

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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VERIFIED PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY FOR (1) APPROVAL OF AN )  
ADJUSTMENT TO ITS GAS SERVICE RATES )  
THROUGH ITS TRANSMISSION, DISTRIBUTION, AND )  
STORAGE SYSTEM IMPROVEMENT CHARGE )  
("TDSIC") RATE SCHEDULE; (2) AUTHORITY TO )  
DEFER 20% OF THE APPROVED CAPITAL )  
EXPENDITURES AND TDSIC COSTS FOR RECOVERY )  
IN PETITIONER'S NEXT GENERAL RATE CASE; AND )  
(3) APPROVAL OF PETITIONER'S UPDATED 7-YEAR )  
GAS PLAN, INCLUDING ACTUAL AND PROPOSED )  
ESTIMATED CAPITAL EXPENDITURES AND TDSIC )  
COSTS THAT EXCEED THE APPROVED AMOUNTS, )  
ALL PURSUANT TO IND. CODE CH. 8-1-39 AND THE )  
COMMISSION'S ORDERS IN CAUSE NOS. 44403 AND )  
44403-TDSIC-1. )

CAUSE NO. 44403 TDSIC 4  
(Remand)

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY LLC FOR (1) APPROVAL OF AN )  
ADJUSTMENT TO ITS GAS SERVICE RATES )  
THROUGH ITS TRANSMISSION, DISTRIBUTION, AND )  
STORAGE SYSTEM IMPROVEMENT CHARGE )  
("TDSIC") RATE SCHEDULE; (2) AUTHORITY TO )  
DEFER 20% OF THE APPROVED CAPITAL )  
EXPENDITURES AND TDSIC COSTS FOR RECOVERY )  
IN PETITIONER'S NEXT GENERAL RATE CASE; (3) )  
APPROVAL OF PETITIONER'S UPDATED 7-YEAR GAS )  
PLAN, INCLUDING ACTUAL AND PROPOSED )  
ESTIMATED CAPITAL EXPENDITURES AND TDSIC )  
COSTS THAT EXCEED THE APPROVED AMOUNTS IN )  
CAUSE NO. 44403-TDSIC-8, ALL PURSUANT TO IND. )  
CODE CH. 8-1-39-9, AND (4) APPROVAL OF )  
PETITIONER'S RETURN OF EXCESS INCOME TAX )  
REVENUE RECOVERED THROUGH ITS BASE RATES )  
BETWEEN JANUARY 1 AND APRIL 30, 2018 THROUGH )  
ITS TDSIC FACTOR. )

CAUSE NO. 44403 TDSIC 9

APPROVED: DEC 27 2018

ORDER OF THE COMMISSION

Presiding Officers:

Sarah E. Freeman, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On August 28, 2018, Northern Indiana Public Service Company LLC (“Petitioner” or “NIPSCO”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) in Cause No. 44403 TDSIC 9 (“TDSIC-9”) for approval of a new Transmission, Distribution, and Storage System Improvement Charge (“TDSIC”) pursuant to Ind. Code § 8-1-39-9. On the same day, NIPSCO filed its direct testimony.

On October 30, 2018, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its direct testimony and exhibits.

The NIPSCO Industrial Group (“Industrial Group”) filed a petition to intervene on October 31, 2018, which was subsequently granted.<sup>1</sup>

On November 2, 2018, the Industrial Group filed a Motion to Consolidate requesting that TDSIC-9 be consolidated with Cause No. 44403 TDSIC 4, which had recently been remanded for further Commission action by the Indiana Supreme Court, for purposing of addressing a settlement agreement and supporting testimony, which was granted on November 5, 2018 (hereinafter referred to as “this Cause”).

On November 5, 2018, NIPSCO, the Industrial Group, and the OUCC (“Settling Parties”) filed a Stipulation and Settlement Agreement concerning the issues in this Cause, as well as those that remain outstanding in the appeals of Cause Nos. 44403 TDSIC 5 through 44403 TDSIC 8 (“TDSIC Settlement”).

On November 9, 2018, the Settling Parties filed testimony and exhibits supporting the TDSIC Settlement. On that same day, the Industrial Group filed a Verified Motion for Award of Attorney Fees and Litigation Expenses, a Motion for Confidential Treatment of Attorney Records, and testimony supporting the Supplemental Settlement on Award of Attorney Fees and Litigation Expenses (“Supplemental Settlement”) (Exhibit A to the Verified Motion for Award of Attorney Fees and Litigation Expenses).<sup>2</sup>

An evidentiary hearing was held on November 29, 2018, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. NIPSCO, the OUCC and the Industrial Group appeared and participated. At the hearing, the parties’ prefiled evidence was offered and admitted into the record without objection. Because the Indianapolis Star failed to timely publish notice of the hearing, an additional hearing was held at 9:30 a.m. on December 17, 2018, at which time no additional evidence was offered.

Based on the applicable law and evidence presented, the Commission now finds:

**1. Notice and Jurisdiction.** Notice of the hearings in this Cause was given and published by the Commission as required by law. Petitioner is a public utility as that term is defined in Ind. Code §§ 8-1-2-1(a) and 8-1-39-4. Under Ind. Code ch. 8-1-39 (“TDSIC Statute”), the

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<sup>1</sup> The members of the Industrial Group in this proceeding are ArcelorMittal USA, BP Products North America, Inc., Cargill, Inc., Fiat Chrysler Automobiles, General Motors LLC, Praxair, Inc., United States Steel Corporation, and USG Corporation.

<sup>2</sup> The Supplemental Settlement was entered into by the Industrial Group, Lewis & Kappes, P.C., and the OUCC (“Supplemental Settling Parties”).

Commission has jurisdiction over a public utility's petition to approve rate schedules establishing a TDSIC that will allow the periodic automatic adjustment of the public utility's basic rates and charges to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

**2. Petitioner's Characteristics.** Petitioner is a public utility organized and existing under the laws of the State of Indiana and having its principal office at 801 E. 86<sup>th</sup> Avenue, Merrillville, Indiana 46410. Petitioner is engaged in rendering electric and gas public utility service in the State of Indiana and owns, operates, manages, and controls, among other things, plant and equipment within the State of Indiana used for the generation, transmission, distribution and furnishing of such service to the public. Petitioner provides gas utility service to more than 819,000 residential, commercial, and industrial gas customers in northern Indiana.

**3. Background and Relief Requested.** On April 30, 2014, the Commission issued an Order in Cause No. 44403 ("44403 Order") concerning Petitioner's request for approval of a 7-year plan for eligible transmission, distribution and storage system improvements ("7-Year Gas Plan" or "Plan"), pursuant to Ind. Code §§ 8-1-39-10 and 11. In the 44403 Order, the Commission held: (1) the projects contained in Year 1 of NIPSCO's 7-Year Gas Plan are eligible transmission, distribution, and storage system improvements ("eligible improvements") within the meaning of Ind. Code § 8-1-39-2; (2) the project categories contained in Years 2 through 7 of NIPSCO's 7-Year Gas Plan are presumed eligible improvements within the meaning of Ind. Code § 8-1-39-2, subject to further definition and specifics being provided through the plan update proceedings; (3) the 7-Year Gas Plan is reasonable and approved subject to certain modifications; (4) NIPSCO's proposed definitions of key terms for purposes of interpreting and applying those terms to NIPSCO's 7-Year Gas Plan are approved; and (5) NIPSCO's proposed process for updating the 7-Year Gas Plan in future semi-annual adjustment proceedings is approved. Although an Appeal was filed, it was subsequently dismissed with prejudice.<sup>3</sup>

On January 28, 2015, the Commission issued an Order in Cause No. 44403 TDSIC 1 ("TDSIC-1 Order") approving, among other things, NIPSCO's updated Plan ("Plan Update-1"), with the exception of certain cost estimates for the 112<sup>th</sup> Street project and bare steel replacement project, and designating the projects included in Year 2 as eligible improvements under Ind. Code § 8-1-39-2. The Commission approved NIPSCO's proposed methodology for calculating its TDSIC adjustment and authorized NIPSCO's recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 30, 2014. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO's base rates as a result of its general rate case.

On February 27, 2015, NIPSCO filed its petition and case-in-chief in Cause No. 44403 TDSIC 2 ("TDSIC-2"). Subsequently, on April 8, 2015, the Indiana Court of Appeals issued a decision in the appeal of Commission Orders in Cause Nos. 44370 and 44371 (NIPSCO's Electric TDSIC cases), reversing in part, affirming in part, and remanding the case to the Commission. *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 31 N.E.3d 1 (Ind. Ct. App. 2015). After discussion with the parties, NIPSCO ultimately moved to dismiss TDSIC-2 with the understanding that it would request to recover approved capital expenditures incurred through June 30, 2015 and TDSIC

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<sup>3</sup> Order of the Indiana Court of Appeals in Cause No. 93A02-1405-EX-368 dated September 23, 2014.

costs for the period July 2014 through June 2015 in Cause No. 44403 TDSIC 3. On June 2, 2015, the Commission dismissed TDSIC-2 without prejudice.

On March 30, 2016, the Commission issued an Order in Cause No. 44403 TDSIC 3 (“TDSIC-3 Order”) approving, among other things, NIPSCO’s updated Plan (“Plan Update-3”), with the exception of certain new and emergent projects that were not identified or approved in NIPSCO’s 7-Year Gas Plan or an update, and designating the projects included in the approved Plan Update-3 as eligible improvements within the meaning of Ind. Code § 8-1-39-2. The Commission approved a new allocation of NIPSCO’s approved capital expenditures and TDSIC costs to the various customer classes based on total revenue, including gas revenue, by removing the adjustment for transmission versus distribution considerations. The Commission authorized NIPSCO’s recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 2015. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO’s base rates as a result of its general rate case.

On June 22, 2016, the Commission issued an Order in Cause No. 44403 TDSIC 4 (“TDSIC-4 Order”) approving, among other things, NIPSCO’s updated Plan (“Plan Update-4”), with the exception of four projects. The Commission authorized NIPSCO’s recovery of 80% of its approved capital expenditures and TDSIC costs incurred through December 2015. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO’s base rates as a result of its general rate case. The TDSIC-4 Order was appealed by the Industrial Group in Case No. 93A02-1607-EX-1644. On June 20, 2017, the Indiana Court of Appeals issued an order affirming the TDSIC-4 Order. The Industrial Group filed a Petition to Transfer, which was granted by the Indiana Supreme Court’s order of June 20, 2018, in Case No. 18S-EX-334. On September 25, 2018, the Supreme Court issued its Order on Rehearing. The Supreme Court’s opinion as modified on rehearing was certified (“Supreme Court Order”) on October 15, 2018.<sup>4</sup>

The Supreme Court Order reversed the TDSIC-4 Order, holding that periodic rate increases are available only for specific projects a utility designates in the threshold TDSIC proceeding and not for multiple unit projects it describes using ascertainable planning criteria. The Court remanded the case to the Commission “to identify such project categories that were not identified with specificity in TDSIC-3. The costs for all multiple unit projects as to which particular improvements were identified for the first time in TDSIC-4 are disallowed for TDSIC recovery to the extent those projects were not properly designated in the previously approved seven-year plan.” (*Id.* at 245) (“TDSIC-4 Remand”).

On December 28, 2016, the Commission issued an Order in Cause No. 44403 TDSIC 5 (“TDSIC-5 Order”) approving, among other things, NIPSCO’s updated Plan. The Commission authorized NIPSCO’s recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 2016. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO’s base rates as a result of its general rate case. The Commission’s TDSIC-5 Order was appealed by the Industrial Group and is currently pending in Case No. 93A02-1701-EX-177 but has been stayed pending resolution of the TDSIC-4 Remand.

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<sup>4</sup> *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 100 N.E.3d 234 (Ind. 2018).

On June 28, 2017, the Commission issued an Order in Cause No. 44403 TDSIC 6 (“TDSIC-6 Order”) approving, among other things, NIPSCO’s updated Plan. The Commission authorized NIPSCO’s recovery of 80% of its approved capital expenditures and TDSIC costs incurred through December 2016. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO’s base rates as a result of its general rate case. The Commission’s TDSIC-6 Order was appealed by the Industrial Group and is currently pending in Case No. 93A02-1707-EX-1632 but has been stayed pending resolution of the TDSIC-4 Remand.

On December 28, 2017, the Commission issued an Order in Cause No. 44403 TDSIC 7 (“TDSIC-7 Order”) approving, among other things, NIPSCO’s updated Plan. The Commission authorized NIPSCO’s recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 2017. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO’s base rates as a result of its general rate case. The Commission’s TDSIC-7 Order was appealed by the Industrial Group and is currently pending in Case No. 18A-EX-146 but has been stayed pending resolution of the TDSIC-4 Remand.

On August 22, 2018, the Commission issued an Order in Cause No. 44403 TDSIC 8 (“TDSIC-8 Order”) approving, among other things, NIPSCO’s updated Plan (“Plan Update-8”). The Commission authorized NIPSCO’s recovery of 80% of its approved capital expenditures and TDSIC costs incurred through December 2017. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO’s base rates as a result of its general rate case. The Commission’s TDSIC-8 Order was issued subject to refund pending resolution of the TDSIC-4 Remand. The Commission’s TDSIC-8 Order was appealed by the Industrial Group and is currently pending in Case No. 18A-EX-02281 but has been stayed pending resolution of the TDSIC-4 Remand.

In this Cause, NIPSCO requests:

(a) approval of an adjustment to its Appendix F – Transmission, Distribution and Storage System Improvement Charge to be applicable for gas bills rendered by NIPSCO during the months of January through June 2019, or until replaced by different factors that are approved in a subsequent proceeding, to effectuate the timely recovery of 80% of approved capital expenditures and TDSIC costs incurred in connection with NIPSCO’s eligible transmission, distribution, and storage system improvements;

(b) authority to defer, as a regulatory asset, 20% of eligible and approved capital expenditures and TDSIC costs incurred in connection with its 7-Year Gas Plan and record ongoing carrying charges based on the current overall weighted average cost of capital (“WACC”) on all deferred TDSIC costs until such costs are included for recovery in NIPSCO’s base rates consistent with Ind. Code § 8-1-39-9(b);

(c) approval of NIPSCO’s Plan Update-9, including actual and proposed estimated capital expenditures and TDSIC costs that exceed the amounts approved in the TDSIC-8 Order;

(d) approval to defer and recover 80% of eligible and approved capital expenditures and TDSIC costs in connection with the Plan Update-9 through the TDSIC and to defer 20% of eligible

and approved capital expenditures and TDSIC costs in connection with the Plan Update-9, for recovery in its base rates; and

(e) return of the excess income tax revenue recovered through its base rates and any applicable charges between January 1, 2018, and April 30, 2018, currently reflected as a regulatory liability in accordance with the Commission's January 3, 2018 Order initiating Cause No. 45032, over a six month period beginning January 1, 2019, on a per therm basis, through its TDSIC schedule.

**4. Overview of the TDSIC Settlement.** In the TDSIC Settlement, the Settling Parties agree to a resolution of the issues in TDSIC-9, the TDSIC-4 Remand, and those that remain outstanding in the appeals of the TDSIC-5 through TDSIC-8 Orders. The key terms of the TDSIC Settlement are summarized as follows:

(a) Refunds related to multiple unit projects: Refunds will be processed as a credit against revenue requirements in this Cause. Based on multiple unit projects already removed by NIPSCO, the amount of the refunds inclusive of interest shall be \$2,668,629.

(b) Bare steel replacement: The bare steel replacement portion of the Plan will be removed from the updated Plan from TDSIC-4 forward. On a going forward basis, in any NIPSCO petition seeking a certificate of public convenience and necessity pursuant to Ind. Code ch. 8-1-8.4, neither the OUCC nor the Industrial Group will oppose the eligibility of bare steel replacement as a federally mandated compliance project within the meaning of Ind. Code § 8-1-8.4-2. The total affected TDSIC revenue requirements associated with bare steel replacement, including amounts collected through the TDSIC rider, amounts deferred for rate case treatment, and amounts included in the TDSIC-9 filing as revised on September 25, 2018, are \$2,328,354. NIPSCO will credit amounts collected through the TDSIC rider for bare steel replacement from TDSIC-4 through TDSIC-8, plus interest in the amount of \$101,735, consistent with the refunds for multiple unit projects in this Cause.

(c) Kokomo low pressure system: The Kokomo low pressure system portion of the Plan will be removed from the updated Plan. On a going forward basis, in any NIPSCO petition seeking a certificate of public convenience and necessity pursuant to Ind. Code ch. 8-1-8.4, neither the OUCC nor the Industrial Group will oppose the eligibility of the Kokomo low pressure system work as a federally mandated compliance project within the meaning of Ind. Code § 8-1-8.4-2. To date, no revenue requirements associated with the Kokomo low pressure system have been reflected in the TDSIC rider or deferred for rate case treatment. This change, accordingly, will be prospective only and will not involve any additional refunds, credits, or adjustments.

(d) Cost increases at issue in pending appeals: The portion of the capital costs associated with increases approved in TDSIC-5, -6, -7 and -8 Orders and the effect on TDSIC-9 that relate to multiple unit projects are being addressed in the resolution specific to multiple unit projects. The total revenue requirements associated with the increases that remain in dispute in those pending appeals, inclusive of amounts collected through the TDSIC rider, amounts deferred for rate case treatment and amounts included in the TDSIC-9 filing as revised on September 25, 2018, are \$5,963,432. One-half of that amount, \$2,981,716, will be removed from the revenue requirements. For the removed portion, NIPSCO will credit amounts collected through the TDSIC

rider consistent with the refunds for multiple unit projects in this Cause and write-off amounts that have not yet been collected. For this component, there will not be additional interest included.

(e) Adjustment to the deferral account: NIPSCO has already adjusted the 20% deferral account for purposes of the Step One compliance filing in Cause No. 44988 in the amount of \$1,149,851, to reflect the removal of multiple unit projects. NIPSCO will make further adjustments to the deferral account to remove amounts associated with bare steel replacement from TDSIC-4 forward and amounts associated with one-half of the increases that remain in dispute in the pending appeals, and will reflect that adjustment in the Step Two compliance filing made in Cause No. 44988.

(f) Adjustment to schedules in TDSIC-9: Consistent with Paragraphs 1, 2, 4, and 5 above, NIPSCO will revise its schedules and rate computations as filed in TDSIC-9 to reflect the removal of the multiple unit projects and bare steel replacement project; the inclusion of interest relating to the amounts of the multiple unit projects and the bare steel replacement project; and the removal of one-half of the cost increases at issue in the pending appeals. Corresponding TDSIC-9 changes will be included to reflect the removal of bare steel replacement and one-half of disputed cost increases, with the adjustments being made to the amounts resulting from the TDSIC-9 revision filed on September 25, 2018. In the aggregate, the foregoing revisions result in a decrease to the 80% revenue requirements to be collected through the TDSIC rider in the amount of \$6,975,808 and a decrease in the 20% deferral account in the amount of \$2,254,478.

