with the Settlement Agreement, Remand Exhibit Electric Plan Update-2 (Confidential) contains the most current list of 2014 and 2015 projects (i.e. Plan Update-2 filed in Cause No. 44371-TDSIC-2) and includes estimated costs for each program by year, including the underground cable replacement, transmission and distribution line replacement, and economic development programs.

Mr. Sangster testified Remand Exhibit TAD-R1 (Confidential) identifies the projected year for replacement and estimated costs for each Aging Infrastructure asset included in years 2014–2020 of the Plan. He stated that, consistent with the terms of the Settlement Agreement, Remand Exhibit TAD-R1 (Confidential) represents the most recently filed version of Petitioner's Exhibit No. TAD-R1 (Confidential), which was filed as Petitioner's Exhibit No. 3-C (Confidential) in Cause No. 44371-TDSIC-2, sorted by year, and does not include assets that are not expected to be replaced during the 7-Year Plan (i.e. no year).

Mr. Sangster testified the Settlement Agreement contemplates that NIPSCO will file a new 7-Year Electric TDSIC Plan following the filing of its next electric general rate case proceeding. He stated the level of detail shown in Remand Exhibit Electric Plan Update-2 (Confidential) and Remand Exhibit TAD-R1 (Confidential) will be provided in NIPSCO's direct case in its new Plan filing and will include estimated costs for each program by year. He explained that NIPSCO will continue to work with the OUCC and other stakeholders to make exhibits and information as user-friendly as possible for future TDSIC filings.

Mr. Sangster testified NIPSCO is submitting in this proceeding and in each direct case for future TDSIC filings: (i) cost estimate support for each individual project (excluding programs) scheduled in the current or upcoming year in a similar level of detail as the "Material and Labor Estimate" (i.e., as supplied by NIPSCO in Cause No. 44371-TDSIC-2 and labeled as "Audit Package 1-014 Confidential") (See e.g. Petitioner's Exhibit No. Remand-2-A (Confidential)); (ii) unit cost evidence similar to Petitioner's Exhibit No. TAD-4 (Confidential) submitted in Cause No. 44370 broken down by material, labor, storage, freight and handling (See e.g. Petitioner's Exhibit No. Remand-2-B (Confidential)); and (iii) for programs, unit cost information broken down by material and labor (See e.g. Petitioner's Exhibit No. Remand-2-C (Confidential)).

Mr. Sangster testified Petitioner's Exhibit No. Remand-2-A (Confidential) provides cost estimate support for each 2014 and 2015 individual project (excluding programs) in a similar level of detail as the "Material and Labor Estimate" (i.e., as supplied by NIPSCO in Cause No. 44371-TDSIC-2 and labeled as "Audit Package 1-014 Confidential").

Mr. Sangster testified Petitioner's Exhibit No. Remand-2-A (Confidential) provides the unit cost data utilized to develop the cost estimates for years 2016 – 2020 that was submitted as Petitioner's Exhibit No. TAD-4 (Confidential) in Cause No. 44370 and also submitted as Petitioner's Exhibit No. 3-D (Confidential) in Cause No. 44371-TDSIC-2. He stated NIPSCO has added further detail to this information by breaking the unit cost estimates down into material, labor and stores, freight and handling. He explained that, for longer-term capital planning, NIPSCO developed unit cost estimates based on a combination of factors including historical results of recently completed projects of a similar scope and cost estimates and price quotes from third parties.

Mr. Sangster stated these costs are then escalated at a rate of 3% per year to approximate for annual inflation, which is consistent with the Construction Escalation rate used in NIPSCO's 2014 IRP (See Table 9-2 of the 2014 IRP - <https://www.nipSCO.com/docs/default-source/about-nipSCO-docs/2014-nipSCO-irp.pdf>). He explained that, following the internal development of these unit costs, NIPSCO asked a third party, Black & Veatch, to conduct an independent review of these costs and to offer its opinion as to the reasonableness of the project estimates. Following this review, Black & Veatch concluded that the unit cost estimates contained within the Plan are reasonable. Mr. Sangster stated this independent cost estimate review was provided previously in this Cause as Petitioner's Exhibit No. TAD-5 (Confidential), the "Black & Veatch Independent Review of Capital Cost Estimates," and that although Black & Veatch completed a review, NIPSCO had final approval of the cost estimates.

Mr. Sangster testified Petitioner's Exhibit No. Remand-2-C (Confidential) provides unit cost information for the programs included in NIPSCO's 7-Year Plan broken down by material, labor and stores, freight and handling based on historical cost information.

On rehearing, NIPSCO offered a verified revision to one page of Mr. Sangster's testimony to clarify that the Settling Parties request the Commission to approve Remand Exhibit Electric Plan Update-2 (Confidential) and Remand Exhibit TAD-R1 (Confidential) as NIPSCO's plan in this remand proceeding.

Barbara A. Smith, Director for the Resource Planning and Communications Division of the OUCC, provided testimony to support the Settlement Agreement. She testified that while the Settlement Agreement is the result of compromise between the Settling Parties, it is beneficial to ratepayers when viewed in its entirety.

Ms. Smith explained NIPSCO will clarify the level of project cost estimates and project scope detail to be included in all future NIPSCO TDSIC case-in-chief filings – both initial plan and updated tracker filings. She stated this level of detail, explained below, not only goes beyond the detail previously filed in the NIPSCO Electric TDSIC dockets, but also beyond the detail previously filed in other utilities' TDSIC dockets. She testified the OUCC sees this level

of detail as the new minimum filing requirements for future utility TDSICs and recommends the Commission approve such.

Ms. Smith testified NIPSCO has agreed to terminate its current 7-Year Plan by ceasing the collection of Electric TDSIC-1 factors on or about June 1, 2015 and refunding all monies previously collected from ratepayers plus 6% interest. She explained this termination and NIPSCO's additional project and cost detail submitted in this Cause resolves the Remand issues of presumption and lack of detail for years two through seven.

Ms. Smith explained the project-related information NIPSCO is obligated to include in this Cause and in both future TDSIC Plan and tracker filings. She stated the level of detail found in Petitioner's Exhibit TAD-R1 (submitted as a rebuttal exhibit in Cause No. 44370) contains the specific asset name, classification (such as breaker, transformer, etc.), voltage, year scheduled for replacement, nominal cost, normalized risk score at replacement, probability of failure ("PoF") percentage at replacement ("CoF") score, Normalized CoF score and CoF factor. She stated the advantages of this data are that it lists the specific projects (versus using generic language such as 'replace 3 transformers') as well as risk rankings and the planned replacement timing. She stated that it is important the utilities provide specific project prioritization in order to identify the critical assets most likely to fail.

Ms. Smith explained that NIPSCO commits to provide updated cost estimates by year for each of the following types of projects and the three programs identified in the Settlement Agreement (a) transmission and distribution system deliverability investments, (b) underground able replacements, (c) system protection replacements, (d) 4kV system upgrade, (e) transmission substations, (f) transmission and distribution lines, (g) distribution substations, and (h) economic development.

She stated that NIPSCO will provide the following in this Cause and all future NIPSCO Electric TDSIC Plan and tracker filings: modified 44370 Petitioner's confidential Exhibit TAD-R1 that includes new "Asset ID" column (Remand Exhibit TAD-R1 (Confidential)); modified 44371 TDSIC-2 Petitioner's confidential Exhibit No. 3-D, with unit costs broken out by the applicable categories of labor, materials, storage, freight and handling (Petitioner's Exhibit No. Remand-2-B (Confidential)), and provide all applicable escalators used to calculate future years from the actual base estimate figures (in this remand proceeding, NIPSCO is using 3%, which the OUCC considers reasonable); and program unit cost detail (as shown in Petitioner's Exhibit No. Remand-2-C (Confidential)), with the number of program units per year (as shown in Remand Exhibit Electric Plan Update-2). In future filings, NIPSCO will continue to file details on actual direct capital dollars showing the variance by project from the last filed tracker (similar to Exhibit Electric Plan Update-2 (Confidential), pages 3 – 13, filed in TDSIC-2).

Ms. Smith stated that NIPSCO has agreed to provide in all future NIPSCO Electric TDSIC Plan and tracker filings a modified version of 44371 TDSIC-2 Petitioner's Exhibit No. 3-B (Confidential) that includes a new "Year Replaced" column.

Ms. Smith testified the detailed cost information by category NIPSCO will supply forms the basis of the asset costs shown on 44371-TDSIC-2, Petitioner's Exhibit No. 3-D. She stated

the parties will then validate the inclusion of the actual project or program and verify the data to the specific proposed asset project that is shown on the Petitioner's Confidential Exhibit TAD-R1. She stated the OUCC and other interested parties can validate variances throughout the 7-Year Plan by having the data available on certain criteria, such as a particular project's labor or material. She stated Exhibit 3-C also provides the year of planned replacement and the risk score anticipated in the asset's replacement year. She testified the information from these documents will help the OUCC pinpoint questions and concerns regarding cost and project variances satisfying the remand issue of the Commission's presumption of TDSIC eligibility. Ms. Smith testified that by filing the above information in future TDSIC cases, NIPSCO appropriately retains the burden to prove TDSIC eligibility in its direct evidentiary record.

Ms. Smith testified that pursuant to the Settlement Agreement, NIPSCO will defer as a regulatory asset in a manner consistent with its current 20% cost deferral, 100% of incurred TDSIC costs beginning March 1, 2014 and until such capital expenditures and TDSIC costs, including depreciation, allowance for funds used during construction, and post in service carrying costs are recovered as part of a general rate case. She stated this deferral will be limited to monies spent on NIPSCO's 2014 and 2015 eligible transmission, distribution and storage system improvements, as well as the associated depreciation, allowance for funds used during construction and post in service carrying costs. The deferred amount will be allocated by the allocation approved in future general rate case proceedings.

Ms. Smith testified Section 13 of the Settlement Agreement states that NIPSCO will file an electric general rate case proceeding by December 31, 2015. She stated the OUCC and intervening parties will have the opportunity to do a more thorough review of NIPSCO's records and procedures than in the TDSIC trackers, given the wider scope of a base rate case and also the longer procedural timeframe of 300 total days as compared to a total 90 days for a TDSIC tracker.

Ms. Smith testified Section 14 of the Settlement Agreement states that NIPSCO will file a new Electric TDSIC Plan following the filing of its general rate case proceeding. She noted that under Ind. Code § 8-1-39-9(c), NIPSCO may not file for cost recovery associated with its approved TDSIC 7-Year Plan within nine (9) months after the date on which the Commission issues an order changing its basic rates and charges.

Ms. Smith testified the OUCC and other intervening parties do not forfeit their rights to raise or challenge issues in either NIPSCO's rate case or in its next TDSIC 7-Year Plan by being a party to the Settlement Agreement. She testified the Settlement Agreement does not resolve or pre-determine ratemaking or other issues that will arise in either NIPSCO's next TDSIC Plan or tracker case to be filed after NIPSCO files its general rate case.

Finally, Ms. Smith explained NIPSCO will provide on an ongoing basis additional information to allow for more thorough reviews which will ensure that the TDSIC projects authorized by the statute will be more transparent and implemented in a cost effective manner. For these reasons, Ms. Smith stated that the Settlement Agreement is in the public interest. Finally, Ms. Smith testified the OUCC recommended the Commission approve the Settlement Agreement in its entirety.