(g) Revised plan update: A revised plan update reflecting the agreed terms will be submitted by agreement for approval in this Cause.

(h) Establishment of caps: For purposes of future proceedings on the remainder of NIPSCO's existing 7-Year Gas Plan (Years 2019 and 2020), the total capital set forth in Exhibit A to the TDSIC Settlement will be subject to annual and 7-year caps in the respective amounts shown for 2019, 2020, and 7-Year Total, subject to a 5% flexibility factor for each annual cap. The 7-Year Total cap will not be subject to the 5% flexibility factor. In each future proceeding on the existing 7-Year Gas Plan, NIPSCO will retain the burden to support recovery of actual or projected costs in excess of approved amounts and the OUCC and Industrial Group shall retain the ability to challenge any such costs, pursuant to Ind. Code § 8-1-39-9(f).

(i) Attorney fees: By separate agreement, contingent on approval of the TDSIC Settlement, the Industrial Group and the OUCC will determine a mutually acceptable award for recoverable fees and expenses consistent with common fund principles and established Commission practice. The agreed amount of the fee award will be netted against the reduction in revenue requirement to be implemented in this Cause.

(j) Pending appeals: Upon execution of the TDSIC Settlement, the Settling Parties will jointly move for a stay of the pending appeals of the TDSIC-5, -6, -7 and -8 Orders and notify the Court of Appeals that a settlement has been reached. Upon approval of the TDSIC Settlement by the Commission in a final order, the Settling Parties will jointly move for dismissal of the pending appeals of the TDSIC-5, -6, -7 and -8 Orders.

**5. Evidence Presented.**

**A. NIPSCO's Case-In-Chief.** NIPSCO presented the testimony and exhibits of Alison M. Becker, Manager of Regulatory Policy for NIPSCO; James F. Racher, Director of Regulatory for NiSource Corporate Services Company ("NCSC"); and Donald L. Bull, Director of Gas TDSIC Projects for NCSC.

Ms. Becker testified all of the TDSIC projects included for recovery in this filing were or will be undertaken for the purpose of safety, reliability, system modernization, or economic development as required by Ind. Code § 8-1-39-2 and the rural gas extension projects were undertaken for the purpose of extending gas service in rural areas. She testified that none of the projects were included in NIPSCO's rate base in Cause No. 43894. Ms. Becker stated that NIPSCO is requesting approval of all of the projects designated in Plan Update-9 that are included for recovery in the proposed TDSIC-9 factors.

Ms. Becker noted that NIPSCO has a base rate case pending with the Commission (Cause No. 44988) and that once an order has been received in that Cause, pursuant to Ind. Code § 8-1-39-9(c), NIPSCO will not file a petition for a TDSIC adjustment filing for at least nine months after the date on which the Commission issues an order changing its basic rates and charges. In addition, she testified that NIPSCO complied with the requirement in Ind. Code § 8-1-39-9(d), which requires a public utility that implements a TDSIC under Ind. Code Ch. 8-1-39 to petition the Commission before the expiration of the utility's approved seven-year plan for review of the utility's basic rates and charges with respect to the same type of utility service, through its filing in Cause No. 44988.

Ms. Becker testified this filing complies with the Supreme Court's June 20, 2018 Order regarding multiple unit projects.

Ms. Becker testified NIPSCO is requesting approval of Plan Update-9, including the actual capital expenditures incurred through June 30, 2018, as well as updated cost estimates for the projects designated in Plan Update-9, including actual and proposed estimated capital expenditures and TDSIC costs that exceed the amounts approved in Plan Update-8.

Ms. Becker explained that to date NIPSCO has not undertaken any targeted economic development projects that are eligible for recovery through the TDSIC. However, NIPSCO continues to work with interested parties on potential projects, and it will continue to keep TDSIC stakeholders informed to the extent the projects are developed enough to present to them prior to submitting in a TDSIC filing. Ms. Becker testified that in the TDSIC-1 Order, the Commission approved NIPSCO's proposal to include all rural customers in the updated estimate and to provide an 80% credit to the TDSIC rider for actual margins received from all new customers added under the rural extension projects.

Ms. Becker testified that NIPSCO met with the OUCC and interested stakeholders, including representatives of the Industrial Group and United States Steel Corporation on August 1, 2018. During the meeting, NIPSCO identified known changes to projects from Plan Update-9. She stated that the stakeholders also discussed how NIPSCO was implementing the Supreme Court's June 20, 2018 order in this filing.



Regarding NIPSCO's proposed ratemaking treatment, Mr. Racher testified the total cost of the eligible improvements upon which NIPSCO requests authority to earn a return is \$452,919,293. This amount includes allowance for funds used during construction ("AFUDC"), other indirect costs, and net accumulated depreciation incurred through June 30, 2018.

Mr. Racher testified that NIPSCO is only seeking approval to recover a return on its investment and the related depreciation expense, property taxes, and carrying charges associated with \$3,322,780 of the total direct capital costs incurred through December 31, 2015 for the 112<sup>th</sup> Street Project. He stated this amount represents NIPSCO's best estimate provided in Cause No. 44403 and is inclusive of the 20% contingency percentage. He testified that consistent with the TDSIC-1 Order, NIPSCO will defer for recovery in its base rates the depreciation expense and property taxes related to the difference between this amount and the actual amount of the 112<sup>th</sup> Street Project. The depreciation and property taxes NIPSCO plans to defer relating to this difference for the months of January through June 2018 is \$138,096 and the total deferred balance is \$877,114.

Mr. Racher provided an overview of the indirect capital costs that are associated with capital projects and must be capitalized to comply with Generally Accepted Accounting Principles ("GAAP"). He noted these costs often cannot be charged directly to a specific capital project work order because they cannot be directly linked to one particular project and tend to be incurred away from the job site. He stated that NIPSCO groups these indirect capital costs into three categories: (1) overheads, (2) stores, freight, and handling, and (3) AFUDC.

Mr. Racher testified that NIPSCO computes AFUDC amounts and relevant AFUDC rates for eligible TDSIC projects in accordance with the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts and is also consistent with GAAP. He stated that NIPSCO also has a process to ensure that AFUDC is no longer recorded after such costs are given construction work in progress ("CWIP") ratemaking treatment, are otherwise reflected in base gas rates, or the project is placed in service, whichever occurs first. After the in-service date, NIPSCO will calculate and include for recovery post in-service carrying charges on costs that have been placed into service and are not receiving ratemaking treatment until such costs receive CWIP ratemaking treatment, or are otherwise reflected in base gas rates.

Mr. Racher testified NIPSCO calculated the depreciation expense related to TDSIC capital expenditures according to each asset's designated FERC account classification. Each asset, upon being placed in service, is depreciated by NIPSCO according to the associated FERC account composite remaining life approved by the Commission's November 4, 2010 Order in Cause No. 43894.

Mr. Racher explained the calculation of NIPSCO's "return on" portion of the revenue requirement for costs of the designated eligible improvements incurred through June 30, 2018. He stated that the annual revenue requirement for the return on investment is calculated by multiplying the June 30, 2018 net book value of all TDSIC projects by the debt and equity components of NIPSCO's WACC. The product of this calculation is then multiplied by 50% to calculate a semi-annual revenue requirement. This semi-annual amount is then multiplied by 20% to calculate the deferred amount, with an 80% portion being adjusted for taxes. The semi-annual return on investment is the amount to be recovered for bills rendered during the months of January through

June 2019, not to exceed an average aggregate increase in NIPSCO's total retail revenues of more than 2% in a 12-month period.

Mr. Racher provided the computation of the revenue conversion factor used to compute NIPSCO's pre-tax revenue requirement. He testified that the revenue conversion factor is calculated for debt and equity to properly synchronize interest for the purpose of calculating the revenue requirement. The state income tax rate used in this computation was determined in accordance with Ind. Code § 6-3-2-1.

Mr. Racher provided information concerning depreciation expense, operations and maintenance ("O&M") expense, and property taxes for the period January through June 2018. The actual expenses and taxes incurred were reduced to 80% to determine the proposed total semi-annual revenue requirement to be recovered for bills rendered during the months of January through June 2019, not to exceed the 2% excess revenue test. He explained that based on the allocators approved in the TDSIC-3 Order, NIPSCO will allocate 91.1% of O&M expenses related to the System Integrity Data Integration Project ("Records Project") based on the distribution allocator and 8.9% based on the transmission allocator.

Mr. Racher testified the TDSIC-1 Order approved NIPSCO's proposal to provide an 80% credit to the TDSIC rider for actual margins received from all new customers added under the rural extension projects. He stated these amounts are calculated by obtaining the related customer usage values and billing rate information to compute the total margin billed for the period January through June 2018.

Mr. Racher explained that the revenue requirement calculated in Cause No. 44403 TDSIC 8 is being reconciled against the actual revenues received from the customers from January through June 2018 resulting in an over-recovery of \$3,927,340.

Mr. Racher provided the allocation factors as approved in the TDSIC-3 Order, which NIPSCO used to allocate the related transmission, distribution, and storage revenue requirements. He also explained the calculation of the TDSIC factors by rate code based on the previously calculated revenue requirements.

Mr. Racher testified there is no amount in excess of 2% of retail revenues for the past 12 months. He testified NIPSCO has calculated the 2% cap by comparing the increase in TDSIC revenues with the total retail revenues for the past 12 months. The retail revenues used in this calculation represent the revenues related to the 12 months ending December 31, 2018.

Mr. Racher sponsored a clean and redlined version of NIPSCO's revised Appendix F – Transmission, Distribution and Storage System Improvement Charge showing the TDSIC factors proposed to be applicable for bills rendered during the months of January through June 2018, or until replaced by different factors that are approved in a subsequent proceeding. He also sponsored an attachment showing the projected effect of NIPSCO's Plan Update-9 on retail rates and charges and the total estimated revenue requirement for each rate class from 2014 to 2020. He stated the estimated average monthly bill impact for a typical residential customer using 69 therms per year is \$0.49, which is a \$6.07 decrease to the bill based on the factor currently in effect.

Finally, Mr. Racher noted that in the TDSIC-1 Order, the Commission authorized NIPSCO to defer 20% of the TDSIC costs incurred in connection with approved eligible improvements, including ongoing carrying charges based on the current overall WACC, and recover those deferred costs in its base rates. Accordingly, NIPSCO has deferred as a regulatory asset 20% of all TDSIC costs, including depreciation and property taxes and all tax expenses recorded as a result of the deferral of 20% of all TDSIC costs for recovery in its next rate case. He also noted that NIPSCO's Schedule 10 had been changed to reflect the revised revenue requirement reflecting exclusion of multiple unit projects.

Mr. Bull sponsored NIPSCO's Plan Update-9 and Plan Update-8. He also sponsored Petitioner's Exhibit 1, Attachment 1-A, Attachment 1, Schedule 1 (Columns B through D and H through J), showing the actual capital expenditures incurred through June 30, 2018 relating to designated eligible improvements. Mr. Bull also sponsored Petitioner's Exhibit 3, Attachment 3-A (Summary the Gas System Deliverability, Gas System Integrity, and Records Project categories) and Confidential Attachment 3-B (rural extensions projects), Confidential Attachment 3-C (summary of 112<sup>th</sup> Street Project), Confidential Attachment 3-D (summary of Plan Project Variances (Moves & Costs), and Confidential Attachment 3-E (list of multiple unit projects and associated actual costs removed from Plan Update-9).

Mr. Bull described NIPSCO's project management processes and procedures, which were developed around the Project Management Institute's Project Management Body of Knowledge guidelines. He stated the processes are designed to integrate project design and project planning, scope management, schedule and cost management, and risk management to provide a project life cycle plan and provide consistency in execution.

Mr. Bull described how NIPSCO manages the portfolio of projects included in the 7-Year Gas Plan. He explained that the Engineering department developed the Plan and initial cost estimates for the projects. The projects were then assigned to the appropriate departments (including Engineering and Gas Major Projects) for design and execution. He testified that the Project Manager and the Project Controls Team have the primary responsibility to verify that costs are accurately forecasted, accounted for, and tracked for all TDSIC projects. It is also responsible for obtaining, tracking, and paying invoices for the TDSIC projects as well as creating monthly forecasts and accruals.

Mr. Bull described NIPSCO's cost management process, which begins with initiating a new TDSIC work order. The Project Engineer/Manager submitting a Capital Initiative Form to the TDSIC Support Budget Analyst who does a preliminary check of the asset register to verify the work is a valid TDSIC project, initiates the work order, and routes the form to the Plan Owner and the Project Execution/Engineering Team for two levels of review. The purpose of the first level of review is to verify that the project and costs are TDSIC eligible. The purpose of the second level of review is to approve the scope and cost of the project work. Both the review and approval are required before work is performed and project costs are incurred, except when a work order is needed for an emergency.

Mr. Bull stated that once a TDSIC work order is initiated, NIPSCO records charges to the work order. He explained that capital dollars are separated into direct capital and indirect capital.

Mr. Bull testified that vendor-related direct costs are procured through the use of a material requisition and that a purchase order is required to order goods or services.

Mr. Bull stated that the TDSIC Project Controls Team provides bi-weekly reports that show the year-to-date actual costs to each project and an estimate of the weekly actual costs for the current month. The TDSIC Project Controls Cost Engineers meet two times per month one-on-one with the Project Managers and Manager, Gas Major Projects to review actual costs, estimate accruals, and forecast estimates. The Project Managers also review all project costs to ensure that costs are properly recorded to the TDSIC work orders. This process includes the review of non-vendor payments such as internal labor and other direct costs. The Project Managers review the detailed project cost reports provided by the Project Controls Team to ensure that all vendor payments are properly recorded, and internal labor charges are appropriate. He noted that any unusual charges are investigated and corrected if necessary.

Mr. Bull described NIPSCO's process for executing the projects included in its Plan. He stated that with the exception of rural extension projects that are better handled by the local operating area, Engineering and Gas Major Projects execute all of the projects in the Plan. The Engineering group, in partnership with Major Projects, develops the updates to the Plan and establishes the base scope of work associated with each updated Plan. Next, the Engineering group develops a more detailed scope (with internal NIPSCO stakeholders) and provides detailed estimates for the next year's projects. When possible and appropriate, the Engineering group conducts more detailed engineering prior to execution start. The TDSIC Execution group then executes the work. Mr. Bull stated the cost tracking of the work is managed by the Project Controls Team.

Mr. Bull provided an update on the potential risks associated with the completion of projects in light of actual experience that NIPSCO identified in previous stakeholder meetings, including the Aetna to LaPorte (TP2), Gary Bare Steel and Balance of System Project (BSR11), and 36/22 Highland Junction to Grant St. (TP8).

Mr. Bull explained the estimation classes identified by the Association for the Advancement of Cost Engineering ("AACE"). He stated that AACE standards identify classes of estimates based on the use of the estimate and the level of detailed engineering required to produce inputs into the estimate. NIPSCO generally uses these AACE classifications with respect to its estimates for TDSIC projects, but the process of managing costs involves more than specifying a specific class or range of estimate.

Mr. Bull provided an overview of NIPSCO's process for managing costs in its 7-Year Gas Plan. He stated that many of the projects are substantial projects that span more than a single year. He stated the process of estimate refinement is a continuous process as the 7-Year Gas Plan progresses. NIPSCO uses these estimating techniques to better utilize resources while providing the best estimate based on lead time for construction, with the goal of improving overall project continuity and efficiency.

For projects more than two years out in the Plan, Mr. Bull stated that they have been estimated utilizing a unit cost methodology. The project scope is developed based on inputs from the risk model, engineering planning, operations, and the application of NIPSCO's engineering

standards. Historical costs of similar type projects are utilized to estimate the cost of the project with limited engineering being complete. These estimates are considered Class 4 and no detailed site visit has been conducted.

For projects that are planned for construction within the next two years of the Plan, Mr. Bull stated NIPSCO utilizes a more detailed estimating process that includes a project scope review. Specific site details are then integrated into the estimate allowing risks that may result in the project cost decreasing or increasing based on the outcome of the site visit and input from all impacted parties. At this phase, estimates are refined and considered Class 3, with at least one site visit, and are based on additional engineering or analysis along with scope definition. After projects advance from this phase, detailed engineering begins, which continues to refine the project cost estimate. He explained that for most projects, this will now occur within 18-24 months of the start of construction, and detailed engineering will be complete. Detailed engineering includes generation of material lists, associated labor, and technical drawings to be utilized during construction. Estimated labor hours are utilized to develop a resource plan which includes both internal and external labor resources. Detailed engineering documents are also used to bid external construction projects. A constructability review is also conducted to review the detailed engineering with project management and construction. Mr. Bull stated this typically takes place at the project site and is designed to identify associated project risks for integration into the cost estimate. At this phase, estimates are refined and considered Class 2. He testified that until construction begins, and until the project is complete, it is difficult to define all of the factors that influence a project's final cost. Factors that can influence project costs include weather, seasonal site conditions, emergencies, specific equipment needs or other situations not identified until the construction process has started.

Mr. Bull explained the process NIPSCO uses to determine whether requested changes in cost estimates are eligible for TDSIC treatment. During the first half of the year, a formal reprioritization meeting is held once a month to review and approve project estimate changes. Because of increased requests, NIPSCO increases the meeting frequency to twice a month during the second half of the year. This reprioritization process starts when the need for a project estimate change is identified and the Project Management team completes a Project Change Request ("PCR") form. NIPSCO requires a PCR for estimate changes that are +/- \$30,000 or 15%, whichever is greater, or any estimates changes that exceed \$100,000 for any project even if it does not meet the 15% threshold in this filing. He stated the intent of the reprioritization process is for leadership to review and approve estimate changes before they occur.

Mr. Bull stated that the TDSIC Support team summarizes a list of requested project estimate decreases and increases from the PCRs for review at the reprioritization meeting. Each project estimate change is reviewed and approved or rejected by a level of leadership in accordance with NIPSCO's Capital Governance Policy. If the change is approved, then it is included in the next Plan update. If the change is not approved, it may be placed on a "hold" list for review at a future meeting, or it may be denied, but it will not be included in a Plan update until it is approved.

Mr. Bull testified that consistent with the TDSIC-1 Order, Plan Update-9 shows the originally approved cost estimate for the 112<sup>th</sup> Street Project. He sponsored Confidential Attachment 3-C showing the approved costs, actual costs as of December 31, 2014, December 31, 2015, December 31, 2016, December 31, 2017, and June 30, 2018, total estimated costs, and the

amount of total estimated costs that exceed the approved amount related to the 112<sup>th</sup> Street Project. He testified the 112<sup>th</sup> Street Project was placed in service in December 2014 and is operational. NIPSCO did not perform any additional work related to 112<sup>th</sup> Street project in 2016 or 2017. Although minimal capital costs associated with the final closeout of the project were booked in 2016 and 2017, he indicated that NIPSCO does not anticipate any additional capital costs for the 112<sup>th</sup> Street Project.