B. Docket Entry Responses. As part of its Verified Petition for Rehearing and Reconsideration or, Alternatively, Commission Clarification and Guidance, NIPSCO filed a verified clarification to its response to July 15 Docket Entry Question as follows:

Question 1. On page 5 of Mr. Sangster’s direct testimony he states that “[t]he Settling Parties request the Commission to approve Remand Exhibit Electric Plan Update-2 (Confidential) as NIPSCO’s plan in this remand proceeding.” Is the 7-Year Plan that the Parties seek approval of comprised of Remand Exhibit Electric Plan Update-2, or it plus Remand Exhibit TAD-R1?

Response 1. The 7-year plan that the Settling Parties seek approval of is delineated in both Remand Exhibit Electric Plan Update-2 and Remand Exhibit TAD-R1, which together include detailed information on investments for all 7 years of the plan.

On October 22, 2015 NIPSCO filed its Responses to October 19 Docket Entry Questions. In response to Docket Entry Question 1, NIPSCO provided Confidential Attachment A that maps each asset listed in Remand Exhibit TAD-R1 (Confidential) to the Project Category of Remand Exhibit Electric Plan Update-2 (Confidential) in which it is included. Specifically, Confidential Attachment A includes three additional columns on Remand Exhibit TAD-R1 (Confidential) to map each asset to the corresponding (1) Project Category from Plan Detail (Page 1), (2) Project Category from Plan Detail (Pages 3-6, 9-11, 19-33), and (3) Project Titles from Plan Detail (Pages 3-6, 9-11, 19-33).

In response to Docket Entry Question 2, NIPSCO provided Confidential Attachment B that identifies, for each improvement for which an eligibility declaration is requested, whether or not the investment is included on Remand Exhibit TAD-R1 (Confidential). Specifically, Confidential Attachment B includes one additional column on Remand Exhibit Electric Plan Update-2 (Confidential) to indicate whether the project is included on Remand Exhibit TAD-R1 (Confidential). Further, NIPSCO’s Response provided additional information to explain the assets that Remand Exhibit Electric Plan Update-2 (Confidential) and Remand Exhibit TAD-R1 (Confidential) constitute the Plan and that Remand Exhibit TAD-R1 (Confidential) contains the results of a risk assessment of major assets (recommended investments from this assessment make up 60% of the total estimated cost of the 7-Year Plan). The remaining 40% of the cost of the 7-Year Plan is comprised of certain articulated transmission and distribution (“T&D”) investments that are designed to improve system reliability. These improvements are not included on Remand Exhibit TAD-R1 because they were not within the scope of the risk analysis for major assets from which the exhibit was derived.

4. Commission Discussion and Findings. 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). Any settlement agreement that is approved by the Commission “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be

served by accepting the settlement.” *Citizens Action 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 has carefully analyzed the evidence and the proposed Settlement Agreement to evaluate whether the proposed outcome is reasonable and in the public interest.

On February 17, 2014, the Commission issued an order in this Cause approving a 7-Year Plan for eligible transmission, distribution, and storage system improvements under Ind. Code § 8-1-39-10(a). *N. Ind. Pub. Serv. Co.*, Cause No. 44370, 2014 WL 1896296 (IURC).

On April 8, 2015, the Court of Appeals reversed the 44370 Order in part and remanded the case for further proceedings. *NIPSCO Indus. Grp.*, 31 N.E.3d at 8. The Court of Appeals determined that NIPSCO’s 7-Year Plan did not contain enough detail for the Commission to determine whether the plan for years two through seven was reasonable or to determine a best estimate of the cost of the improvements. *Id.* The Court of Appeals also reversed the Commission’s creation of a presumption of eligibility for projects in years two through seven of NIPSCO’s plan without any statutory authority to do so. *Id.* at 9. In the Commission’s Order on Remand, we noted that the Settling Parties had identified Remand Exhibit TAD-R1 only as evidence supporting the 7-Year Plan, without specifying that it is part of the plan. In that respect, the deficiency found by the Court of Appeals was not fully resolved, insofar as the greater level of detail contained in Remand Exhibit TAD-R1 was not included in the 7-Year Plan and the planned improvements still were not defined with sufficient specificity to support the requested designation of eligibility.

A. Level of Detail to Be Included in the 7-Year Plan. The Settlement Agreement sets forth the Settling Parties’ agreement regarding the level of detail NIPSCO will include in the 7-Year Plan and what additional supporting information NIPSCO will provide in its direct case in future TDSIC filings. As part of the evidence in support of the Settlement Agreement, NIPSCO has provided a more detailed 7-Year Plan and more detailed cost information as follows.

Remand Exhibit Electric Plan Update-2 (Confidential) is based on NIPSCO’s most recent updated plan filed in Cause No. 44371-TDSIC-2 (i.e. Exhibit Electric Plan Update-2 (Confidential)) and includes a listing of projects and cost estimates for all seven years of the plan. Consistent with the Settlement Agreement, Remand Exhibit Electric Plan Update-2 (Confidential) contains the most current list of 2014 and 2015 projects (i.e. Plan Update-2 filed in Cause No. 44371-TDSIC-2) and it includes estimated costs for each program by year, specifically the underground cable replacement, transmission and distribution line replacement, and economic development programs. The Settling Parties have requested the Commission to approve Remand Exhibit Electric Plan Update-2 (Confidential) and Remand Exhibit TAD-R1 (Confidential) as NIPSCO’s plan in this remand proceeding.

Remand Exhibit TAD-R1 (Confidential) identifies the projected year for replacement and estimated costs for each Aging Infrastructure asset included in years 2014–2020 of the Plan. Remand Exhibit TAD-R1 (Confidential) is the most recently filed version of Petitioner’s Exhibit

No. TAD-R1 (Confidential) and also filed as Petitioner's Exhibit No. 3-C (Confidential) in Cause No. 44371-TDSIC-2, sorted by year without including assets that are not expected to be replaced during the 7-Year Plan.