Mr. Bull noted that in the TDSIC-1 Order, the Commission approved NIPSCO's proposal to include all rural gas extensions, both those that qualify using the 20-year margin test under Ind. Code § 8-1-39-11 and those that may qualify under NIPSCO's existing line extension policy, and provide an 80% credit to the TDSIC rider for actual margins received from all new customers added under the rural extensions projects. He testified that in determining the number of connections expected to be made annually, the New Business department forecasts the number of meters projected to be added each year. This is based on previous customer connections, planned marketing, and the anticipated availability of new main. Once the total number of new connections is determined, NIPSCO further refines the estimate into what is expected to be TDSIC-eligible. Mr. Bull explained the two primary methods NIPSCO uses to determine whether a new rural business project is eligible for TDSIC treatment. He testified the rural extensions projects included in Plan Update-9 are projected to pass the 20-year test identified in Ind. Code § 8-1-39-11.

Regarding the Records Project, Mr. Bull testified that to date, NIPSCO has successfully completed 17 out of 28 deliverables for the project, resulting in approximately 41,885 linens mined and 213,944 features added for placement into the NIPSCO's Geographic Information System ("GIS"). He testified that in Plan Update-9, NIPSCO is not proposing any changes to the approved cost estimates for the Records Project.

Mr. Bull described the Plan update process approved in the 44403 Order and the contents of Plan Update-9. He stated that the Plan update process is important because information is continually gathered around asset condition and updated risk analysis data. Additionally, configuration of NIPSCO's system, load growth, deliverability to critical customers, and other system events will serve to modify the consequence of failure driver in NIPSCO's aging infrastructure risk model. He said that as NIPSCO's customer demands evolve, both from a location and utilization perspective, system deliverability requirements must evolve with them.

Mr. Bull testified multiple unit projects that did not have a specifically identified asset in TDSIC-3 or TDSIC-1 have been removed from Plan Update-9 consistent with the Supreme Court's June 20, 2018 order.<sup>5</sup> Mr. Bull sponsored Confidential Attachment 3-E showing a detailed list of the multiple unit projects (including Project ID, Project Category, and Project Title) and the associated actual costs for the period May 1, 2014 through December 31, 2017 removed from Plan Update-9.

As of June 30, 2018, the total gross direct capital expenditures associated with NIPSCO's designated eligible improvements is \$183,281,169 [Petitioner's Exhibit 1, Attachment 1-A, Attachment 1, Schedule 1 (Page 4, Lines 1-3, Column H)]; the total indirect capital expenditures

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<sup>5</sup> The multiple unit projects and associated actual costs for the period January 2018 through December 2020 were removed in Plan Update-8.

is \$18,015,706 [Petitioner's Exhibit 1, Attachment 1-A, Attachment 1, Schedule 1 (Page 4, Line 4, Column H)]; and the total AFUDC for capital expenditures is \$6,118,391 [Petitioner's Exhibit 1, Attachment 1-A, Attachment 1, Schedule 1 (Page 4, Line 5, Column H)], for total gross capital expenditures associated with NIPSCO's designated eligible improvements of \$207,415,266 [Petitioner's Exhibit 1, Attachment 1-A, Attachment 1, Schedule 1 (Page 4, Line 6, Column H)].

Mr. Bull stated that there are differences in the transmission and distribution subtotals when comparing Project Category to FERC account. He explained that some projects, such as inspect and mitigate projects, incur charges that are booked to both distribution and transmission FERC accounts. However because a majority of project costs related to specific projects are charged to either distribution or transmission FERC accounts, the project is classified into either a transmission or distribution project category on Plan Update-9 and related schedules.

Mr. Bull testified Plan Update-9 reflects current cost estimates for the completion of the projects in the 7-Year Gas Plan. The result is an overall decrease in direct capital costs of \$7,558,150 or about 1.13% across the remainder of the 7-Year Gas Plan. When indirect capital costs and AFUDC projections are incorporated, the overall projected 7-Year Gas Plan cost decrease is \$8,343,262 or about 1.08%.

Mr. Bull testified Plan Update-9 does not include any new projects that were not previously included in the 7-Year Gas Plan. He showed the total projected capital spend, including indirect capital costs and AFUDC, for Plan Update-9 compared to Plan Update-8, as follows:

Table 1 Comparison of Total Capital Dollars (inclusive of indirect capital costs and AFUDC)								
	2014	2015	2016	2017	2018	2019	2020	7-Year Total
<b>Plan Update-8</b>	\$43,116,426	\$103,200,473	\$127,266,542	\$136,957,233	\$129,693,320	\$111,455,292	\$123,772,972	\$775,462,258
<b>Plan Update-9</b>	\$39,127,749	\$96,372,147	\$124,174,823	\$127,265,440	\$134,147,045	\$122,266,297	\$123,765,495	\$767,118,996
<b>Variance</b>	-\$3,988,677	-\$6,828,326	-\$3,091,719	-\$9,691,793	\$4,453,725	\$10,811,005	-\$7,477	-\$8,343,262

Mr. Bull testified the indirect cost percentage used in Plan Update-9 did not change from that used in Plan Update-8, but the AFUDC percentage used in Plan Update-9 did change from that used in Plan Update-8. Mr. Bull explained that as was experienced with the 2014, 2015, 2016, and 2017 projects, additional costs may be incurred in a subsequent calendar year for a prior year project for a variety of reasons, including restoration costs for work completed, vendor invoices, and labor costs incurred but not submitted. In addition, NIPSCO accruals are booked in December based on the best information known at the time including both known costs and estimates for work completed but not yet booked. When invoices are received in subsequent months, the actual cost is booked and the prior period accrual is reversed. This process can result in either an additional charge or credit booked to the work order in a subsequent year. There may also be late-issued vendor invoices related to work completed that were not known when the accruals were estimated and therefore not incorporated into those accruals. Projects may also be multi-year projects, or may start in one year and end the following year depending on the project start and end dates and project schedule.

Mr. Bull explained how NIPSCO reflects the costs incurred in a subsequent calendar year in the Plan. He stated that in Plan Update-9, the remaining years actual costs (i.e., the amount of actual costs for the project year that may be incurred in a subsequent year) is \$(230,594) for Project Year 2014, \$215,423 for Project Year 2015, and \$(251,698) for Project Year 2016, and \$(81,646) in Project Year 2017, resulting in a Prior Year Reconciliation of \$(187,761) in 2015, \$273,136 in 2016, \$(116,342) in 2017, and \$(317,549) in 2018.

Mr. Bull identified the variances in actual or updated direct costs for the 2018 Projects as compared to the best estimates of the costs approved in Plan Update-8. He testified that Plan Update-9, 2018 Project Detail shows the approved project cost for the 2018 Projects was \$113,788,628, the updated project cost for the 2018 Projects is \$117,681,997, resulting in a total increase of \$3,893,369. Mr. Bull explained what drove the noteworthy cost increases (variances greater than \$100,000 or 20%, whichever is greater, over what was approved in Plan Update-8) for one of the 2018 Projects.

Mr. Bull identified the variances in actual or updated direct costs for the 2019 Projects as compared to the best estimates of the costs approved in Plan Update-8. He testified that Plan Update-9, 2019 Project Detail shows the approved project cost for the 2019 Projects was \$93,590,228, the updated project cost for the 2019 Projects is \$102,668,349, resulting in an increase of \$9,078,121. Mr. Bull explained what drove the noteworthy cost increases (variances greater than \$100,000 or 20%, whichever is greater, over what was approved in Plan Update-8) for one of the 2019 Projects.

Mr. Bull identified the variances in actual or updated direct costs for the 2020 Projects as compared to the best estimates of the costs approved in Plan Update-8. He testified that Plan Update-9, 2020 Project Detail shows the approved project cost for the 2020 Projects was \$105,870,783, the updated project cost for the 2020 Projects is \$105,870,783, resulting in no variance.

Mr. Bull testified Plan Update-9 shows actual costs for the 2014–2017 Projects and updated cost estimates for the 2018–2020 Projects. He testified Plan Update-9 provides information to support NIPSCO’s best estimate of the cost of investments included in the Plan and includes confidential: project estimates for 2018–2020; summary of unit cost estimates; an asset register which includes detailed cost information; PCRs for 2018 Projects; and a Risk Model (updated in TDSIC-7). Mr. Bull testified that for 2018 Projects, the updated estimates are generally based on the current forecast to complete the project. For 2019 Projects, the updated estimates reflect the near final engineering design and incorporation of both risks and recent experiences with material and labor costs. He stated the cost estimates for the 2020 Projects are generally unit costs based on historical experience or similar projects that were executed in earlier years. Mr. Bull testified all of the cost estimates are the best estimate of costs based on the information available at the time.

Mr. Bull testified the eligible improvements included in Plan Update-9 will serve the public convenience and necessity by making investments for safety, reliability, system modernization, and economic development consistent with public policy and the public interest. Mr. Bull testified NIPSCO has a statutory obligation to provide adequate retail service in its certificated gas service territory pursuant to Ind. Code § 8-1-2.3-4(a) and that NIPSCO performs this obligation for the public convenience and necessity.



Mr. Bull testified that the estimated costs of the eligible improvements included in the Plan Update-9 are justified by incremental benefits attributable to the Plan. He stated that Plan Update-9 focuses on maintaining safe, reliable service for NIPSCO's customers in a cost-effective manner. He stated that the emphasis of most of the Plan's investments is to positively impact public safety. Safety drivers focus on risk reduction related to gas system leaks, pipeline ruptures, or incidents of pressure excursion. Reliability drivers include the avoidance of gas outages driven from the inability to maintain gas system pressure during peak load events.

Mr. Bull testified that Plan Update-9 is intended to provide benefits in the form of investments to maintain and improve system reliability through the capacity of the system to deliver gas to customers when they need it, replacement of certain system assets to ensure the ongoing integrity and safe operation of the gas system, investment in data and technology required for the Records Project, and the extension of gas facilities into rural areas. He stated the rural extension projects included in Plan Update-9 will continue to increase the number of rural customers served over the life of the Plan. Mr. Bull concluded that Plan Update-9 cost effectively addresses safety, reliability, system modernization, and the extension of gas service into rural areas, and provides incremental benefits to NIPSCO's customers.

**B. OUCC's Case-in-Chief.** The OUCC presented the testimony of Mark H. Grosskopf, a Senior Utility Analyst in the Natural Gas Division and Leon A. Golden, a Utility Analyst in the Natural Gas Division.

Mr. Grosskopf testified that with the exception of removing NIPSCO's bare steel distribution projects from this filing, he recommended approval of NIPSCO's TDSIC calculations. He stated Petitioner should remove bare steel projects from Attachment 1, Schedule 1, page 2, which will flow through the remaining TDSIC revenue requirement calculations, ultimately affecting the calculated TDSIC factors and deferred revenue requirement. He stated NIPSCO should also adjust indirect capital and AFUDC, carrying charges, depreciation expense, property taxes, and O&M expenses associated with the bare steel projects. Additionally, NIPSCO should reflect the effects of removing bare steel projects from previous filings (TDSIC-4 through TDSIC-8) as currently shown for removal of multiple unit projects. He stated that NIPSCO's other schedules and calculations are consistent with the findings set forth in prior TDSIC Orders and in compliance with the Commission Order in Cause No. 44988.

Mr. Grosskopf stated that he performed a comprehensive analysis of the calculations and data flow contained in NIPSCO's TDSIC rate schedules. He stated he tied specific data to source documentation provided by NIPSCO, verified calculations, and compared the schedules to those schedules approved in NIPSCO's prior TDSIC filings. He stated he reviewed and verified NIPSCO's compliance filing where TDSIC capital assets were rolled into base rates in the Step One rate increase in Cause No. 44988. He also reviewed work order documentation to verify completed capital projects, inquired into the calculation and procedures for indirect costs and AFUDC, reviewed summary detail of O&M expenses, and verified customer counts and total therms billed with summary documentation. Mr. Grosskopf stated that he verified the calculation for NIPSCO's cost of long-term debt and reconciled cost of capital balances with NIPSCO's balance sheet. He also verified the public utility fee and tax rates.

Mr. Grosskopf testified that consistent with the Tax Cuts and Jobs Act of 2017 ("TCJA"), NIPSCO applied a 21% federal income tax rate to the revenue requirement in this filing. Also, in NIPSCO's Phase 1 TCJA 30-Day Filing No. 50168 approved on May 1, 2018, NIPSCO adjusted the TDSIC-7 revenue requirement to reflect the 21% income tax rate. He stated the adjusted TDSIC-7 revenue requirement is used to calculate the previous period variance when comparing the revenue requirement with actual collections during the months of January through June 2018. He stated this TDSIC-7 reconciliation is consistent with the Settlement Agreement recently approved in Cause No. 44988. He stated the over-recovery from TDSIC-7 calculated on Schedule 6 is carried to Schedule 8 to offset the revenue requirement calculated in TDSIC-9. Also on Schedule 8, the TDSIC-9 revenue requirement is reduced further by the over-collection of income tax during the four-month period of January through April, 2018. He stated that a combination of an over-collection of income taxes through TDSIC-7 rate factors and the over-collection of income taxes through base rates, applied to the TDSIC-9 revenue requirement, yields a net TDSIC rate factor credit instead of an additional charge.

Mr. Grosskopf testified NIPSCO's most recent rate case in Cause No. 44988 was approved on September 19, 2018. Customer class allocation factors applicable to TDSIC revenue requirements are specified in the TDSIC statute to be those that are approved in the most recent base rate case. He stated NIPSCO's customer class allocations shown on Attachment 2, Revised Schedule 4 of Petitioner's Exhibit 1, Attachment 1-A agree with the allocators in Joint Exhibit E to the Stipulation and Settlement Agreement approved in Cause No. 44988. Mr. Grosskopf stated he reviewed and verified these allocation factors were used in the allocation of revenue requirements on Attachment 1, Revised Schedule 7 of Petitioner's Exhibit 1, Attachment 1-A.

Mr. Grosskopf testified NIPSCO's 2% cap test reflected in Attachment 1, Revised Schedule 9 of Petitioner's Exhibit 1, Attachment 1-A is calculated correctly. He stated he traced pertinent numbers to accompanying schedules and verified the calculations provided by NIPSCO. He stated NIPSCO's proposed revenue requirement does not exceed the 2% retail revenue cap for the 12-months ended June 30, 2018.

Mr. Grosskopf testified Petitioner's Attachment 1, Revised Schedule 8 of Petitioner's Exhibit 1, Attachment 1-A presents the calculation of the total TDSIC rate adjustment factors. He stated he reviewed the calculations and flow of inputs from other schedules and, with the exception of the removal of bare steel projects recommended by the OUCC in this Cause, Revised Schedule 8 accurately calculates the TDSIC rate factors, including adjustments due to the TCJA.

Mr. Grosskopf testified Petitioner's Attachment 1, Revised Schedule 6 of Petitioner's Exhibit 1, Attachment 1-A shows the reconciliation of the approved TDSIC-7 revenue requirement, adjusted for the new 21% tax rate, with actual revenue collected during the six-month period of January through June 2018. He stated the result is an over-recovery in the amount of \$3,927,340, which will be deducted from the revenue requirement to be collected from customers through the TDSIC rate calculation in this Cause.

Mr. Grosskopf testified Petitioner's proposed TDSIC Rate Schedules on Appendix F accurately reflects the TDSIC calculations presented by Petitioner's Attachment 1 of Petitioner's Exhibit 1, Attachment 1-A. He stated Appendix F will need to be revised to reflect the elimination of the bare steel projects from TDSIC revenue requirements.

Mr. Grosskopf testified Petitioner's Attachment 1, Schedule 10 reflects the cumulative total deferred revenue requirements, showing the 20% deferred amounts for the past and current TDSIC filings, broken out by return on capital, return of expense, and carrying charges. He stated Schedule 10 accurately tracks deferred capital expenditures and expenses, pending recovery in Petitioner's next base rate case. Mr. Grosskopf testified that as of October 1, 2018, NIPSCO transferred \$13,566,544 of the deferred revenue requirement to base rates. He stated Revised Schedule 10 shows a remaining \$3,606,548 deferred revenue requirement qualified for base rate treatment in a future Cause No. 44988 compliance filing. He testified that removal of bare steel projects from this and previous TDSIC filings recommended by the OUCC will necessitate a change to these amounts.

Mr. Grosskopf testified that Petitioner removed from TDSIC recovery calculations the capital expenditures associated with the 112<sup>th</sup> Street Project that exceeded the estimate provided by NIPSCO in Cause No. 44403. Also, consistent with the TDSIC-1 Order, NIPSCO will defer, for recovery in its next base rate case, the depreciation and property tax expense related to the difference between the approved amount and the actual amount of the 112<sup>th</sup> Street Project. Mr. Grosskopf testified the deferred depreciation expense and property tax expense associated with the 112<sup>th</sup> Street Project is shown on Petitioner's Attachment 1, Schedule 11 of Petitioner's Exhibit 1, Attachment 1-A. He stated that as shown on NIPSCO's Revised Schedule 11, the deferred 112<sup>th</sup> Street Project expenses have not been moved to base rates in Cause No. 44988, but these deferred expenses qualify for base rate treatment in a future Cause No. 44988 compliance filing.

Mr. Grosskopf agreed with the rural extension margin credit calculated by NIPSCO. He stated the margin credit balances the interests of the utility and the ratepayers and the OUCC continues to support NIPSCO's approved 80% margin credit for rural extensions for each TDSIC filing.

Mr. Grosskopf testified that due to the Supreme Court Order, NIPSCO provided calculations detailing credits to the current revenue requirements reflecting removal of cost recovery and a return on capital for multiple unit projects in previous TDSIC filings. He testified that Attachment 1, Schedule 5 of Petitioner's Exhibit 1, Attachment 1-A applies these credits to remove the monetary impact the multiple unit projects had on TDSIC-4 through TDSIC-7 and that NIPSCO had already eliminated the multiple unit projects from TDSIC-8 at the time of that filing. Mr. Grosskopf recommended the same method be used to remove the monetary impact the bare steel projects had on TDSIC-4 through TDSIC-8.

Mr. Golden discussed his analysis of transmission, distribution, and storage projects included in NIPSCO's Plan Update-9. He discussed two specific projects that experienced increased costs, and why the OUCC does not object to the actual or estimated cost increase for the projects he determined to have sufficient support. Mr. Golden recommended the Commission approve NIPSCO's Plan Update-9, with the exception of NIPSCO's bare steel replacement project. He also discussed how the Supreme Court Order effects NIPSCO's original 7-Year Gas Plan and its current Plan Update-9.

Mr. Golden testified NIPSCO's case-in-chief does not contain sufficient information regarding location for its bare steel replacement project for each year of its 7-Year Plan. In addition to the lack of sufficient project detail, he indicated that bare steel replacement project may be more

appropriate for inclusion in a federally mandated compliance plan and recommended that the bare steel replacement project be considered a multiple unit project and be removed from NIPSCO's 7-Year Gas Plan.

C. **NIPSCO's Settlement Testimony.** Ms. Becker provided background of the proceedings to which the TDSIC Settlement is applicable and summarized the terms of the TDSIC Settlement. She also noted that by separate agreement, contingent on approval of the TDSIC Settlement, the Industrial Group and the OUCC have determined a mutually acceptable award for recoverable fees and expenses consistent with common fund principles and established Commission practice. She testified the agreed amount of the fee award was netted against the reduction in revenue requirement to be implemented in TDSIC-9.

Ms. Becker explained that the TDSIC Settlement is reasonable and serves the public interest for several reasons. She testified the TDSIC Settlement is consistent with the Supreme Court Order requirement that periodic rate increases are available only for specific projects a utility designates in the threshold TDSIC proceeding and not for multiple unit project categories it describes using ascertainable planning criteria. She testified the Settling Parties have identified such project categories that were not identified with specificity in TDSIC-3 and all costs for those projects as to which particular improvements were identified for the first time in TDSIC-4 have been removed for TDSIC recovery to the extent those projects were not properly designated in the previously approved Plan update. In addition, Ms. Becker testified that the TDSIC Settlement allows NIPSCO to continue to implement the Plan, which is designed to provide a flexible and cost effective solution for maintaining safe, reliable service for NIPSCO's customers, in compliance with the Supreme Court Order. She testified the TDSIC Settlement also provides a clear path forward for future TDSIC filings. Finally, she testified the TDSIC Settlement constitutes a just, reasonable, and complete resolution of the issues raised in these proceedings and brings closure to this protracted and costly litigation.

Mr. Racher testified NIPSCO changed the amounts to be refunded through the 80% revenue requirement and adjusted through the 20% deferred revenue requirement for multiple unit projects from its initial proposal. The refund amount now includes interest of \$271,944. He explained that the amounts related to the bare steel replacement project were calculated in a similar manner as the amounts related to multiple unit projects. Interest on the amount collected has been calculated in the amount of \$101,735. Mr. Racher stated the TDSIC Settlement indicates that 50%, or \$2,981,716, of the total revenue requirement for the cost overrun amounts of \$5,963,432 will be removed from the revenue requirement.

Mr. Racher stated NIPSCO agreed in the TDSIC Settlement to calculate interest amounts on the moneys collected for the multiple unit projects and bare steel replacement project. He testified the interest was applied at the rate of 8% from the date of collection through December 31, 2018. As to how the refund and adjustment would be implemented, Mr. Racher testified that 80% of the amounts are reflected as a refund or adjustment on Petitioner's Exhibit 2-S, Attachment 1, Second Revised Schedule 5 and 20% of the amounts are included on Attachment 1, Second Revised Schedule 10. Mr. Racher indicated that NIPSCO expects the credits to be included in the TDSIC factor for a period of six months. NIPSCO will make a compliance filing to become effective July 1, 2019, to remove all effects of the credits, including the TCJA credit; the credits

for multiple unit projects including bare steel; agreed upon cost increase credits; and the fee award. He stated any variance will be addressed in Cause No. 44403 TDSIC 11.

Mr. Racher provided the calculation of the TDSIC factors by rate code based on previously calculated revenue requirements reflecting the TDSIC Settlement. He stated the factors are calculated by dividing the total revenue requirement by the estimated therm sales to compute a billing factor for bills to be rendered by NIPSCO for the months of January through June 2019. The estimated average monthly bill impact for a typical residential customer using 69 therms per month is a credit of \$0.78, representing a \$6.36 decrease from the factor currently in effect.

Mr. Bull sponsored NIPSCO's Revised Plan Update-9 reflecting the agreed terms in the TDSIC Settlement.

Mr. Bull provided the total actual capital expenditures associated with NIPSCO's investment in eligible improvements as of June 30, 2018. He stated the total gross direct capital expenditures associated with NIPSCO's investment in designated eligible improvements is \$385,162,345, the total indirect capital expenditures is \$45,037,130, the total AFUDC for capital expenditures is \$11,112,620, and the total gross capital expenditures is \$441,312,095.

Mr. Bull testified that in accordance with the TDSIC Settlement, for purposes of future proceedings for the remainder of NIPSCO's existing 7-Year Gas Plan (Years 2019 and 2020), the total capital as set forth in Exhibit A to the TDSIC Settlement is subject to annual and 7-year caps in the amounts shown for 2019, 2020, and 7-Year Total, subject to a 5% flexibility factor for each annual cap. He stated the 7-Year Total cap will not be subject to the 5% flexibility factor. He stated that in each future proceeding relating to the existing 7-Year Gas Plan, NIPSCO will retain the burden to support recovery of actual or projected costs in excess of approved amounts and the other parties will retain the ability to challenge any such costs, pursuant to Ind. Code § 8-1-39-9(f). Mr. Bull testified the agreed-to caps are as follows:

	2019	2020	7-Year Total
<b>Allowed (Cap + 5%)</b>			
Direct Capital	\$87,169,382	\$85,470,110	\$560,017,892
Indirect Capital	\$14,818,795	\$14,529,919	\$81,452,481
AFUDC	\$3,486,775	\$3,418,804	\$18,846,203
TDSIC Ratemaking Cap	\$105,474,952	\$103,418,833	\$660,316,576
5% Limit	\$5,273,748	\$5,170,942	\$
Cap Plus 5%	\$110,748,699	\$108,589,775	\$660,316,576

Mr. Bull testified there is a balancing of interests among NIPSCO's stakeholders and that all parties want to assure NIPSCO's ability to provide safe and reliable service at just and reasonable rates. He stated the TDSIC Settlement reflects the Settling Parties' desire to allow NIPSCO to pursue an appropriate level of infrastructure system improvement projects while providing protections to ratepayers, including an overall cap to be included in the Plan, which provides certainty regarding cost recovery for the duration of the Plan. He testified that the issue of whether project cost increases are recoverable has been litigated at the Commission and

appealed to the Court of Appeals in NIPSCO's TDSIC-5, -6, -7, and -8, and that the TDSIC Settlement reflects an appropriate resolution by providing annual caps, while allowing project by project variation.

Mr. Bull explained how NIPSCO can deviate above the annual cap. He testified that because of the way NIPSCO's projects are planned, managed, and executed, it is nearly impossible to schedule expenditures that match exactly to the cap for each year of the Plan. He stated that if NIPSCO does not spend up to the cap in a particular year, the remaining amount may be rolled over as an increase to the cap in the following years. He stated that if a given project is rescheduled in whole or in part to a different year, the annual caps for the affected years will be adjusted to reflect the reduction or addition of the approved estimate for that project. He stated that the parties and the Commission also retain the ability to review any costs in excess of approved estimates in accordance with Ind. Code § 8-1-39-9(f).

**D. OUCC's Settlement Testimony.** Mr. Grosskopf testified the TDSIC Settlement serves the public interest in several ways. He stated, first and foremost, the TDSIC Settlement saves ratepayers more than \$9.2 million, which in combination with the parties' agreement in NIPSCO's TDSIC-8 proceeding brings total customer savings to over \$10.4 million. He stated customers will also pay less going forward based on lower TDSIC rider charges and 20% deferral amounts, and a revised Plan update with new annual and 7-Year caps are beneficial to both customers and NIPSCO. He stated the public interest is served when all customers are able to pay lower rates and noted this is particularly true in settlements, where multiple parties with varied interests have negotiated at arm's length and come to a resolution they believe is reasonably beneficial given the totality of circumstances. Mr. Grosskopf stated the timing of the agreed refunds/credits further promotes the public interest, as ratepayers will receive a larger, immediate benefit rather than multiple, smaller amounts over an extended period of time. Additionally, the credits/refunds are allocated proportionally in the amounts originally paid by each customer class, assuring neither costs nor benefits have been unfairly shifted. He testified the Revised Plan Update-9 brings the collection of remaining projects, costs, and estimates into clearer focus immediately. In addition, the caps provide customers security against large, annual cost increases and the 5% annual flexibility factor frees NIPSCO from rigid spending and project management limitations while still providing safe, adequate, and reliable service.

Mr. Grosskopf testified the TDSIC Settlement also serves the public interest because, as recommended by the OUCC, the bare steel replacement project will be removed from this and future TDSIC riders; and NIPSCO will be able to recover future costs for both bare steel projects and its Kokomo Low Pressure System project through its federally mandated compliance ("FMCA") tracker. Noting the OUCC advocated for the removal of the bare steel replacement project from the TDSIC as a multiple unit project, Mr. Grosskopf stated the TDSIC Settlement directly addresses that concern by removing bare steel cost recovery from TDSIC-9 going forward and moving those projects to NIPSCO's FMCA, consistent with both the OUCC's position and other gas utilities' practices. The TDSIC Settlement gives NIPSCO the certainty that neither the OUCC nor Industrial Group will oppose bare steel or the Kokomo Low Pressure System project's eligibility within the FMCA, eliminating both litigation risk and improving the chances for an expeditious order for these important projects.

Mr. Grosskopf testified the TDSIC Settlement also serves the public interest because all parties receive both certainty and finality after years of litigation before the Commission and appellate courts with a compromise that balances risks and rewards faced by each party. He stated that administrative efficiency is well served by resolving all disputes in this single proceeding. He noted that risk is inherent in all litigation, so parties compromise and settle on less than their optimal outcome to avoid the prospects of a potentially more damaging result. Litigation is also costly, and parties reasonably settle to avoid those costs. He expressed his belief that public interest is served when all parties, each with their divergent views, negotiate at arm's length and arrive at a mutually agreeable result.

Finally, Mr. Grosskopf testified that NIPSCO's Gas TDSIC cases -4, -5, -6, -7 and -8 were all appealed. He stated the public interest is served by the resolution of all issues in these cases, as well as TDSIC-9, that results in cost certainty for the parties, a reasonable balancing of the parties' interests, and administrative/judicial economy. Mr. Grosskopf testified the OUCC recommends the Commission should find the TDSIC Settlement in the public interest and approve it, in its entirety.

**E. Industrial Group's Settlement Testimony.** The Industrial Group presented the testimony of Nicholas Phillips, Jr., consultant and a Managing Principal of Brubaker & Associates, Inc.

Mr. Phillips discussed how the TDSIC Settlement incorporates the relief required by the Supreme Court Order. He described the actions taken by NIPSCO in response to the Supreme Court Order concerning the removal of multiple unit projects. He also testified that in TDSIC-8 and TDSIC-9, there was disagreement between the parties as to whether the bare steel replacement project was, or was not, subject to removal under the Supreme Court Order. He stated that to resolve that dispute, the Settling Parties have agreed the bare steel replacement project will be removed from NIPSCO's TDSIC Plan, and that related costs collected from TDSIC-4 on will be refunded with interest. He testified the total revenue requirements collected through the TDSIC rider, deferred for later rate case treatment, and included in the TDSIC-9 filing are, in all, approximately \$2.328 million.

Mr. Phillips testified that as with the multiple unit projects, NIPSCO will refund to customers the amounts collected through the TDSIC rider for the bare steel replacement project and make an adjustment to its deferral account. He noted the TDSIC Settlement further states that, on a prospective basis, NIPSCO may file a petition under Ind. Code ch. 8-1-8.4 to treat the bare steel replacement project as a federally mandated compliance project, the eligibility of which the OUCC and Industrial Group have agreed not to oppose. Similarly, the Settling Parties have also agreed to remove the Kokomo Low Pressure System portion from the Plan and will not oppose its eligibility for treatment as a federally mandated compliance project under Ind. Code ch. 8-1-8.4.

Mr. Phillips testified the TDSIC Settlement also addresses the issue of NIPSCO's ability to recover certain cost increases. He testified that the cost increases related to the multiple unit projects are covered by the provisions in the TDSIC Settlement specific to multiple unit projects. With respect to non-multiple unit projects cost increases, the Settling Parties have agreed that one-half of the approximately \$5.96 million in total revenue requirement that remains in dispute in the pending appeals (i.e., approximately \$2.98 million) will be removed from the Plan. He testified

that similar to the treatment of costs for the bare steel replacement project, one-half of the amounts for the contested cost increases that have been collected through the TDSIC rider will be refunded to customers, as a credit against the requested recovery in TDSIC-9. Interest will not be added and NIPSCO will make an adjustment to the deferral account in its Step Two compliance filing in Cause No. 44988.

Mr. Phillips described the additional ratepayer protections built into the TDSIC Settlement, including the addition of annual and 7-year caps. He testified the annual caps will have a 5% tolerance while the 7-Year Total will not. Mr. Phillips testified the Settling Parties have also agreed that NIPSCO will retain the burden to support recovery of the actual or projected costs in excess of the approved amounts, and that the OUCC and Industrial Group will retain the ability to challenge such excess costs under Ind. Code § 8-1-39-9(f). He stated that the caps established in this provision of the TDSIC Settlement, accordingly, provide protection for ratepayers against material cost increases in the future for the remainder of the Plan, while retaining the standard for reviewing excess costs in specific instances.

Mr. Phillips testified the TDSIC Settlement is reasonable and in the public interest. He stated that the TDSIC Settlement results in approximately \$9.23 million in direct benefits to ratepayers through refunds included as credits in TDSIC-9, reductions of the deferred amounts to be collected by NIPSCO through its new base rates, and agreed removals from the revenue requirements proposed by NIPSCO in TDSIC-9. In addition, as a result of the multiple unit projects removal in TDSIC-8 in response to the Supreme Court Order, another \$1.219 million has already either been excluded from the TDSIC rider or removed from NIPSCO's deferral account, and thus is not being collected from ratepayers through the TDSIC mechanism or in base rates. He testified that in total, the TDSIC Settlement represents a reduction of approximately \$170 million in total capital costs from the TDSIC Plan. For the remainder of the Plan, the reduction in capital costs will result in future savings by ratepayers through lower TDSIC rider charges and later collection of deferred amounts.

Mr. Phillips testified that the TDSIC Settlement also provides a path forward for NIPSCO to seek prospective treatment of its bare steel replacement and Kokomo Low Pressure System projects through filings under Ind. Code ch. 8-1-8.4.

Mr. Phillips testified that the TDSIC Settlement brings to a close nearly three years of litigation between the Industrial Group and NIPSCO that began with the filing of NIPSCO's TDSIC-4 petition in February 2016. He testified the TDSIC Settlement further establishes a framework for parties to move forward in future TDSIC filings by NIPSCO. Specifically, the TDSIC Settlement removes from contention the recovery of certain contested costs and, on a going forward basis, establishes caps with defined tolerances for the remaining two years of the Plan. He stated that neither the Industrial Group nor the OUCC, however, have waived their right to challenge particular cost increases, thus preserving an important ratepayer protection.

In conclusion, Mr. Phillips testified that because of the benefits to ratepayers, the resolution of contested issues, the resolution of years of active litigation, and the ratepayer protections put in place while establishing a framework for future TDSIC filings, he believes the TDSIC Settlement is reasonable and in the public interest, and should be approved.



**F. Industrial Group's Supplemental Settlement Evidence.** In the Verified Motion for Award of Attorney Fees and Litigation Expenses, the Industrial Group and its counsel Lewis & Kappes sought an award of \$1.5 million pursuant to the common fund doctrine. Attached to the Motion was the Supplemental Settlement, entered into between the OUCC and the Industrial Group and its counsel. The Supplemental Settlement provides the Supplemental Settling Parties' agreement that an award of \$1.5 million reflects attorney time reasonably expended on the relevant proceedings, times the established hourly rates for the particular attorneys, enhanced with a multiplier of less than 3.2, plus recoverable expenses. The Supplemental Settlement indicates the agreed award amounts to less than 14.4% of the readily quantifiable rate benefits to NIPSCO ratepayers directly achieved through the legal efforts in the relevant proceedings. The Supplemental Settling Parties stipulated that the agreed award is consistent with common fund principles and established Commission practice.

The Supplemental Settlement was supported with the Verified Declaration of Todd A. Richardson, lead counsel for the Industrial Group, and by the testimony of Cory Brundage, an experienced attorney familiar with fee standards and the market for legal services in Indiana.

In the Verified Declaration, Mr. Richardson described his professional background and attached his Curriculum Vitae. He stated that since he joined Lewis & Kappes in 1992 he has been primarily engaged in representing industrial energy consumers in utility proceedings and appeals. He indicated that for three decades Lewis & Kappes has had close professional relationships with such consumers, including frequent representation in proceedings involving energy services as well as affiliation with Indiana Industrial Energy Consumers, Inc., a trade association supporting sound energy policy on behalf of such consumers.

Mr. Richardson described the history of the proceedings that led to the Supreme Court Order and the TDSIC Settlement, which occurred over a period of 33 months and involved six Commission proceedings, four fully briefed appeals, and one appeal decided on transfer by the Supreme Court. He attached a timeline of the major milestones in that litigation, and identified the attorneys with whom he worked at various stages.

Mr. Richardson stated that throughout the proceedings from TDSIC-4 through TDSIC-9, the Industrial Group asserted challenges: (1) to the inclusion of multiple unit project categories in the 7-Year Gas Plan; and (2) to recovery of capital expenditures and TDSIC costs in excess of previously approved amounts. In TDSIC-4 through TDSIC-7, the Commission granted the relief sought by NIPSCO over the Industrial Group's objections, and the Industrial Group appealed. The Court of Appeals initially affirmed the TDSIC-4 Order, but the Supreme Court granted transfer and reversed. At that point, the TDSIC-8 proceeding was nearing completion, but NIPSCO sought leave to reopen the record in order to remove multiple unit projects from the Plan and to make corresponding revisions to the requested rate relief. The appeals of the TDSIC-5, TDSIC-6 and TDSIC-7 Orders are fully briefed but have not been decided.

Mr. Richardson stated the removal of multiple unit projects in TDSIC-8 resulted in a reduction of \$1,000,934 to the revenue requirements for tracking purposes, and an additional reduction of \$218,554 to the amount deferred for collection in the next rate case. In NIPSCO's gas rate case, Cause No. 44988, the Commission's September 17, 2018 Order provided for a two-step rate increase. In connection with the Step One compliance filing, NIPSCO reflected a write-off of

\$1,149,851 associated with multiple unit projects that had been removed in TDSIC-8. When NIPSCO filed its TDSIC-9 petition, it did not seek rate relief associated with the projects removed in TDSIC-8 and did not quantify the dollar amounts associated with that removal.

Mr. Richardson stated that, after the Supreme Court Order was certified on October 15, 2018, the Industrial Group engaged in negotiations with NIPSCO and the OUCC to resolve outstanding issues, leading to the TDSIC Settlement. He stated the TDSIC Settlement was negotiated at arm's length by experienced counsel familiar with the issues and history of the litigation, and the Settling Parties had access to all relevant information and were fully informed as to the subject matter and the risks of continued litigation.