Petitioner's Exhibit No. Remand-2-A (Confidential) provides detailed cost estimate support for the 2014 and 2015 individual projects (excluding programs). The evidence shows NIPSCO has provided this information to parties in the past as part of an "Audit Package", but the evidence now shows that NIPSCO has committed to filing as part of its direct case this confidential detailed cost information for each individual project (excluding programs) that is scheduled in the current or upcoming year of the Plan in a similar level of detail as the "Material and Labor Estimate."

Petitioner's Exhibit No. Remand-2-B (Confidential) provides the unit cost data utilized to develop the cost estimates for years 2016 – 2020 that was submitted as Petitioner's Exhibit No. TAD-4 (Confidential) in Cause No. 44370 and also submitted as Petitioner's Exhibit No. 3-D (Confidential) in Cause No. 44371-TDSIC-2. The evidence shows NIPSCO has added further detail to this information by breaking the unit cost estimates down into material, labor and stores, freight and handling. The evidence shows the unit cost estimates were developed based on a combination of factors including historical results of recently completed projects of a similar scope and cost estimates and price quotes from third parties. These costs are then escalated at a rate of 3% per year to approximate for annual inflation.

Petitioner's Exhibit No. Remand-2-C (Confidential) provides unit cost information for the programs included in NIPSCO's 7-Year Plan broken down by material, labor and stores, freight and handling. The evidence shows these unit cost estimates are based on historical cost information.

The Settling Parties have agreed that Remand Exhibit TAD-R1 is a component of the 7-Year Plan, and that Remand Exhibit Electric Plan Update-2 and Remand Exhibit TAD-R1 together constitute the 7-Year Plan that is being tendered for approval. We find that Remand Exhibit TAD-R1 includes a sufficient level of detail.

NIPSCO explained in the response to Docket Entry Question 2, Remand Exhibit TAD-R1 was derived from an analysis of the major assets in the NIPSCO transmission and distribution systems, and consequently did not separately list every single improvement included in the 7-Year Plan. In fact, NIPSCO's Docket Entry response indicated that 40% of the total TDSIC costs were related to investments not included in the analysis which developed into TAD-R1 investments. Thus, a significant portion of the proposed investments are not in the form of a TAD-R1 exhibit, but instead flow from planned processes to identify specific eligible improvements at a later time. Importantly, the process definitions in the remand proceeding are not materially different than those presented in the initial Cause No. 44370 proceeding which contributed to the conditional approval applied by the Commission and rejected in the Appellate Order¹. As we have previously noted in the Order on Remand, "it is necessary that a utility

¹ We acknowledge that further consideration of the process definitions could lead to a different eligibility conclusion, but the unfolding of the remand and rehearing in the context of the Settlement in this specific case did not foster sufficient development to warrant a different conclusion herein. In effect, the process definitions

submit detail at a reasonably defined individual improvement level as part of the plan.” *N. Ind. Pub. Serv. Co.*, Cause No. 44370, 2015 WL 5678819, *9 (IURC). We find that based on the evidence presented the investments that comprise the 40% of the total TDSIC costs are not defined to a level the Commission can approve as eligible improvements.

However, the 2014 and 2015 projects have previously been declared eligible improvements without the presumption condition utilized in Cause Nos. 44370 and 44371 TDSIC 1, but later rejected in the Appellate Order. Furthermore, by the terms of the Settlement Agreement and confirmed by testimony, NIPSCO seeks cost recovery through the TDSIC statute only for the 2014 and 2015 eligible projects. Thus, in the context of this proceeding and the Settlement Agreement it serves no regulatory purpose for the Commission to declare as eligible improvements the investments that are not defined to a level the Commission found as minimally sufficient in the Order on Remand. As such, we find only the 2014 and 2015 projects and only the 2016 and later projects that are included in TAD-R1 as eligible improvements. We find that the modification and approval is consistent with the Commission’s Order on Remand. For the foregoing reasons, we find the Settlement Agreement constitutes a just, reasonable and complete resolution of the issues raised in these proceedings and brings closure to protracted and costly litigation. We further find the Settlement Agreement is supported by probative evidence as discussed above, and based on that evidence, we conclude the public interest will be served by accepting the settlement. We therefore approve the Settlement Agreement subject to the above modification.

B. Cost Recovery for Eligible TDSIC Investments. The Settlement Agreement provides that instead of continuing the current tracker, NIPSCO will defer, as a regulatory asset for recovery in its future general rate proceedings, 100% of all TDSIC costs, as defined in Ind. Code § 8-1-39-7 and incurred since March 1, 2014 in connection with its 2014 and 2015 eligible transmission, distribution, and storage system improvements. This cost recovery treatment serves the public interest in several ways. First, the costs will be deferred in a manner consistent with the current deferral of 20% of the costs approved in Cause No. 44371, until such capital expenditures and TDSIC costs, including depreciation, allowance for funds used during construction, and post in service carrying costs are recovered as part of a general rate case, consistent with the requirements of Ind. Code § 8-1-39-9(b). In addition, it is helpful that this Settlement resolves the cost allocation issue raised in the Appellate Order because the deferred amounts will be allocated pursuant to the allocation approved in the subsequent general rate case proceeding. Furthermore, it benefits customers in that NIPSCO will provide a refund, with interest, to customers for the amounts collected through NIPSCO’s Rider 688. Finally, we note that all parties reserve their rights to raise any issues in NIPSCO’s electric general rate case and 7-Year Plan filing. We therefore find the cost recovery treatment set forth in the Settlement Agreement provides a just and reasonable way for NIPSCO to recover the TDSIC costs incurred in connection with the 2014 and 2015 projects while addressing the unique circumstances arising from the Appellate Order.

supported by the remand settlement and its supporting testimony are not a sufficient evidentiary basis to alter the original findings of this Commission on this aspect of the specific 7-year plan submitted for approval.