Mr. Richardson stated that the Supplemental Settlement was negotiated with the OUCC separately from and subsequent to the TDSIC Settlement, without NIPSCO's participation. He affirmed that the Supplemental Settlement was negotiated at arm's length and in good faith by experienced counsel familiar with the issues and the litigation. He noted that the OUCC was provided copies of counsel's time and expense records.

Mr. Richardson stated that counsel was paid on an hourly rate basis by the Industrial Group for proceedings at the Commission level, but handled the appellate work on a contingent fee basis depending on the potential for a common fund award or negotiated settlement for any compensation. He indicated that over two-thirds of the attorney time devoted to the litigation was handled on a contingency, and less than one-third was paid for by clients. Attached to the Verified Declaration as confidential exhibits were copies of the time and expense records maintained contemporaneously by counsel. Mr. Richardson stated the total attorney time devoted to the litigation through October 2018, at counsel's standard hourly rates, yields a base lodestar of \$473,249. He stated the Industrial Group also incurred litigation expenses for expert fees, filing fees, record preparation costs, and other itemized expenses typically charged to clients in a total amount of \$20,639.

Mr. Richardson explained the time and expense records reflected the legal effort in the Commission and appellate proceedings in TDSIC-4 through TDSIC-9 and related negotiations. Time and effort in other NIPSCO proceedings during the same period in which TDSIC issues were raised, as well as earlier proceedings involving NIPSCO's 7-Year Gas Plan, were excluded. Mr. Richardson stated that the hourly rates reflected in the lodestar computations are the market rates customarily charged by the particular attorneys for services to industrial energy consumers. He stated that, in his opinion, the hourly rates are reasonable and reflect the market value of the services, and that all the included attorney time was reasonably expended on the litigation.

Mr. Richardson quantified the rate benefits achieved for NIPSCO ratepayers through the litigation, including reductions in revenue requirements for both tracker and deferral purposes arising from the removal of multiple unit projects in TDSIC-8, the write-off from the 20% deferral account reflected in the Step One compliance filing in the rate case, the refunds with interest in the form of credits against revenue requirements associated with the removed multiple unit projects, further refunds with interest in the form of rate credits relating to the removal of the bare steel replacement project, additional refunds in the form of rate credits for half of the tracked cost increases still in dispute in the pending appeals, and write-offs from the 20% deferral account for purposes of the Step Two compliance filing in the rate case associated with the bare steel

replacement project removal and half of the disputed cost overruns. The total amount was computed as \$10,449,774. Mr. Richardson stated that amount did not include the reduced revenue requirements sought by NIPSCO in TDSIC-9 arising from the multiple unit projects removed in TDSIC-8, reduced revenue requirements in future TDSIC proceedings associated with the removal of about \$170 million in capital costs from the 7-Year Gas Plan, or any future cost increases that may be capped under the TDSIC Settlement. He stated the computation also does not include ratepayer benefits from several other utility proceedings that were directly impacted by the Supreme Court Order, or future benefits relating to the Supreme Court's construction of the TDSIC Statute.

Mr. Richardson also addressed further considerations regarding the legal effort. He stated the effort involved nearly three years of litigation with the overlapping demands of six Commission proceedings and four fully briefed appeals, requiring a high degree of diligence and intensive effort over an extended period. He described the issues as difficult and complex, raising questions of first impression, with the difficulty compounded by the need to overcome established Commission practice involving multiple utilities. He noted the Industrial Group pursued the challenges independently, without support from other litigants. He stated that in his experience the litigation was unique due to the frequent and recurrent rejections of the positions advanced by the Industrial Group. He stated the legal effort required a broad range of litigation skills, from contested Commission proceedings to appellate advocacy and ultimately effective negotiation. He noted NIPSCO vigorously opposed the challenges, was represented by skilled counsel, and had superior access to information and resources. Finally, he described utility regulation as a specialty practice area requiring distinct expertise, and stated the attorneys who performed the legal services have strong backgrounds in energy matters.

Mr. Brundage also supported the Supplemental Settlement. He described his background and credentials, his experience on matters involving the reasonableness of attorney fees, and his familiarity with commercial litigation in Indiana including fee recovery in a range of contexts.

Mr. Brundage explained the common fund doctrine as applicable when litigation results in tangible financial benefits to be distributed to a large number of beneficiaries, so that compensating the litigants from the fund before it is distributed results in all beneficiaries contributing to the legal effort. He noted the common fund doctrine is an established part of Indiana law, and has been specifically found applicable to Commission proceedings involving rate refunds. Under Indiana precedent specific to utility proceedings, an appropriate award may be computed by two methods, lodestar-multiplier and percentage of the fund, as a double check on reasonableness. In addition, a settlement with the OUCC is subject to approval under a reasonableness standard. Mr. Brundage also referenced an Indiana appellate decision rejecting a narrow definition of "common fund" and finding the doctrine applicable where ascertainable benefits are being provided to ascertainable beneficiaries such that the award can be divided among those benefiting with some exactitude. He concluded that an award under the common fund doctrine is appropriate in this case.

Mr. Brundage explained the lodestar-multiplier method as starting with a base lodestar computed by multiplying the number of hours reasonably expended in the litigation by reasonable hourly rates, then enhancing the base lodestar where appropriate with a multiplier, and finally adding reasonable expenses for a total award. He stated the relevant proceedings here are the Commission and appellate proceedings in TDSIC-4 through TDSIC-9, noting that related

proceedings are included in the computation when they arise from a common core of facts and contribute to the benefits achieved. He opined that all the attorney time included in the time and expense records was reasonably expended and is consistent with the level of effort expected in litigation of this magnitude. He also opined that the hourly rates reflected in those records are reasonable, the actual rates regularly charged by the particular attorneys for work in utility proceedings and appeals, and in line with market rates in Indiana for commercial litigation. In his opinion, the base lodestar of \$473,249 is reasonable.

Mr. Brundage offered the opinion that a multiplier to enhance the base lodestar is appropriate in this case, particularly where the services were provided on a predominantly contingent fee basis and counsel had substantial risk of no compensation for most of the work absent a successful outcome. He opined the multiplier of slightly less than 3.2 under the Supplemental Settlement was reasonable, noting that multipliers as high as five or more have been applied in Indiana and other jurisdictions, that authorities recognize multipliers between 2.5 and 4.5 as typical, and that the Commission recently approved a multiplier of three in a case involving a common fund of \$7 million.

Mr. Brundage computed the base lodestar with a multiplier of 3.2, and adding expenses of \$20,639 that in his opinion were reasonable, as supporting a total award of \$1,535,036. He noted that amount was higher than the \$1.5 million award provided for in the Supplemental Settlement, and concluded the agreed award was reasonable under the lodestar-multiplier computation.

Mr. Brundage also applied the percentage of the fund approach as a double check on reasonableness. He noted the record indicates the ascertainable rate benefits to NIPSCO ratepayers directly attributable to the Supreme Court Order and the TDSIC Settlement amount to \$10,449,774. He opined that the Supplemental Settlement reasonably used a percentage of less than 14.4%, in light of precedent recognizing 25% as a benchmark for common fund cases, a recent Commission decision granting an award of nearly 16% on a \$7 million common fund, and his experience of typical awards involving common funds of comparable magnitude. He computed a total award of \$1,525,406 by applying 14.4% to the common fund and adding in reasonable expenses. He concluded that, since that amount was greater than the \$1.5 million award called for in the Supplemental Settlement, the percentage computation confirms the reasonableness of the agreed award.

Mr. Brundage recited and applied the factors bearing on the reasonableness of attorney fees as set forth in Rule 1.5(a) of the Rules of Professional Conduct. He stated that in common fund cases, the primary factors are the results achieved and the time and labor required, which are reflected in the percentage and lodestar-multiplier computations. He noted additional factors present in this case include: the risks associated with work performed predominantly on a contingent fee basis; the multiplicity of proceedings placing significant demands on counsel's time and attention for a period of several years; issues that were novel and raised important questions of first impression; the Supreme Court precedent that will benefit ratepayers in TDSIC proceedings for years to come; the fact that the Industrial Group's challenges were not supported by other litigants and were rejected repeatedly; the attorneys have extensive experience in the specialty area of utility regulation and longstanding client relationships; and NIPSCO vigorously opposed the challenges and was represented by skilled and experienced counsel.

Mr. Brundage concluded that the Supplemental Settlement and the agreed award are reasonable. He opined that the award is consistent with common fund principles and established Commission practice, that the context in which the Supplemental Settlement was reached provides further indicia of reasonableness, and that the endorsement of the OUCC as the statutory representative of NIPSCO ratepayers underscores the conclusion that the Supplemental Settlement is in the public interest.

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

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind., Inc. v. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the TDSIC Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settling Parties’ agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

The evidence presented in this Cause demonstrates that the TDSIC Settlement is consistent with the Supreme Court Order providing that periodic rate increases are available only for specific projects designated in the threshold TDSIC proceeding and not for multiple unit project categories described using ascertainable planning criteria. The Settling Parties have identified the project categories that were not identified with specificity in TDSIC-3 and all costs associated with multiple unit projects that were identified for the first time in TDSIC-4 have been removed for TDSIC recovery to the extent those projects were not properly designated in the previously approved Plan.

As a result of the TDSIC Settlement, customers will save more than \$9.2 million and when this amount is combined with the Settling Parties’ agreement in TDSIC-8, total customer savings add up to over \$10.4 million. The credits/refunds will be allocated proportionally in the amounts originally paid by each customer class, assuring neither costs nor benefits have been unfairly shifted. NIPSCO’s customers will also pay less going forward based on lower TDSIC tracker charges and 20% deferral amounts. In addition, NIPSCO’s revised Plan update containing agreed upon annual and 7-year caps is beneficial to both customers and NIPSCO. The caps provide customers security against large annual increases and the 5% annual flexibility factor frees NIPSCO from rigid spending and project management limitations while still providing safe, adequate, and reliable service.

The TDSIC Settlement provides for a complete resolution of the issues raised in NIPSCO’s TDSIC-4 through TDSIC-9 proceedings and brings closure to protracted and costly litigation. It

also provides a clearer path forward in NIPSCO's future TDSIC proceedings and a level of certainty to NIPSCO concerning the eligibility its bare steel replacement and the Kokomo Low-Pressure System projects as federally mandated compliance projects under Ind. Code ch. 8-1-8.4.

The Commission has carefully analyzed the evidence and the proposed TDSIC Settlement to evaluate whether the proposed outcome is reasonable and in the public interest. Based on that review, and as further discussed below, we conclude that the TDSIC Settlement is reasonable and in the public interest and should be approved.

## **7. Commission Discussion and Findings on TDSIC-9.**

**A. Plan Update-9.** Ind. Code § 8-1-39-9(a) requires a utility to update its seven-year plan as a component of TDSIC periodic automatic adjustment filings. In this case, NIPSCO requests approval of Plan Update-9, which contains updates to eligible improvements and associated cost estimates for each year of the Plan.<sup>6</sup> The TDSIC Statute is silent as to what may be included in a Section 9 update. We have previously found that plan updates should include a discussion of any changes in an eligible improvement's best estimate of cost, necessity, and associated incremental benefits upon which the Commission based its determination to approve NIPSCO's proposed Plan as reasonable.

**1. Cost Estimates.** Ind. Code § 8-1-39-9(f) provides that actual capital expenditures and TDSIC costs in excess of approved amounts require specific justification by the utility for the increases and approval from the Commission before being authorized for recovery in rates. In prior TDSIC proceedings, we have recognized that a "best estimate" is developed at a point in time and based on information that was known or should have been known. TDSIC-3 Order at 40. We have also indicated that specific justification requires an explanation of why the increase in an approved best estimate is reasonable or warranted and cannot simply identify the reason for the increase. TDSIC-1 Order at 20. While we have also recognized that Ind. Code § 8-1-39-9(f) only requires specific justification when the utility seeks to recover the actual expenditures, we expressed our expectation that utilities would provide such justification for approval whenever the utility became aware of such increases. TDSIC-4 Order at 28.

In this proceeding, Mr. Bull testified Plan Update-9 shows actual costs for the 2014–2018 Projects and updated cost estimates for the 2018–2020 Projects. He testified Plan Update-9 provides information to support NIPSCO's current best estimate of the cost of investments included in the Plan. Plan Update-9 includes: (1) confidential project estimates for 2018–2020 (Confidential Appendix 1); (2) confidential summary of unit cost estimates (Confidential Appendix 2); (3) confidential asset register that includes detailed cost information (Confidential Appendix 3); project change requests for 2018 Projects (Confidential Appendix 4); and a Risk Model (updated in TDSIC-7) (Confidential Appendix 5). Petitioner's Exhibit 1, Attachment 1-A, Exhibit Gas Plan Update-9 as modified in Petitioner's Exhibit 3-S.

Consistent with prior TDSIC cases and expectations, NIPSCO provided testimony addressing the reasons for variances greater than \$100,000 or 20%, whichever is greater. The

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<sup>6</sup> Throughout the remainder of this Order, Plan Update-9 refers to the Plan as revised by NIPSCO's settlement testimony and attachments (Revised Confidential Exhibit Gas Plan Update-9).

Commission's review of cost increases, however, is not limited to these more substantial increases. Rather, we review all project increases and the related documentation provided by NIPSCO.

Mr. Bull explained that for projects scheduled for completion in 2018, the estimated costs are generally based on the current forecast for completion. For projects scheduled for completion in 2019, the estimated costs are typically based on further engineering and updated unit costs, or are projects that NIPSCO expects to go out for bid in 2018 and will be revised if appropriate in a subsequent tracker filing. For 2020, for projects not based on unit costs, NIPSCO has attempted to reflect its actual experience to date in its updated project cost estimates wherever feasible. Mr. Bull testified it is more difficult to anticipate cost changes for specific projects the further in advance the estimate is made, so changes in non-unit costs have been made only where such changes have a basis in more recent engineering analysis.

The Settling Parties did not object to any of the cost estimates and recommended the Commission approve NIPSCO's Plan Update-9, subject to the terms of the TDSIC Settlement.

Accordingly, we find that NIPSCO has provided a sufficient level of detail in support of its Plan Update-9, including justification for the cost variances associated with projects through its exhibits as well as additional testimony for those projects exceeding the greater of \$100,000 or 20%, and we approve these costs in Plan Update-9.

**2. Public Convenience and Necessity.** Mr. Bull testified that consistent with NIPSCO's approved Plan, the eligible improvements included in Plan Update-9 will serve the public convenience and necessity. He explained that Plan Update-9 follows the requirements of the TDSIC Statute by making investments for the purposes of safety, reliability, system modernization and economic development consistent with public policy and the public interest. No evidence was presented in this Cause to contest the continued public convenience and necessity associated with the designated eligible improvements in the Plan.

NIPSCO has a statutory obligation to provide reasonably adequate retail service in its certificated gas service territory for the public convenience and necessity pursuant to Ind. Code §§ 8-1-2-4, -87 and -87.5. We find that NIPSCO has sufficiently supported that the eligible improvements as described in Plan Update-9 are reasonably necessary for it to continue to provide adequate retail service to its customers, and the public convenience and necessity continues to require or will require those eligible improvements.

**3. Incremental Benefits Attributable to the Updated Plan.** Mr. Bull testified that consistent with the approved Plan, Plan Update-9 focuses on maintaining safe, reliable service for NIPSCO's customers in a cost effective manner. Plan Update-9 is also intended to provide benefits in the form of investments to maintain and improve system reliability through the capacity of the system to deliver gas to customers when they need it, the replacement of certain system assets to ensure the ongoing integrity and safe operation of the gas system, investments to enhance pipeline safety and reliability, and the extension of gas facilities into rural areas.

In the 44403 Order (at 23), we found that "NIPSCO's 7-Year Gas Plan contains solutions that will enhance customer and employee safety, avoid outages, preserve operational integrity, provide equipment protection, and meet evolving customer demands." Although the cost estimates

for some projects have increased compared to those approved in Plan Update-8, and some projects have been delayed beyond the 7-Year Gas Plan timeframe, there is no evidence of a dispute that the eligible improvements provide incremental benefits to NIPSCO's customers.

Based upon the evidence presented in this proceeding and for the reasons set forth above, we find the estimated costs of the eligible improvements included in Plan Update-9 as approved herein are justified by the incremental benefits attributable to the Plan.

**4. Conclusion.** Plan Update-9 includes sufficient evidence for us to determine the best estimate of the cost of the eligible improvements and the public convenience and necessity continues to require or will require the eligible improvements, and the estimated costs of the eligible improvements continue to be justified by the incremental benefits attributable to Plan Update-9. NIPSCO's Plan Update-9 appropriately and reasonably addresses NIPSCO's aging infrastructure through projects intended to enhance, improve, and replace system assets for the provision of safe and reliable natural gas service, as well as the extension of service into rural areas. Therefore, based on the evidence presented, we approve Plan Update-9.

**B. TDSIC-9 Factors.** In the TDSIC-1 Order, the Commission approved NIPSCO's request for approval of a TDSIC Rate Schedule and accompanying changes to NIPSCO's gas service tariff to allow for timely recovery of 80% of eligible and approved capital expenditures and TDSIC costs pursuant to Ind. Code § 8-1-39-9. Consistent with the ratemaking and accounting principles approved by the TDSIC-1 Order, NIPSCO requests approval of its TDSIC-9 factors, as revised in NIPSCO's settlement testimony and attachments, to provide for timely recovery of 80% of approved capital expenditures and TDSIC costs incurred through June 30, 2018.

**1. Section 9 Requirements.** Ind. Code § 8-1-39-9(a) provides:

[s]ubject to subsection (c), a public utility that provides electric or gas utility service may file with the commission rate schedules establishing a TDSIC that will allow the periodic automatic adjustment of the public utility's basic rates and charges to provide for timely recovery of eighty percent (80%) of approved capital expenditures and TDSIC costs. The petition must:

- (1) use the customer class revenue allocation factor based on firm load approved in the public utility's most recent retail base rate case order;
- (2) include the public utility's seven (7) year plan for eligible transmission, distribution, and storage system improvements; and
- (3) identify projected effects of the plan described in subdivision (2) on retail rates and charges.

**a. NIPSCO's 7-Year Gas Plan.** As part of its direct and settlement testimony, NIPSCO attached its currently approved 7-Year Gas Plan as well as its proposed Plan Update-9. Therefore, NIPSCO has satisfied the requirement set forth in Ind. Code § 8-1-39-9(a)(2).



**b. Customer Class Revenue Allocation.** In our TDSIC-3 Order, we found that NIPSCO's approved capital expenditures and TDSIC costs should be allocated to the various customer classes based on total revenue, including gas cost revenue. Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 2, Revised Schedule 4 provides the calculation of the allocation factors as approved in the TDSIC-3 Order which NIPSCO used to allocate the related transmission and distribution revenue requirements in this proceeding as shown in Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 7.

Therefore, we find that NIPSCO's approved capital expenditures and TDSIC costs have been properly allocated to the various customer classes in accordance with Ind. Code § 8-1-39-9(a)(1) and the TDSIC-3 Order.

**c. Projected Effect on Retail Rates and Charges.** Mr. Racher sponsored Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 2, Schedule 6, which identifies: (1) the projected effect of Plan Update-8 on retail rates and charges and (2) the projected effect of Plan Update-9 on retail rates and charges. This exhibit also summarizes the total estimated revenue requirement for each rate class from 2014 to 2020. Finally, Mr. Racher testified the estimated average monthly bill impact for a typical residential customer using 69 therms per month is a credit of \$0.78 and represents a \$6.36 decrease from the factor currently in effect. Based on our review of the evidence, we find that NIPSCO provided sufficient information regarding the projected effects of Plan Update-8 and Plan Update-9 on retail rates and charges as required by Ind. Code § 8-1-39-9(a)(3).

**2. Reconciliation.** Mr. Racher testified that NIPSCO is including a reconciliation of revenues in this filing. The revenue requirement calculated in the TDSIC-7 filing is being reconciled against the actual revenues received from customers during January through June 2018. This under-/over-recovery analysis is performed as part of Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Schedule 6.

**3. Semi-Annual Revenue Requirement.**

**a. Capital.** In this proceeding and in accordance with the TDSIC Settlement, NIPSCO requests approval of a total adjusted semi-annual revenue requirement associated with a return on eligible improvements incurred through June 30, 2018 of \$6,209,669 (Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 2, Line 4, Column M). The 80% recoverable adjusted semi-annual revenue requirement associated with a return on the eligible improvements is \$4,967,735 (*Id.* at Line 6). The 20% portion of the adjusted semi-annual revenue requirement associated with a return on the eligible improvements is \$1,241,934 (*Id.* at Line 5).

The total cost of the eligible improvements incurred through June 30, 2018, upon which NIPSCO requests authority to earn a return is \$203,929,991 (Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 2, Line 1, Column M). Mr. Racher testified this total includes AFUDC, other indirect costs, and net accumulated depreciation. He testified the AFUDC related to TDSIC projects was calculated in accordance with the FERC Uniform System of Accounts, which is consistent with GAAP. He further testified that if the Commission approves the proposed ratemaking treatment for costs of the eligible improvements incurred through June

30, 2018, NIPSCO will cease accruing AFUDC on construction costs once the incurred costs receive CWIP ratemaking treatment, are otherwise reflected in base gas rates, or the project is placed in service, whichever occurs first.

In accordance with our findings above relating to recovery through the TDSIC rider of costs in excess of the amounts approved in TDSIC-8, we approve \$203,929,991 as the total cost of the eligible improvements incurred through June 30, 2018, upon which NIPSCO is authorized to earn a return.

In TDSIC-1, the Commission ordered NIPSCO to use a full WACC, including zero-cost capital, to calculate pretax return and provided that the WACC should be updated in each semi-annual TDSIC filing to reflect an updated capital structure and cost of debt. The calculation of NIPSCO's updated total WACC is shown on Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 2, Schedule 1. Mr. Racher explained that the annual revenue requirement for the return on investment is calculated by multiplying the June 30, 2018 net book value of all TDSIC projects by the debt and equity components of NIPSCO's WACC. The product of this calculation is then multiplied by 50% in order to calculate a semi-annual revenue requirement. This semi-annual amount is then multiplied by 20% to calculate the deferred amount. The 80% portion is then adjusted for taxes. The semi-annual return on investment amount is then shown on Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 2 to be recovered for bills rendered for the months of January through June 2019.

Based on the evidence of record, we find the appropriate total semi-annual revenue requirement associated with the eligible improvements as of June 30, 2018, to be \$6,209,669 and the 80% recoverable semi-annual revenue requirement of \$4,967,735 to have been calculated in compliance with the TDSIC rider methodology approved in the TDSIC-1 Order, and the revenue requirement is approved.

**b. Depreciation, O&M Expense, and Property Tax Expenses.** In this proceeding and in accordance with the TDSIC Settlement, NIPSCO requests approval of a total depreciation, O&M, and property tax expense through June 30, 2018 of \$3,670,910 (Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Revised Schedule 4, Column E, Page 4, Line 7). The 80% recoverable depreciation, O&M and property tax expense associated with eligible TDSIC projects is \$2,936,728 (*Id.* at Line 9). The 20% portion of the depreciation, O&M and property tax expense associated with eligible TDSIC projects is \$734,182 (*Id.* at Line 8).

Mr. Racher sponsored Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Revised Schedule 4, which shows the depreciation expense, O&M, and property taxes for the period January through June 2018, which was reduced by 20% to calculate the 80% revenue requirement and then adjusted for taxes as shown on Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Revised Schedule 4. The 80% revenue requirement amount is then included on Second Revised Schedule 5 to determine the proposed total semi-annual revenue requirement to be recovered for bills rendered during the months of January through June 2019.

Based on the evidence of record, we find that NIPSCO's total depreciation, O&M, and property tax expense associated with eligible TDSIC projects through June 30, 2018, is

\$3,670,910; the 80% recoverable depreciation, O&M, and property tax expense associated with eligible TDSIC projects is \$2,936,728; and the 20% portion of the depreciation, O&M, and property tax expense associated with eligible TDSIC projects is \$734,182. After adjusting the 80% recoverable amount for applicable taxes, the total amount to be included in the revenue requirement is \$2,980,949. These amounts have been calculated in compliance with the TDSIC rider methodology approved in the TDSIC-1 Order and are approved.

c. **Margin Credit for Rural Extensions.** In the TDSIC-1 Order, the Commission approved NIPSCO's proposal to include in its 7-Year Gas Plan all rural gas extensions, both those that qualify using the 20-year margin test under Ind. Code § 8-1-39-11 and those that may qualify under NIPSCO's existing line extension policy. The Commission also approved NIPSCO's proposal to provide a credit to the TDSIC rider for 80% of actual margins received from all new customers added under the rural extensions policy. TDSIC-1 Order at 19, 25-26. In this proceeding, Mr. Racher testified these amounts are calculated on Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 2, Schedule 5, by obtaining the related customer usage values and billing rate information to compute the total margin billed for the period of January through June 2018.

Based on the evidence of record, we conclude that the rural extensions margin credit of \$1,497,925 calculated on Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 2, Schedule 5 is computed in accordance with the TDSIC-1 Order, and it is approved.

4. **Calculation of TDSIC Factors.** Mr. Racher sponsored Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Revised Schedule 8, which shows the calculation of the TDSIC factors by rate code based on the previously calculated revenue requirement adjusted for prior period variances and inclusive of the TCJA refund adjustment, of \$7,708,057 (at Line 28, Column R). He testified the factors are calculated by dividing the total revenue requirement by the estimated therm sales to compute a billing factor for bills rendered for the months of January through June 2019. Mr. Racher also testified that NIPSCO expects the credits to be included in the TDSIC factor for a period of six months and that NIPSCO will make a compliance filing to become effective July 1, 2019, to remove all effects of the credits, including the TCJA credit and the credits for multiple unit projects, including bare steel, agreed upon cost increase credits, and the fee award, with any variance being addressed in Cause No. 44403 TDSIC 11. Mr. Racher sponsored Petitioner's Exhibit 2-S, Attachment 2-S-A, Revised Attachment 3 (Appendix F - Transmission, Distribution and Storage System Improvement Charge (First Revised Sheet No. 137)) showing the TDSIC factors proposed to be applicable for bills rendered during the months of January through June 2019, or until replaced by different factors that are approved in a subsequent proceeding.

Based on the evidence, we approve the proposed TDSIC factor calculation methodology set forth in Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Revised Schedule 8 to be applicable to bills rendered during the months of January through June 2019 or until replaced by new factors.

5. **Billing Period.** NIPSCO requests approval of TDSIC factors to be applicable to bills rendered during the billing months of January through June 2019, or until changed through a future filing, to effectuate the timely recovery of 80% of TDSIC costs incurred

in connection with NIPSCO's eligible improvements. Mr. Racher testified the TDSIC factors include TDSIC costs incurred through June 30, 2018.

**C. Deferred TDSIC Costs.** In the TDSIC-1 Order, we authorized NIPSCO to defer 20% of the TDSIC costs incurred in connection with the approved eligible improvements and recover those deferred costs in its next general rate case. TDSIC-1 Order at 30. NIPSCO is authorized to record ongoing carrying charges based on the current overall WACC on all deferred TDSIC costs until such costs are recovered in NIPSCO's base rates as a result of its next general rate case. *Id.* We also authorized NIPSCO to defer all approved TDSIC costs, including depreciation, pretax returns, AFUDC, post-in-service carrying costs, O&M, and property taxes on an interim basis until such costs are recognized for ratemaking purposes through Petitioner's proposed TDSIC mechanism or otherwise included for recovery in NIPSCO's base rates in its next general rate case. *Id.*

In this proceeding and in accordance with the TDSIC Settlement, Mr. Racher sponsored Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 10, which serves as a record of the deferred TDSIC costs as well as the ongoing carrying charges on all deferred costs, excluding tax gross up. He testified NIPSCO has deferred as a regulatory asset 20% of all TDSIC costs as a result of the deferral of 20% of all TDSIC costs for recovery in its base rates consistent with Ind. Code § 8-1-39-9(b).

In the TDSIC-1 Order, we also ordered that with respect to the 112<sup>th</sup> Street Project, NIPSCO may recover a return on its investment and the related depreciation expense, property taxes, and carrying charges associated with NIPSCO's best estimate in Cause No. 44403 and may defer for recovery in its next base rate case the difference between the amount authorized in Cause No. 44403 and the actual cost of the project. Consistent with the TDSIC-1 Order, NIPSCO proposes to defer for recovery in its next base rate case the depreciation expense and property taxes related to the difference between the amount approved in Cause No. 44403 and the actual amount of the project. Mr. Racher sponsored Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Schedule 11, which shows the total depreciation and property taxes NIPSCO proposes to defer relating to this difference as of June 30, 2018.

Based on the record evidence and in accordance with our TDSIC-1 Order, we find that the total costs to be deferred and recovered in NIPSCO's base rates in its next general rate case are \$2,898,933 (Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 10) and the depreciation and property tax expenses associated with the 112<sup>th</sup> Street Project to be deferred are \$877,114 (Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Schedule 11).

**D. Average Aggregate Increase in Total Retail Revenues.** Ind. Code § 8-1-39-14(a) states as follows:

The commission may not approve a TDSIC that would result in an average aggregate increase in a public utility's total retail revenues of more than two percent (2%) in a twelve (12) month period. For purposes of this subsection, a public utility's total retail revenues do not include TDSIC revenues associated with a target economic development project.

Mr. Racher sponsored Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 9 (the revised TDSIC-9 revenue requirement calculation on Attachment 1, Second Revised Schedule 5), which shows there is no amount in excess of 2% of retail revenues for the past 12 months. Mr. Racher testified that NIPSCO has calculated the 2% cap by comparing the increase in TDSIC revenues in a given year with the total retail revenues for the past 12 months. The retail revenues used in this calculation represent the revenues related to the 12 months ending June 30, 2018.

Based on the record evidence, we find that NIPSCO's proposed TDSIC-9 factors will not result in an average aggregate increase in NIPSCO's total retail revenues of more than 2% in a 12-month period.

**8. Records Project.** In our TDSIC-7 Order (at 27), we found that,

NIPSCO shall also include an update on the results of the time study referenced in NIPSCO's Docket Entry response and by Mr. Mooney at the hearing and a projection of the date for completion of the work remaining within the scope of the Records Project.

In this proceeding, NIPSCO presented testimony from Mr. Bull stating that NIPSCO has successfully completed 17 out of 28 deliverables for the project, resulting in approximately 41,885 linens mined and 213,944 features added for placement into Petitioner's GIS.

**9. Commission Discussion and Findings on Supplemental Settlement.** The Industrial Group and its counsel, Lewis & Kappes, submitted a Verified Motion for Award of Attorney Fees and Litigation Expenses, seeking an award pursuant to the common fund doctrine. When legal work results in tangible financial benefits to an ascertainable set of beneficiaries, an award of fees and expenses may be made from the common fund created by the litigation, so that all the beneficiaries contribute to the compensation. *See N. Ind. Pub. Serv. Co. v. Citizens Action Coal. of Ind., Inc.*, 548 N.E.2d 153, 161-62 (Ind. 1989); *Citizens Action Coal. of Ind., Inc. v. N. Ind. Pub. Serv. Co.*, 812 N.E.2d 814, 817-18 (Ind. Ct. App. 2004); *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 405 (Ind. Ct. App. 1996). The total award sought in the Verified Motion is in the amount of \$1.5 million.

A "fund" can be found to exist if there are ascertainable benefits given to an ascertainable number of beneficiaries. *Citizens Action Coal.*, 812 N.E.2d at 817. And, a fund is "common" if the class of beneficiaries is small and easily identifiable, the benefits to the beneficiaries can be traced with some accuracy, and there was reason for confidence that the litigation costs could be shifted with some exactitude to the beneficiaries. *Id.* Based on the evidence presented in support of the TDSIC Settlement, we find that a common fund does exist. As a result of the litigation related to NIPSCO's TDSIC-4 through TDSIC-9 proceedings, the evidence shows NIPSCO's customers will receive over \$10.4 million in savings. These savings will be passed on to NIPSCO's customers through reductions in amounts to be recovered in the TDSIC rider, and refunds will be allocated in the same manner in which they were collected. In addition, the litigation costs incurred can, with some exactitude, be shifted to the beneficiaries or customers to whom the savings will flow.

Having determined a common fund exists, we must consider the reasonableness of the request for attorney fees and litigation. Paragraph B.9 of the TDSIC Settlement provides that the Industrial Group and the OUCC, by separate agreement, will determine a mutually acceptable award for recoverable fees and expenses consistent with common fund principles and established Commission practice. Consistent with that provision, the Industrial Group and the OUCC entered into a Supplemental Settlement. The Supplemental Settlement provides for an award of \$1.5 million for the work leading to the decision of the Supreme Court Order and the TDSIC Settlement, which the Supplemental Settlement Parties agree is consistent with common fund principles and established Commission practice.

The standard for approval of a settlement providing for an award of fees and expenses under the common fund doctrine was addressed at length in *PSI Energy*, 664 N.E.2d 401. In that case, the Court of Appeals held that the Commission must examine a settlement regarding attorneys to determine whether the fee agreement is reasonable under the circumstances of the case. *Id.* at 406, 410. The Court described two methods to compute an award for attorney fees: the lodestar-multiplier approach and the percentage of the fund method. *Id.* at 406-08. The Court prescribed the use of both methods as a “double check” on reasonableness. *Id.* at 410. The Court also noted that legal work on related proceedings should be included in the computation. *Id.* at 408-10.

Evidentiary support for the Supplemental Settlement was provided through a Verified Declaration of Todd A. Richardson, lead counsel for the Industrial Group, and by the testimony of Cory Brundage, an experienced attorney familiar with fee standards and the legal market in Indiana. Detailed time and expense records maintained contemporaneously by the Industrial Group’s counsel for the relevant proceedings were attached to the Verified Declaration as confidential exhibits.

Under the lodestar-multiplier method, a base lodestar is determined by multiplying the number of hours reasonably expended in the litigation by reasonable hourly rates. The base lodestar may then be enhanced where appropriate by a multiplier to determine a reasonable fee. *See PSI Energy*, 664 N.E.2d at 404 n.1. Finally, reasonable litigation expenses can then be added to compute the total award.

In this case, the relevant scope of the litigation includes the Commission proceedings in TDSIC-4 through TDSIC-9 and the related appeals. Those are the regulatory and appellate proceedings in which the Industrial Group asserted the legal challenges that directly led to the ratepayer benefits under the Supreme Court Order and TDSIC Settlement. The Supplemental Settlement and the supporting time and expense records are limited to those proceedings and do not include other NIPSCO cases that raised TDSIC issues during the same time period or earlier proceedings involving NIPSCO’s 7-Year Gas Plan. Consistent with the holding on related proceedings in *PSI Energy*, 664 N.E.2d at 408-10, the Commission concludes that inclusion of the legal work provided in connection with the Commission and appellate proceedings in TDSIC-4 through TDSIC-9 for purposes of computing the base lodestar is reasonable.

The time and expense records for the relevant proceedings supports a base lodestar of \$473,249. Both Mr. Richardson and Mr. Brundage testified that all the attorney time reflected in those records was reasonably expended on the litigation considering the stakes, the complexity of

the issues, and the multiplicity of the proceedings. They also stated that the hourly rates set forth in the time and expense records are the actual rates regularly charged by the particular attorneys and are consistent with the market rates for comparable work in Indiana. Accordingly, the Commission concludes that the computed base lodestar of \$473,249 is reasonable.

Article III, paragraph 3.2 of the Supplemental Settlement provides for enhancement of the base lodestar with a multiplier of less than 3.2. Mr. Brundage testified that multipliers as high as five or more have been applied in cases such as *PSI Energy*, 664 N.E.2d 401, and in class actions in Indiana and other jurisdictions. Recently, the Commission found a multiplier of three to be reasonable in a case involving a common fund of about \$7 million. *Petition of Jt. Petitioners*, Cause No. 43114 IGCC 15 S1 at 9 (IURC June 13, 2018). Given the monetary benefit achieved, the complexity and duration of the litigation, the Commission finds that the proposed multiplier of less than 3.2 is reasonable.

The total litigation expenses incurred in the relevant proceedings amount to \$20,639. Those expenses include expert fees, filing fees, record preparation costs, and other itemized expenses typically charged by counsel to clients. No evidence was offered to dispute these expenses. Accordingly, the Commission finds the reported expenses are reasonable in amount.

The base lodestar of \$473,249 enhanced with a multiplier of 3.2 yields \$1,514,397. Adding expenses of \$20,639 results in a total of \$1,535,036. Since that amount is higher than the \$1.5 million award called for in the Supplemental Settlement, the Commission concludes that the proposed award is reasonable under the lodestar-multiplier methodology.

As a double check, the percentage method involves computation of the common fund resulting from the litigation. The fee portion is computed as a reasonable percentage of that amount. Recoverable expenses are then added to yield the total award.

The tangible and quantifiable economic benefits to NIPSCO's retail gas customers resulting from the services performed in the relevant proceedings include reductions in TDSIC revenue requirements, refunds in the form of credits against TDSIC revenue requirements, interest on refunds, and write-offs of TDSIC costs deferred for rate case recovery. The record indicates that the total amount of those benefits is \$10,449,774. That sum does not include additional benefits that are less readily quantified, such as reductions in the revenue requirements sought by NIPSCO in TDSIC-9 due to the multiple unit projects removed in TDSIC-8, reduced revenue requirements in future TDSIC proceedings relating to the removal of \$169,765,122 million in total capital costs from the 7-Year Gas Plan, and any future increases that may be capped under the terms of the TDSIC Settlement. The computation of the common fund also does not include cost savings achieved in other proceedings as a result of the Supreme Court Order. Therefore, the Commission concludes \$10,449,774 is a reasonable computation of the common fund in this case.