C. **General Electric Rate Case.** The Settlement Agreement provides that NIPSCO will file an electric general rate case proceeding by December 31, 2015.² Based on the evidence, we conclude this requirement serves the public interest in several ways. First, based on Ms. Smith's testimony, we find the OUCC and intervening parties will have the opportunity to do a more thorough review of NIPSCO's records and procedures than in the TDSIC trackers, given the wider scope of a base rate case and also the longer procedural timeframe of 300 total days as compared to a total of only 90 days for a TDSIC tracker. Second, Ms. Smith testified the OUCC and other intervening parties do not forfeit their rights to raise or challenge issues in either NIPSCO's rate case or in its next 7-Year Plan by being a party to the Settlement Agreement. Third, we find this requirement comports with Section 9(d) of the TDSIC Statute, which requires a utility to petition the Commission for review of the utility's basic rates and charges before the expiration of the utility's approved 7-year plan. Fourth, under the Settlement Agreement, NIPSCO will be authorized to seek recovery of its deferred TDSIC costs for 2014 and 2015 projects in subsequent electric general rate cases. Finally, based on Mr. Shambo's testimony, we find an electric general rate case will allow the parties the opportunity to consider other factors, including the appropriate cost allocation, that were not reviewed in NIPSCO's last general rate proceeding since the TDSIC Statute did not exist at the time the parties settled that case.

D. **The Settlement Agreement Resolves all Issues on Remand.** Based on our review of the Settlement Agreement and the evidence in support thereof, we conclude that the Settlement Agreement resolves all issues raised and addressed by the Appellate Order on remand to the Commission in Cause No. 44370 and Cause No. 44371. We find that the public interest is served by resolving these Causes on remand, which provides certainty of an outcome.

5. **Confidential Information.** Petitioner filed confidential information in this Remand proceeding that had previously been the subject of a motion for protective order filed July 19, 2013 which was supported by affidavit showing documents to be submitted to the Commission were trade secret information within the scope of Ind. Code §§ 5-14-3-4(a)(4) and (9) and Ind. Code § 24-2-3-2. The Presiding Officers issued a Docket Entry on August 1, 2013 finding such information to be preliminarily confidential, after which such information was submitted under seal. In our February 17, 2014 Order, we found all such information is confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission. We extend this same protection to the confidential information submitted in this Remand proceeding.

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

1. The Settlement Agreement attached hereto is approved subject to the above modifications.

² NIPSCO filed an electric general rate case docketed as Cause No. 44688 on October 1, 2015.

2. NIPSCO's 7-Year Electric Plan as set forth in Remand Exhibit Electric Plan Update-2 (Confidential) and Remand Exhibit TAD-R1 (Confidential) as modified above is hereby approved.

3. NIPSCO shall refund all monies that have been collected through NIPSCO's Rider 688 (Adjustment of Charges for Transmission, Distribution and Storage System Improvement Charge) pursuant to the Commission's November 25, 2014 Order in Cause No. 44371-TDSIC-1 with interest at the rate of six percent via Rider 688 to the rate classes from whom NIPSCO collected the monies.

4. NIPSCO shall file with the Energy Division of the Commission, prior to placing in effect the TDSIC refund factors, an amendment to its rate schedule with reasonable reference therein reflecting that such refund amounts are applicable to the rate schedules reflected on the amendment.

5. NIPSCO is authorized to defer, as a regulatory asset, 100% of all TDSIC costs, as defined in Ind. Code § 8-1-39-7, incurred since March 1, 2014 in connection with its 2014 and 2015 eligible transmission, distribution, and storage system improvements, in a manner consistent with the current deferral of 20% of the costs approved in Cause No. 44371, until such capital expenditures and TDSIC costs, including depreciation, allowance for funds used during construction, and post in service carrying costs are recovered as part of a general rate case, consistent with the requirements of Ind. Code § 8-1-39-9(b).

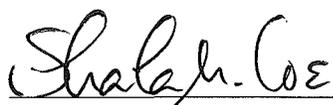
6. The information filed by Petitioner in this Remand proceeding pursuant to its Motion for Protective Order is deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from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

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

STEPHAN, HUSTON, AND ZIEGNER CONCUR; MAYS-MEDLEY AND WEBER DISSENTING WITH OPINION:

APPROVED: DEC 16 2015

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



**Shala M. Coe, Acting
Secretary to the Commission**

MAYS-MEDLEY AND WEBER DISSENTING

The Commission does not approve a settlement agreement just because the parties are satisfied; rather, we must ensure that the settlement agreement is reasonable, just, and consistent with the purposes of the applicable statute and that acceptance of the settlement agreement serves the public interest. Because we find that the Settlement Agreement in this Cause fails to meet this burden, we respectfully dissent from the majority's decision.

1. **Approval of the 7-Year Electric Plan.** NIPSCO seeks approval of its 7-Year Electric Plan under Ind. Code § 8-1-39-10(b). The majority finds that TAD-R1 includes a sufficient level of detail, but eliminates approximately 40% of the TDSIC costs (that were not included in the analysis that developed TAD-R1) from NIPSCO's proposed 7-Year Electric Plan because it found the evidence supporting those costs to be insufficient. As a result, the majority approves a 7-year plan that includes "only the 2014 and 2015 projects and only the 2016 and later projects that are included in TAD-R1 as eligible improvements."