The Supplemental Settlement, at Article III, paragraph 3.2, provides for an award amounting to less than 14.4% of the readily quantifiable rate benefits. In *PSI Energy*, 664 N.E.2d at 410, the Court of Appeals noted that 25% has been recognized as a "benchmark" for common fund cases, although a smaller percentage may be appropriate as the size of the fund increases. Mr. Brundage stated that a leading treatise indicated 20-30% is normal up to common funds in the \$50 million range. The award granted by the Commission in Cause No. 43114 IGCC 15 S1 was nearly

16% of a \$7 million common fund. In the circumstances presented here, the Commission concludes that the use of 14.4% is reasonable.

Applying 14.4% to the common fund of \$10,449,774 results in fees of \$1,504,767. Adding \$20,639 in expenses results in a total of \$1,525,406. Insofar as that amount is greater than the \$1.5 million award called for in the Supplemental Settlement, the Commission concludes that the percentage double check supports the reasonableness of the proposed award.

According to Mr. Brundage, the primary considerations in determining a reasonable fee award are the results achieved and the time and labor required. The lodestar-multiplier method is based on the time and labor factor, whereas the percentage approach is a function of the results achieved. Additional factors are identified in Rule 1.5(a) of the Rules of Professional Conduct. As applied in the circumstances of this case and discussed below, the reasonableness factors provide further support for the award contemplated in the Supplement Settlement.

The legal work was provided predominantly on a contingent fee basis, subjecting counsel to considerable risk of receiving no compensation for extensive efforts absent a successful outcome. The Supreme Court Order noted the litigation raised important issues of first impression, likely having enormous financial consequences for utilities and their ratepayers. *NIPSCO Indus. Grp.*, 100 N.E.3d at 237-38. The litigation spanned nearly three years of intensive litigation involving six distinct Commission proceedings, four fully-briefed appeals, and an oral argument at the Supreme Court. The Industrial Group pressed the legal challenges independently, without substantial support from other litigants. NIPSCO vigorously opposed the positions advanced by the Industrial Group and throughout the proceedings was skillfully represented by experienced counsel. By the time of the Supreme Court Order, NIPSCO's TDSIC proposals had been approved over the Industrial Group's objections in four successive proceedings and the Court of Appeals had initially affirmed the TDSIC-4 order. Counsel for the Industrial Group have longstanding client relationships and extensive experience in utility proceedings and appellate practice and provided quality services throughout the contentious litigation. The Supreme Court Order construed the TDSIC Statute in a manner that will benefit ratepayers in future TDSIC cases.

The Supplemental Settlement was negotiated at arm's length by experienced counsel familiar with the issues and the history of the litigation, with full access to relevant information including time and expense records. The negotiation was conducted independent of and subsequent to the negotiation of the TDSIC Settlement, without NIPSCO's involvement. The OUCC executed the Supplemental Settlement in its capacity as the statutory representative of NIPSCO's ratepayers. The endorsement of the OUCC, while not binding on the Commission or determinative of whether the public interest will be served, supports the conclusion that the agreed award is reasonable and consistent with the public interest.

The Commission concludes the Supplemental Settlement is reasonable and should be approved. Pursuant to Paragraph B.9 of the TDSIC Settlement, NIPSCO is directed to net the \$1.5 million award against the reduction in revenue requirements being implemented in this proceeding. The revised schedules filed by NIPSCO on November 9, 2018, reflect that treatment. Consistent with the Supplemental Settlement, NIPSCO is directed to pay the \$1.5 million award within ten days of a final unappealable order approving the TDSIC Settlement, in accordance with timely and reasonable transmittal instructions to be provided by the Industrial Group and its counsel. The



approval of the Supplemental Settlement resolves all issues before the Commission concerning the award of attorney fees and litigation expenses from the common funds arising from the Supreme Court Order and the TDSIC Settlement.

**10. Effect of Settlement Agreements.** The parties to the TDSIC Settlement and Supplemental Settlement agree that their settlement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the TDSIC Settlement and the Supplemental Settlement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849 at \*7-8 (IURC March 19, 1997).

**11. Confidential Information.** NIPSCO filed a motion for protective order on August 28, 2018, which was supported by affidavit showing documents to be submitted to the Commission containing costs and cost estimates were trade secret information as defined by Ind. Code § 24-2-3-2 and certain testing and risk modeling results that if revealed may threaten public safety, within the scope of Ind. Code § 5-14-3-4(a)(4) and (b)(19), respectively. The Presiding Officers issued a Docket Entry on September 11, 2018, finding such information to be preliminarily confidential, after which such information was submitted under seal.

The Industrial Group filed a motion for confidential treatment on November 9, 2018, which was supported by affidavit showing the attorney time records containing privileged attorney work product and attorney client communications to be submitted to the Commission were confidential and trade secret information within the scope of Ind. Code § 5-14-3-4(a)(4) and (8). The Presiding Officers issued a Docket Entry on November 22, 2018 finding such information to be preliminarily confidential, after which such information was submitted under seal.

We find all such information is confidential pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. The TDSIC Settlement, a copy of which is attached to this Order, is reasonable, in the public interest, and approved.
2. NIPSCO's Plan Update-9 is approved.
3. NIPSCO is authorized to defer, as a regulatory asset, and recover 80% of the approved capital expenditures and TDSIC costs incurred in connection with its designated eligible improvements approved in its rates and charges for gas service in accordance with NIPSCO's TDSIC beginning with the month of January 2019.
4. NIPSCO is authorized 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(g)(3)(c) pursuant to Ind. Code § 8-1-39-13(b).

5. NIPSCO is authorized to defer, as a regulatory asset, 20% of the TDSIC costs incurred in connection with its designated eligible improvements and recover those deferred costs in its next general rate case.

6. NIPSCO is authorized to record ongoing carrying charges based on the current overall WACC on all deferred capital expenditures and TDSIC costs until such costs are recovered in NIPSCO's base rates as a result of its next general rate case.

7. NIPSCO is authorized to defer, as a regulatory asset, for recovery in NIPSCO's next general rate case depreciation expenses and property tax expenses associated with the difference between the amount authorized for the 112<sup>th</sup> Street Project in Cause No. 44403 and the actual cost of the project.

8. The TDSIC factors set forth in Petitioner's Exhibit 2-S, Attachment 2-S-A, Attachment 1, Second Revised Schedule 8 are approved to be effective for bills rendered by NIPSCO for the months of January through June 2019 or until replaced by different factors approved in a subsequent filing. NIPSCO shall make a compliance filing to become effective July 1, 2019 to remove all effects of the credits as required by this Order.

9. Prior to implementing the authorized TDSIC factors approved herein, NIPSCO shall file the applicable rate schedules under this Cause for approval by the Commission's Energy Division.

10. The Supplemental Settlement is reasonable, in the public interest, and approved. NIPSCO is authorized to net the approved award against the reduction in revenue requirements to be implemented in this proceeding and shall pay the award in accordance with timely and reasonable transmittal instructions to be provided to NIPSCO by the Industrial Group and its counsel in accordance with the terms of the Supplemental Settlement.

11. The information filed by Petitioner and the Industrial Group in this Cause pursuant to motions requesting confidential treatment is deemed confidential pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, 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.

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

**HUSTON, OBER, AND ZIEGNER CONCUR; FREEMAN AND KREVDA ABSENT:**

**APPROVED: DEC 27 2018**

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

  
\_\_\_\_\_  
Mary M. Becerra  
Secretary of the Commission

## STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (the "Agreement") is entered into as of the 5<sup>th</sup> day of November, 2018, by and between Northern Indiana Public Service Company LLC ("NIPSCO" or "Company"), the Indiana Office of Utility Consumer Counselor ("OUCC"), and the NIPSCO Industrial Group ("Industrial Group"), (collectively, the "Settling Parties") (the OUCC and Industrial Group are collectively referred to as "the Consumer Parties"), who stipulate and agree for purposes of settling the issues in Cause Nos. 44403 TDSIC 4 through 44403 TDSIC 9 (individually "TDSIC 4", "TDSIC 5", etc.) that the terms and conditions set forth below represent a fair and reasonable resolution of all issues subject to incorporation into a Final Order of the Indiana Utility Regulatory Commission ("Commission") without any modification or condition that is not acceptable to the Settling Parties.

### **A. Background.**

#### **1. NIPSCO's Gas TDSIC Proceedings.**

On April 30, 2014, the Commission issued an Order in Cause No. 44403 concerning NIPSCO's request for approval of a 7-year plan for eligible transmission, distribution and storage system improvements ("7-Year Gas Plan" or "Plan"), pursuant to Ind. Code §§ 8-1-39-10 and 11. The Commission found: (1) the projects contained in Year 1 of NIPSCO's 7-Year Gas Plan are eligible transmission, distribution, and storage system improvements within the meaning of Indiana Code § 8-1-39-2; (2) the project

categories contained in Years 2 through 7 of NIPSCO's 7-Year Gas Plan are presumed eligible improvements within the meaning of Indiana Code § 8-1-39-2, subject to further definition and specifics being provided through the plan update proceedings; (3) the 7-Year Gas Plan is reasonable and approved subject to certain modifications; (4) NIPSCO's proposed definitions of key terms for purposes of interpreting and applying those terms to NIPSCO's 7-Year Gas Plan are approved; and (5) NIPSCO's proposed process for updating the 7-Year Gas Plan in future semi-annual adjustment proceedings is approved.

On January 28, 2015, the Commission issued an Order in TDSIC-1 approving, among other things, NIPSCO's updated Plan, with the exception of certain cost estimates for the 112<sup>th</sup> Street project and bare steel replacement projects, and designating the projects included in Year 2 as eligible improvements under Ind. Code § 8-1-39-2. The Commission approved NIPSCO's proposed methodology for calculating its TDSIC adjustment and authorized NIPSCO's recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 30, 2014. NIPSCO was authorized to defer the remaining 20% until such costs are recovered in NIPSCO's base rates as a result of its general rate case.

On February 27, 2015, NIPSCO filed its petition and case-in-chief in TDSIC-2. Subsequently, on April 8, 2015, the Court of Appeals of Indiana issued a decision in the appeal of a Commission Order in Cause Nos. 44370 and 44371 (NIPSCO's Electric

TDSIC cases), reversing in part, affirming in part, and remanding the case to the Commission. *NIPSCO Indus. Grp. v. Northern Ind. Pub. Serv. Co.*, 31 N.E.3d 1 (Ind. Ct. App. 2015). After discussion with the parties, NIPSCO ultimately moved to dismiss TDSIC-2 with the understanding that it would request recovery of approved capital expenditures and TDSIC costs for the applicable period in TDSIC-3. On June 2, 2015, the Commission dismissed TDSIC-2 without prejudice.

On March 30, 2016, the Commission issued an Order in TDSIC-3, approving NIPSCO's updated Plan with the exception of certain new and emergent projects that were not identified or approved in NIPSCO's 7-Year Gas Plan or the Plan update approved in TDSIC-1. The TDSIC-3 Order designated the projects included in the approved Plan Update-3 as eligible improvements within the meaning of Ind. Code § 8-1-39-2, approved an allocation of NIPSCO's approved capital expenditures and TDSIC costs consistent with the appellate ruling in the Electric TDSIC case, and authorized NIPSCO's recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 30, 2015. NIPSCO was authorized to defer the remaining 20% for recovery in NIPSCO's base rates as a result of its next general rate case.

On June 22, 2016, the Commission issued an Order in TDSIC-4, approving NIPSCO's updated Plan, with the exception of four projects, and designating the projects included in the updated Plan as eligible improvements within the meaning of Ind. Code § 8-1-39-2. The Commission authorized NIPSCO's recovery of 80% of its

approved capital expenditures and TDSIC costs incurred through December 31, 2015.

NIPSCO was authorized to defer the remaining 20% for recovery in NIPSCO's base rates as a result of its next general rate case. The TDSIC-4 Order was appealed by the Industrial Group in Case No. 93A02-1607-EX-1644, challenging the treatment of "multiple unit project" portions of the updated Plan and specifically a \$20 million increase in one of those categories. The disposition of that appeal is described below.

On December 28, 2016, the Commission issued an Order in TDSIC-5, approving NIPSCO's updated Plan and designating the projects included in the updated Plan as eligible improvements within the meaning of Ind. Code § 8-1-39-2. The Commission authorized NIPSCO's recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 30, 2016. NIPSCO was authorized to defer the remaining 20% for recovery in NIPSCO's base rates as a result of its next general rate case. The TDSIC-5 Order was appealed by the Industrial Group, challenging the approval of certain cost increases, and that appeal is currently pending in Case No. 93A02-1701-EX-177.

On June 28, 2017, the Commission issued an Order in TDSIC-6, approving NIPSCO's updated Plan and designating the projects included in the updated Plan as eligible improvements within the meaning of Ind. Code § 8-1-39-2. The Commission authorized NIPSCO's recovery of 80% of its approved capital expenditures and TDSIC costs incurred through December 31, 2016. NIPSCO was authorized to defer the

remaining 20% for recovery in NIPSCO's base rates as a result of its next general rate case. The TDSIC-6 Order was appealed by the Industrial Group, challenging the approval of certain cost increases, and that appeal is currently pending in Case No. 93A02-1701-EX-1632.

On December 28, 2017, the Commission issued an Order in TDSIC-7, approving NIPSCO's updated Plan and designating the projects included in the updated Plan as eligible improvements within the meaning of Ind. Code § 8-1-39-2. The Commission authorized NIPSCO's recovery of 80% of its approved capital expenditures and TDSIC costs incurred through June 30, 2017. NIPSCO was authorized to defer the remaining 20% for recovery in NIPSCO's base rates as a result of its next general rate case. The TDSIC-7 Order was appealed by the Industrial Group, challenging the approval of certain cost increases, and that appeal is currently pending in Case No. 18A-EX-146.

In TDSIC-8, NIPSCO requested approval for an updated Plan, designation of projects included in the updated Plan as eligible improvements within the meaning of Ind. Code § 8-1-39-2, authorization to recover 80% of approved capital expenditures and TDSIC costs incurred through December 31, 2017, and authorization to defer the remaining 20% for recovery in NIPSCO's base rates as a result of its next general rate case. Prior to the issuance of an order in TDSIC-8, the Indiana Supreme Court issued a decision in the TDSIC-4 appeal. NIPSCO then sought leave to reopen the record to submit additional evidence in order to comply with the decision in the TDSIC-4 appeal.

On August 22, 2018, the Commission approved NIPSCO's revised request for relief on an interim basis, subject to refund. The Industrial Group appealed the TDSIC-8 Order, and that appeal is currently pending as Case No. 18A-EX-02281 but has been stayed by the Court of Appeals pending resolution of the TDSIC-4 remand.

NIPSCO filed its petition in TDSIC-9 on August 28, 2018, seeking approval for an updated Plan, designation of projects included in the updated Plan as eligible improvements within the meaning of Ind. Code § 8-1-39-2, authorization to recover 80% of approved capital expenditures and TDSIC costs incurred through June 31, 2018, and authorization to defer the remaining 20% for recovery in NIPSCO's base rates as a result of its next general rate case.

On September 19, 2018, the Commission issued an Order in Cause No. 44988, approving a settlement agreement resolving NIPSCO's petition to modify its base rates and charges for retail gas service and related relief. The approved rate case settlement provided for implementation of the rate changes in two steps, with Step One reflecting rate base, capital structure and depreciation expense as of June 30, 2018, and Step Two reflecting changes through December 31, 2018. The rate case order also authorized recovery in base rates of amounts deferred in prior TDSIC proceedings.

2. Supreme Court Decision in TDSIC-4.

On June 20, 2018, the Supreme Court issued its opinion in Case No. 18S-EX-334



involving the appeal of TDSIC-4. *NIPSCO Indus. Grp. v. Northern Ind. Pub. Serv. Co.*, 100 N.E.3d 234 (Ind. 2018). On September 25, 2018, the Court issued its Order on Rehearing, revising the June 20, 2018 Opinion. On October 15, 2018, the Supreme Court's opinion as modified on rehearing was certified.

The Supreme Court reversed the Commission's Order in TDSIC-4, holding that periodic rate increases are available only for specific projects a utility designates in the threshold TDSIC proceeding and not for multiple-unit-project categories it describes using ascertainable planning criteria. The Court remanded the case to the Commission "to identify such project categories that were not identified with specificity in TDSIC-3. The costs for all multiple-unit projects as to which particular improvements were identified for the first time in TDSIC-4 are disallowed for TDSIC recovery to the extent those projects were not properly designated in the previously approved seven-year plan." *Id.* at 245.

**B. Settlement Terms.**

1. Refunds related to multiple unit projects: Refunds will be processed as a credit against revenue requirements in the pending TDSIC-9 proceeding. Based on multiple unit projects already removed by NIPSCO, the amount of the refunds inclusive of interest shall be \$2,668,629.

2. Bare steel replacement: The bare steel replacement portion of the 7-year plan will be removed from the updated Plan from TDSIC-4 forward. On a going

forward basis, in any NIPSCO petition seeking a certificate of public convenience and necessity pursuant to Ind. Code ch. 8-1-8.4, the Consumer Parties will not oppose the eligibility of bare steel replacement as a federally mandated compliance project within the meaning of Ind. Code § 8-1-8.4-2. The total affected TDSIC revenue requirements associated with bare steel replacement, including amounts collected through the TDSIC rider, amounts deferred for rate case treatment and amounts included in the TDSIC-9 filing as revised on September 25, 2018, are \$2,328,354. NIPSCO will credit amounts collected through the TDSIC rider for bare steel replacement from TDSIC-4 through TDSIC-8, plus interest in the amount of \$101,735, consistent with the refunds for multiple unit projects in the pending TDSIC-9 proceeding.

3. Kokomo low pressure system: The Kokomo low pressure system portion of the 7-year plan will be removed from the updated Plan. On a going forward basis, in any NIPSCO petition seeking a certificate of public convenience and necessity pursuant to Ind. Code ch. 8-1-8.4, the Consumer Parties will not oppose the eligibility of the Kokomo low pressure system work as a federally mandated compliance project within the meaning of Ind. Code § 8-1-8.4-2. To date, no revenue requirements associated with the Kokomo low pressure system have been reflected in the TDSIC rider or deferred for rate case treatment. This change, accordingly, will be prospective only and will not involve any additional refunds, credits, or adjustments.