First, this treatment of NIPSCO's proposed 7-year plan is inconsistent with the Commission's treatment of similar TDSIC cases filed by other utilities. In Cause No. 44526, the Commission denied Duke Energy Indiana's proposed 7-year plan, finding: "Duke's proposed T&D Plan does not contain sufficient detail for us to make the findings required by Ind. Code § 8-2-39-10." *Duke Energy Ind., Inc.*, Cause No. 44526, 2015 WL 2250622, at *18 (IURC May 8, 2015). Similarly, in Cause No. 44542, the Commission denied Indiana Michigan Power Company's proposed 7-year plan, finding: "I&M should have provided for years 2015 through 2021 a level of detail comparable to that provided for the first two years of its 7-Year Electric Plan. Therefore, we find that I&M has not presented a 7-Year Plan as contemplated by Section 10(a)." *Indiana Michigan Power Company*, Cause No. 44542, 2015 WL 2250624, at *11 (IURC May 8, 2015). In those two cases, the Commission denied the proposed 7-year plans in their entirety because they did not contain sufficient detail for all proposed projects. The Commission did not strike out those projects that had insufficient detail and approve the remainder.

By approving only portions of NIPSCO's proposed 7-Year Electric Plan and striking out portions that are insufficient, the majority is changing course. This creates the kind of inconsistent treatment on the same issue that the Court of Appeals noted with concern in the Appellate Order. *See NIPSCO Indus. Group v. N. Ind. Pub. Serv. Co.*, 31 N.E.3d 1, 13 (Ind. Ct. App. 2015). Failure to treat the same issue consistently between different utilities risks creating the appearance that the Commission's decisions are arbitrary and capricious.

Second, what the majority approves is not a 7-year plan. Under the Settlement Agreement, NIPSCO agrees to cease collecting the TDSIC factor authorized in Cause No. 44371 TDSIC 1, and will refund to customers the money it has already collected plus interest. Although the 7-Year Electric Plan approved by the majority includes future projects, NIPSCO has agreed to seek recovery of only the costs related to eligible 2014 and 2015 TDSIC projects through a

deferred regulatory asset. It is unlikely that NIPSCO would complete any future projects without seeking the associated cost recovery that the TDSIC statute allows. In the Settlement Agreement, NIPSCO agrees that it will file an electric general rate case by the end of 2015—which it did on October 1, 2015—and that it will file a new 7-Year Electric TDSIC Plan after the rate case proceeding. We must assume that NIPSCO will include the future projects that are being approved in this case in its next 7-Year Electric TDSIC Plan so that it may recover the associated costs through the new TDSIC tracker. Thus, as Ms. Smith testified, NIPSCO has, in essence, agreed to terminate its proposed 7-year plan. Therefore, the 7-year plan approved by the majority is not a plan at all, but rather a list of completed projects for which NIPSCO seeks deferred recovery of the related costs. This is not authorized by Ind. Code ch. 8-1-39.

2. Approval of Deferred Cost Recovery. As agreed to in the Settlement Agreement, NIPSCO also seeks recovery of TDSIC costs that it has already incurred through the creation of a regulatory asset under Ind. Code § 8-1-39-9(b). The majority approves the deferral of 100% of the eligible TDSIC costs incurred in 2014 and 2015 to be recovered in NIPSCO's next general rate case. This level of deferred cost recovery is not authorized by Ind. Code § 8-1-39-9, which specifically allows a utility to recovery 80% of its TDSIC costs through the TDSIC tracker and to defer the remaining 20%, including depreciation, allowance for funds used during construction, and post-in-service carrying costs. The statute does not include any permissive language, such as *up to* or *at least*, in defining the percentage of recovery under each mechanism; rather, it is specific that a utility may only defer 20% of its TDSIC costs for recovery in its next rate case. Therefore, the majority's approval of the deferral of 100% of the TDSIC costs exceeds the authority granted to the Commission by Ind. Code § 8-1-39-9.

In addition, we would note that NIPSCO completed the 2014 and 2015 TDSIC projects while the 44370 and 44371 Orders were pending on appeal. Because they had been appealed, those orders were not final orders of the Commission. Thus, the majority is allowing the retroactive recovery of two years of expenditures that NIPSCO incurred without Commission approval. Such cost recovery is not authorized by Ind. Code ch. 8-1-39, and in the end it may end up costing ratepayers more money.³

Based on our discussion above, we would reject the Settlement Agreement and deny NIPSCO's proposed 7-Year Electric Plan and associated 100% deferred cost recovery.

³ That is not to say that NIPSCO was or in the future is without any options to seek recovery of those costs. It could have sought recovery through an alternative regulatory plan under Ind. Code § 8-1-2.5 or within the context of its pending rate case, both of which options would likely have avoided most of the issues that we raise here.

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC)
SERVICE COMPANY FOR APPROVAL OF)
PETITIONER'S 7-YEAR PLAN FOR ELIGIBLE) CAUSE NO. 44370
TRANSMISSION, DISTRIBUTION AND)
STORAGE SYSTEM IMPROVEMENTS,)
PURSUANT TO IND. CODE § 8-1-39-10(a).)

PETITION OF NORTHERN INDIANA PUBLIC)
SERVICE COMPANY FOR (1) APPROVAL OF)
A TRANSMISSION, DISTRIBUTION AND)
STORAGE SYSTEM IMPROVEMENT)
CHARGE ("TDSIC") RATE SCHEDULE, (2))
APPROVAL OF PETITIONER'S PROPOSED) CAUSE NO. 44371
COST ALLOCATIONS, (3) APPROVAL OF THE)
TIMELY RECOVERY OF TDSIC COSTS)
THROUGH PETITIONER'S PROPOSED TDSIC)
RATE SCHEDULE, AND (4) AUTHORITY TO)
DEFER APPROVED TDSIC COSTS,)
PURSUANT TO IND. CODE CH. 8-1-39.)

STIPULATION AND SETTLEMENT AGREEMENT ON REMAND

Northern Indiana Public Service Company ("NIPSCO"), the Indiana Office of Utility Consumer Counselor ("OUCC"), the NIPSCO Industrial Group,¹ ("Industrial Group") and United States Steel Corporation ("US Steel") (collectively, "the Settling Parties"), by their respective counsel, stipulate and agree as follows in the interest of

¹ The members of the NIPSCO Industrial Group in this proceeding are ArcelorMittal, Inc., BP Products North America, Inc., Praxair, Inc. and USG Corporation.

jointly resolving the issues to be addressed in the remand of the above captioned proceedings (the "Remand"):

I. BACKGROUND.

A. Cause Nos. 44370 and 44371

1. On July 19, 2013, NIPSCO filed a Petition, docketed as Cause No. 44370, for approval of a 7-year plan for eligible transmission, distribution and storage system improvements ("7-Year Electric Plan"), pursuant to Ind. Code § 8-1-39-10(a). On the same day, NIPSCO filed a separate Petition, docketed as Cause No. 44371, for: (1) approval of a Transmission, Distribution and Storage System Improvement Charge ("TDSIC") Rate Schedule, (2) approval of NIPSCO's proposed cost allocation, (3) approval of the timely recovery of TDSIC costs through NIPSCO's proposed TDSIC Rate Schedule, and (4) authority to defer approved TDSIC costs, pursuant to Ind. Code Ch. 8-1-39. On February 17, 2014, the Commission issued its Orders in Cause Nos. 44370 and 44371.

2. In Cause No. 44370, the Commission held: (1) the projects contained in Year 1 of NIPSCO's 7-Year Electric Plan are "eligible transmission, distribution, and storage system improvements" within the meaning of Indiana Code § 8-1-39-2; (2) municipal lighting projects are eligible for TDSIC treatment as economic development projects when selected in accordance with the findings set forth in Paragraph 6.D.; (3) the project categories contained in Years 2 through 7 of NIPSCO's 7-Year Electric Plan

are presumed “eligible transmission, distribution, and storage system improvements” within the meaning of Indiana Code § 8-1-39-2, subject to further definition and specifics being provided through the plan update proceedings; (4) the 7-Year Electric Plan is reasonable subject to the modifications within the Order; (5) NIPSCO’s proposed definitions of key terms for purposes of interpreting Indiana Cod Ch. 8-1-39 are approved; and (6) NIPSCO’s proposed process for updating major changes to the 7-Year Electric Plan in sub-docket proceedings as discussed in Paragraph 6.G. is approved.

3. In Cause No. 44371, the Commission; (1) authorized NIPSCO to implement its TDSIC Rate Schedule pursuant to Ind. Code § 8-1-39-9(a) to effectuate the timely recovery of 80% of eligible and approved capital expenditures and TDSIC costs; (2) ordered NIPSCO to use a full weighted average cost of capital, including zero-cost capital, to calculate pretax return; (3) authorized NIPSCO to defer post in service TDSIC costs, including carrying costs, on an interim basis until such costs are recognized for ratemaking purposes through NIPSCO’s proposed TDSIC mechanism or otherwise included for recovery in NIPSCO’s base rates in its next general rate case; (4) approved NIPSCO’s proposed allocation of transmission and distribution project costs; (5) authorized NIPSCO to defer 20% of eligible and approved capital expenditures and TDSIC costs and to recover such deferred expenditures and TDSIC costs in its next general rate case; and (6) authorized NIPSCO to adjust its authorized net operating

income to reflect any approved earnings associated with the TDSIC for purposes of Ind. Code § 8-1-2-42(d)(3). The Commission also held that, for purposes of satisfying Ind. Code § 8-1-39-14, NIPSCO's proposed calculation that compares the increase in TDSIC revenue in a given year with the total retail revenues for the past 12 months is consistent with the TDSIC statute. 44371 Order at 20.

B. Consolidated Appeals of Cause No. 44370 and 44371

4. On March 13, 2014, the OUCC filed a Notice of Appeal relating to the 44371 Order, which was docketed as Cause No. 93A02-1403-EX-158. On March 19, 2014, the Industrial Group filed Notices of Appeal relating to both the 44371 Order and the 44370 Order, which was docketed as Cause No. 93A02-1403-EX-174. On April 28, 2014, the Court of Appeals issued an order to consolidate Cause No. 93A02-1403-EX-174 with Cause No. 93A02-1403-EX-158 and to close Cause No. 93A02-1403-EX-174. On April 8, 2015, the Court of Appeals of Indiana issued a published opinion in Cause No. 93A02-1403-EX-158, reversing in part, affirming in part, and remanding the 44370 Order and 44371 Order ("Appellate Order"). This Settlement Agreement is intended to resolve all issues raised and addressed by the Appellate Order on remand to the Commission.

II. TERMS OF AGREEMENT.

5. All Settling Parties will vigorously defend this Settlement Agreement at the Commission.

6. All Settling Parties will vigorously defend any Commission order approving this Settlement Agreement in its entirety should such order be appealed by a non-settling party.

7. Nothing in this Settlement Agreement precludes any party from taking a contrary position in any other proceeding, provided that no party will deny the enforceability of, or attempt to deprive any other party of the benefit of, any provision in this Settlement Agreement.

8. The record in Cause No. 44370 will be re-opened to: (a) clarify that in all future TDSIC filings, the level of detail in Petitioner's Exhibit No. TAD-R1, submitted as a rebuttal exhibit in Cause No. 44370, will be provided in NIPSCO's direct case; (b) submit the most current list of 2014 and 2015 projects into the record (i.e., Petitioner's Exhibit No. 1-A, Exhibit Electric Plan Update-2 (Confidential) filed in Cause No. 44371-TDSIC-2); (c) clarify that in all future TDSIC filings, for the underground cable replacement, transmission and distribution line replacement, and economic development, programs described in the prefiled direct testimony of Timothy A. Dehring in Cause No. 44370 (Section IV, pages 25-34 which provided the explanation of

these programs and projects in detail), NIPSCO will provide updated estimated costs for each program by year; and (d) submit the most current version of Petitioner's Exhibit No. TAD-R1 (i.e., Petitioner's Exhibit No. 3-C (Confidential) filed in Cause No. 44371-TDSIC-2), sorted by year, removing projects that are not expected to be replaced during the 7-Year Plan (i.e., no year).

9. NIPSCO agrees to cease collecting the current Electric TDSIC-1 factors on or about June 1, 2015.

10. All monies that have been collected through NIPSCO's Rider 688 (Adjustment of Charges for Transmission, Distribution and Storage System Improvement Charge) pursuant to the Commission's November 25, 2014 Order in Cause No. 44371-TDSIC-1 will be refunded with interest at the rate of 6 percent via Rider 688 upon approval of this Settlement Agreement to the rate classes from whom NIPSCO collected the monies.

11. NIPSCO agrees that rather than implementing a new TDSIC factor to recover costs incurred in connection with its current 7-Year Electric Plan, NIPSCO will defer, as a regulatory asset, 100% of all TDSIC costs, as defined in I.C. § 8-1-39-7, incurred since March 1, 2014 in connection with its 2014 and 2015 eligible transmission, distribution, and storage system improvements, in a manner consistent with the current deferral of 20% of the costs approved in Cause No. 44371, until such capital

expenditures and TDSIC costs, including depreciation, allowance for funds used during construction, and post in service carrying costs are recovered as part of a general rate case, consistent with the requirements of I.C. § 8-1-39-9(b).

12. The deferred amounts referenced in Paragraph 11 will be allocated pursuant to the allocation approved in the subsequent general rate case proceedings.

13. NIPSCO will file an electric general rate case proceeding by December 31, 2015.

14. NIPSCO will file a new 7-Year Electric TDSIC Plan following the filing of its next electric general rate case proceeding.

15. All parties reserve their rights to raise any issues in NIPSCO's next electric general rate case referenced in Paragraph 13 and new 7-Year Electric TDSIC Plan filing referenced in Paragraph 14.

16. The Settling Parties will file this Settlement Agreement, supportive testimony and a joint proposed order that incorporates the terms above with the Commission.

III. PROCEDURAL ASPECTS AND PRESENTATION OF THE SETTLEMENT AGREEMENT.

17. The Settling Parties agree to jointly present this Settlement Agreement to the Commission for its approval in this proceeding or any other docketed proceeding established by the Commission for consideration of this Settlement Agreement, and agree to assist and cooperate in the preparation and presentation of evidence as necessary to provide an appropriate factual basis for such approval.

18. If this Settlement Agreement is not approved in its entirety by the Commission, the Settling Parties agree that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding. Moreover, the concurrence of the Settling Parties with the terms of this Settlement Agreement is expressly predicated upon the Commission's approval of the Settlement Agreement in its entirety without any material modification of any material further condition deemed unacceptable by any Settling Party. If the Commission does not approve the Settlement Agreement in its entirety, the Settlement 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 order that any modifications made by the Commission are unacceptable to it.

19. The Settling Parties agree that this Settlement Agreement and each term, condition, amount, methodology and exclusion contained herein reflects a fair, just and reasonable resolution and compromise for the purpose of settlement, and is agreed

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

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

21. The issuance of an order by the Commission approving this Settlement Agreement without any material modification or further condition unacceptable to any Settling Party shall terminate all proceedings in these Causes. The terms of this Settlement Agreement and the relief requested on Remand in these Causes are directly related to and supersede the relief granted in Cause No. 44371 TDSIC-1 and requested in Cause No. 44371-TDSIC-2, which latter proceeding is currently stayed pending the conclusion of the Remand. As a result, the Settling Parties agree that upon issuance of an Order approving this Settlement Agreement without any material modification or further condition unacceptable to any Settling Party, Cause No. 44371-TDSIC-2 is moot and no further consideration of that Cause is necessary.

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

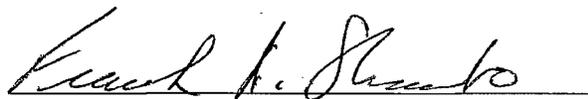
23. The Settling Parties shall not appeal the agreed final order or any subsequent Commission order as to any portion of such order that is specifically implementing, without modification, the provisions of this Settlement Agreement and the Settling Parties shall not support any appeal of the portion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

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

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

ACCEPTED AND AGREED this 26th day of May, 2015.

Northern Indiana Public Service Company ("NIPSCO")



Frank A. Shambo, Vice President, Regulatory and Legislative Affairs

Indiana Office of Utility Consumer Counselor ("OUCC")

A. David Stippler, Consumer Counselor

NIPSCO Industrial Group

Bette J. Dodd, Counsel

United States Steel Corporation

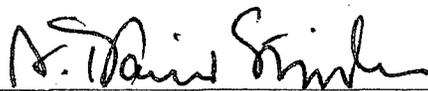
Nikki G. Shoultz, Counsel

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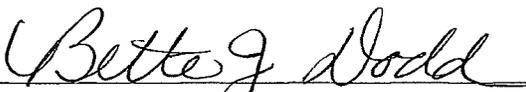
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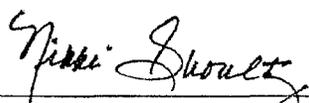
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