4. Cost increases at issue in pending appeals: The portion of the capital costs associated with increases approved in TDSIC-5, -6, -7 and -8 and the effect on TDSIC-9 that relate to multiple unit projects are being addressed in the resolution specific to multiple unit projects. The total revenue requirements associated with the increases that remain in dispute in those pending appeals, inclusive of amounts collected through the TDSIC rider, amounts deferred for rate case treatment and amounts included in the TDSIC-9 filing as revised on September 25, 2018, are \$5,963,432. One half of that amount, \$2,981,716, will be removed from the revenue requirements. For the removed portion, NIPSCO will credit amounts collected through the TDSIC rider consistent with the refunds for multiple unit projects in the pending TDSIC-9 proceeding and write off amounts that have not yet been collected. For this component, there will not be additional interest included.

5. Adjustment to the deferral account: NIPSCO has already adjusted the 20% deferral account for purposes of the Step One compliance filing in Cause No. 44988 in the amount of \$1,149,851, to reflect the removal of multiple unit projects. NIPSCO will make further adjustments to the deferral account to remove amounts associated with bare steel replacement from TDSIC-4 forward and amounts associated with one half of the increases that remain in dispute in the pending appeals, and will reflect that adjustment in the Step 2 compliance filing made in Cause No. 44988.

6. Adjustment to schedules in TDSIC-9: Consistent with ¶¶1, 2, 4 and 5 above, NIPSCO will revise its schedules and rate computations as filed in TDSIC-9 to reflect the removal of the multiple unit projects and bare steel replacement project; the inclusion of interest relating to the amounts of the multiple unit projects and the bare steel replacement project; and the removal of one half of the cost increases at issue in the pending appeals. Corresponding TDSIC-9 changes will be included to reflect the removal of bare steel replacement and one half of disputed cost increases, with the adjustments being made to the amounts resulting from the TDSIC-9 revision filed on September 25, 2018. In the aggregate, the foregoing revisions result in a decrease to the 80% revenue requirements to be collected through the TDSIC rider in the amount of \$6,975,808 and a decrease in the 20% deferral account in the amount of \$2,254,478.

7. Revised plan update: A revised plan update reflecting the agreed terms will be submitted by agreement for approval in the pending TDSIC-9 proceeding. The first two summary pages of that update are attached hereto as Exhibit A.

8. Establishment of caps: For purposes of future proceedings on the remainder of NIPSCO's existing 7-Year Gas Plan (Years 2019 and 2020), the Total Capital set forth in Exhibit A will be subject to annual and 7-year caps in the respective amounts shown for 2019, 2020 and 7-Year Total, subject to a 5% flexibility factor for each annual cap. The 7-Year Total cap will not be subject to the 5% flexibility factor. In each future proceeding on the existing 7-Year Gas Plan, NIPSCO will retain the burden

to support recovery of actual or projected costs in excess of approved amounts and the Consumer Parties shall retain the ability to challenge any such costs, pursuant to Ind. Code § 8-1-39-9(f).

9. Attorney fees: By separate agreement, contingent on approval of this Settlement, the Industrial Group and the OUCC will determine a mutually acceptable award for recoverable fees and expenses consistent with common fund principles and established Commission practice. The agreed amount of the fee award will be netted against the reduction in revenue requirement to be implemented in TDSIC-9.

10. Pending appeals: Upon execution of this Settlement, the Settling Parties will jointly move for a stay of the pending appeals in TDSIC-5, -6, -7 and -8 and notify the Court of Appeals that a settlement has been reached. Upon approval of the settlement by the Commission in a Final Order, the Settling Parties will jointly move for dismissal of the pending appeals in TDSIC-5, -6, -7 and -8.

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

1. The Settling Parties acknowledge that a significant motivation to enter into this Agreement is the expectation that, if the Commission finds this Agreement is reasonable and in the public interest, the pending appeals in TDSIC-5, TDSIC-6, TDSIC-7, and TDSIC-8 will be dismissed. The Settling Parties have spent valuable time reviewing data and negotiating this Agreement in an effort to eliminate time consuming and costly litigation.

2. The Settling Parties agree to jointly present this Agreement to the Commission for its approval in the consolidated Cause Nos. 44403 TDSIC-4 and 44403 TDSIC-9, 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.

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

4. The Settling Parties agree that this Agreement and each term, condition, amount, methodology and exclusion contained herein reflects a fair, just and reasonable resolution and compromise for the purpose of settlement, and is agreed upon without

prejudice to the ability of any party to propose a different term, condition, amount, methodology or exclusion in future proceedings. As set forth in the Order in *Re Petition of Richmond Power & Light*, Cause No. 40434, p. 10, the Settling Parties agree and ask the Commission to incorporate as part of its Final Order that this Agreement, or the Order approving it, not be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues. This Agreement is solely the result of compromise in the settlement process. Each of the Settling Parties hereto has entered into this Agreement solely to avoid further disputes and litigation with the attendant inconvenience and expenses.

5. The Settling Parties stipulate that the evidence of record presented in Cause Nos. 44403 TDSIC-4 and 44403 TDSIC-9 constitutes substantial evidence sufficient to support this Agreement and provide an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed. The Settling Parties agree to the admission into the evidentiary record of this Agreement, along with testimony supporting it without objection.

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

7. 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.

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


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

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




ACCEPTED AND AGREED this 5 day of November, 2018.

Northern Indiana Public Service Company LLC

  
\_\_\_\_\_  
Violet Sistovaris, Executive Vice President  
And President of Northern Indiana Public  
Service Company LLC

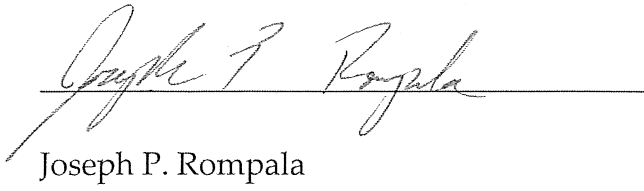
**Indiana Office of Utility Consumer Counselor**



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Jeffrey M. Reed  
Deputy Consumer Counselor  
Indiana Office of Utility Consumer Counselor

**NIPSCO Industrial Group**



Handwritten signature of Joseph P. Rompala in cursive script, positioned above a horizontal line.

Joseph P. Rompala

EXHIBIT A

Stipulation and Settlement Agreement

EXHIBIT A

# NORTHERN INDIANA PUBLIC SERVICE COMPANY

Exhibit A  
Stipulation and Settlement Agreement

## UPDATED 7-YEAR GAS PLAN BY FERC ACCOUNT

	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Line No.	Gas FERC Account	2014 Updated	2015 Updated	2016 Updated	2017 Updated	2018 Updated	2019 Updated	2020 Updated	7-Year Total
	<b>Direct Capital</b>								
	<u>Transmission</u>								
1	365 Land & Land Rights - Transmission	\$0	\$71,865	\$236,819	\$408,302	\$0	\$0	\$0	\$716,986
2	366 Structures and Improvements - Transmission	\$0	\$8,278	\$450,878	\$1,474,654	\$0	\$0	\$0	\$1,933,810
3	367 Mains - Transmission	\$8,036,686	\$29,933,251	\$75,566,785	\$75,420,688	\$91,320,829	\$71,663,034	\$66,582,532	\$418,523,805
4	369 Meas. & Reg Station Equipment - Transmission	\$78,153	\$4,473,577	\$2,745,353	\$4,395,006	\$581,977	\$1,317,006	\$501,392	\$14,092,464
5	370 Communication Equipment - Transmission	\$0	\$45,397	(\$45,397)	\$0	\$53,000	\$658,503	\$17,490	\$728,993
6	Total Transmission	\$8,114,839	\$34,532,368	\$78,954,438	\$81,698,650	\$91,955,806	\$73,638,543	\$67,101,414	\$435,996,058
	<u>Distribution</u>								
7	374 Land & Land Rights - Distribution	\$0	\$0	\$7,875	\$1,217	\$0	\$0	\$0	\$9,092
8	375 Structures and Improvements - Distribution	\$0	\$152,519	\$734	(\$33)	\$0	\$0	\$0	\$153,220
9	376 Mains - Distribution	\$12,476,639	\$31,339,826	\$11,352,400	\$11,733,500	\$12,088,425	\$12,000,382	\$13,338,177	\$104,329,349
10	378 Meas. & Reg Station Equipment - Distribution	\$4,745,883	\$4,052,648	\$635,254	\$201,437	\$0	\$0	\$0	\$9,635,222
11	380 Services - Distribution	\$5,421,848	\$8,655,045	\$8,650,334	\$9,842,067	\$4,993,736	\$5,176,818	\$5,568,396	\$48,308,244
12	382 Meter Installations - Distribution	\$34,447	\$1,375,837	\$355,525	\$259,135	\$0	\$0	\$0	\$2,024,944
13	383 House Regulators - Distribution	\$1,600	\$1,184,833	\$411,631	\$238,544	\$1,664,579	\$1,725,606	\$1,856,132	\$7,082,925
14	384 House Regulator Installations - Distribution	\$0	\$1,230	\$5	\$4	\$0	\$0	\$0	\$1,239
15	385 Industrial Measuring and Regulating Station Equip - Distribution	\$171,995	\$503,867	\$244,850	\$220,929	\$0	\$0	\$0	\$1,141,641
16	397 Communication Equipment - Distribution	\$131,633	(\$478)	\$3,683	(\$3,598)	\$0	\$0	\$0	\$131,240
17	Total Distribution	\$22,984,045	\$47,265,327	\$21,662,291	\$22,493,202	\$18,746,740	\$18,902,806	\$20,762,705	\$172,817,116
	<u>Storage</u>								
18	351 Structures and Improvements	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
19	353 Lines - Storage	\$219,487	\$1,324,261	\$212,021	(\$9,970)	\$0	\$0	\$0	\$1,745,799
20	354 Compressor Station Equipment - Storage	\$0	\$60,206	\$62,797	\$27,945	\$0	\$0	\$0	\$150,948
21	355 Meas. & Reg Station Equipment - Storage	\$0	\$0	\$0	\$113	\$0	\$0	\$0	\$113
22	356 Purification Equipment - Storage	\$39,391	\$116,060	\$341,695	\$37,002	\$0	\$0	\$0	\$534,148
23	357 Other Equipment - Storage	\$52,653	(\$19,164)	\$136	\$535	\$0	\$0	\$0	\$34,160
24	361 Structures and Improvement - Storage	\$21,556	\$609,040	\$476,350	\$28,133	\$0	\$0	\$0	\$1,135,079
25	362 Gas Holders - Storage	\$0	\$144,259	\$1,521	(\$1)	\$0	\$0	\$0	\$145,779
26	363 Equipment - Storage	\$183,307	\$1,184,826	\$209,666	\$238,463	\$0	\$0	\$0	\$1,816,262
27	Total Storage	\$516,394	\$3,419,488	\$1,304,186	\$322,220	\$0	\$0	\$0	\$5,562,288
28	Cost Overruns	\$0	(\$7,270,148)	(\$7,128,057)	(\$12,734,237)	\$0	\$0	\$0	(\$27,132,442)
29	Prior Year Reconciliation	\$0	\$0	\$0	\$0	(\$317,549)	\$0	\$0	(\$317,549)
30	Total Direct Capital	\$31,615,278	\$77,947,035	\$94,792,858	\$91,779,835	\$110,384,997	\$92,541,349	\$87,864,119	\$586,925,471
31	Indirect Capital - Other	\$7,127,482	\$8,638,301	\$11,193,997	\$9,632,611	\$13,431,821	\$14,961,157	\$13,187,526	\$78,172,895
32	AFUDC	\$384,989	\$1,564,998	\$3,390,556	\$2,950,345	\$2,012,294	\$2,703,689	\$1,663,626	\$14,670,497
33	Total Capital	\$39,127,749	\$88,150,334	\$109,377,411	\$104,362,791	\$125,829,112	\$110,206,195	\$102,715,271	\$679,768,863
34	Total O&M (Integrity Data Integration Project)	\$2,126,788	\$2,985,601	\$2,440,290	\$2,332,534	\$2,314,787	\$0	\$0	\$12,200,000

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA )  
PUBLIC SERVICE COMPANY FOR (1) APPROVAL OF )  
AN ADJUSTMENT TO ITS GAS SERVICE RATES )  
THROUGH ITS TRANSMISSION, DISTRIBUTION, )  
AND STORAGE SYSTEM IMPROVEMENT CHARGE )  
("TDSIC") RATE SCHEDULE; (2) AUTHORITY TO )  
DEFER 20% OF THE APPROVED CAPITAL )  
EXPENDITURES AND TDSIC COSTS FOR ) Cause No. 44403-TDSIC-4  
RECOVERY IN PETITIONER'S NEXT GENERAL ) *On Remand*  
RATE CASE; AND (3) APPROVAL OF PETITIONER'S )  
UPDATED 7-YEAR GAS PLAN, INCLUDING ACTUAL )  
AND PROPOSED ESTIMATED CAPITAL )  
EXPENDITURES AND TDSIC COSTS THAT EXCEED )  
THE APPROVED AMOUNTS, ALL PURSUANT TO )  
IND. CODE CH. 8-1-39 AND THE COMMISSION'S )  
ORDERS IN CAUSE NOS. 44403 AND 44403-TDSIC-1.

AND

VERIFIED PETITION OF NORTHERN )  
INDIANA PUBLIC SERVICE COMPANY LLC )  
FOR (1) APPROVAL OF AN ADJUSTMENT )  
TO ITS GAS SERVICE RATES THROUGH )  
ITS TRANSMISSION, DISTRIBUTION, AND )  
STORAGE SYSTEM IMPROVEMENT )  
CHARGE ("TDSIC") RATE SCHEDULE; (2) )  
AUTHORITY TO DEFER 20% OF THE ) CAUSE NO. 44403-TDSIC-9  
APPROVED CAPITAL EXPENDITURES AND )  
TDSIC COSTS FOR RECOVERY IN )  
PETITIONER'S NEXT GENERAL RATE )  
CASE; (3) APPROVAL OF PETITIONER'S )  
UPDATED 7-YEAR GAS PLAN, INCLUDING )  
ACTUAL AND PROPOSED ESTIMATED )  
CAPITAL EXPENDITURES AND TDSIC )  
COSTS THAT EXCEED THE APPROVED )  
AMOUNTS IN CAUSE NO. 44403-TDSIC-8, )  
ALL PURSUANT TO IND. CODE CH. 8-1-39-9, )  
AND (4) APPROVAL OF PETITIONER'S )  
RETURN OF EXCESS INCOME TAX )  
REVENUE RECOVERED THROUGH ITS )  
BASE RATES BETWEEN JANUARY 1 AND )  
APRIL 30, 2018 THROUGH ITS TDSIC )  
FACTOR. )

**SUPPLEMENTAL SETTLEMENT ON AWARD OF  
ATTORNEY FEES AND LITIGATION EXPENSES**

This Supplemental Settlement on Award of Attorney Fees and Litigation Expenses (“Supplemental Settlement”) is entered into this 9<sup>th</sup> day of November, 2018, between and among duly authorized representatives of NIPSCO Industrial Group (“Industrial Group”) and Lewis & Kappes, P.C. (“Lewis & Kappes”) (together the “Petitioning Parties”), and the Indiana Office of Utility Consumer Counselor (“OUCC”). The Petitioning Parties and the OUCC are referred to collectively as the “Settling Parties.”

WHEREAS, on November 5, 2018, a Stipulation and Settlement Agreement (the “TDSIC Settlement”) was executed by the Industrial Group, the OUCC and Northern Indiana Public Service Company (“NIPSCO”) and filed with the Indiana Utility Regulatory Commission (the “Commission”) in the above-captioned causes;

WHEREAS, the TDSIC Settlement resolves disputes raised over the course of nearly three years of contested proceedings involving NIPSCO’s 7-Year Gas Plan as approved under the Transmission, Distribution, and Storage System Improvement Charges and Deferrals Act (the “TDSIC Statute”), Ind. Code ch. 8-1-39;

WHEREAS, in Cause No. 44403-TDSIC-4 (“TDSIC-4”), the Industrial Group raised challenges to the ratemaking treatment sought by NIPSCO with respect to certain multiple unit project portions of its 7-Year Gas Plan and associated cost increases that NIPSCO sought to recover through the TDSIC mechanism;

WHEREAS, in the final order in TDSIC-4, the Commission granted the relief sought by NIPSCO over the Industrial Group’s objections, and the Industrial Group then sought judicial review in an appeal docketed at the Court of Appeals as Case No. 93A02-1607-EX-1644;

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WHEREAS, in three successive proceedings under Cause No. 44403 designated as TDSIC-5, TDSIC-6 and TDSIC-7, the Industrial Group raised further challenges to the ratemaking treatment sought by NIPSCO regarding multiple unit projects and asserted further objections to additional cost increases that NIPSCO sought to recover through the TDSIC mechanism;

WHEREAS, the final orders in TDSIC-5, TDSIC-6 and TDSIC-7 all granted the relief sought by NIPSCO over the Industrial Group's objections, and the Industrial Group in each instance sought judicial review in further appeals docketed at the Court of Appeals as, respectively, Case No. 93A02-1701-EX-177, 93A02-1707-EX-1632 and 18A-EX-146;

WHEREAS, on June 20, 2017, the Court of Appeals issued a decision in the TDSIC-4 appeal, reported as NIPSCO Industrial Group v. Northern Indiana Public Service Co., 78 N.E.3d 730 (Ind. App. 2017), vacated, 100 N.E.3d 234 (Ind. 2018), affirming the Commission order and ruling against the Industrial Group;

WHEREAS, the Industrial Group petitioned for transfer in the TDSIC-4 appeal, that petition was granted by the Indiana Supreme Court, and on June 20, 2018, the Supreme Court issued its decision, reported as NIPSCO Industrial Group v. Northern Indiana Public Service Co., 100 N.E.3d 234 (Ind. 2018), reversing the TDSIC-4 order and finding in favor of the Industrial Group with respect to the challenges to multiple unit projects and associated cost increases;

WHEREAS, as of June 20, 2018, NIPSCO's next proceeding on its 7-Year Gas Plan, TDSIC-8, was pending before the Commission at a post-hearing stage, and NIPSCO sought leave to reopen the record in order to modify its plan update and adjust the requested ratemaking relief in light of the decision in the TDSIC-4 appeal, resulting in a Commission order granting the modified relief on an interim basis subject to refund;



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WHEREAS, the Industrial Group commenced an appeal from the TDSIC-8 order, docketed at the Court of Appeals as Case No.18A-EX-2281, which by agreement of the parties was stayed prior to record preparation and briefing;

WHEREAS, on petition for rehearing filed by NIPSCO, the Supreme Court modified its decision in the TDSIC-4 appeal on September 25, 2018, in a manner that did not alter the rulings with respect to multiple unit projects and the challenged cost increases (as modified, the “Supreme Court Decision”);

WHEREAS, the appeals from the orders in TDSIC-5, TDSIC-6 and TDSIC-7 are all fully briefed but have not been decided by the Court of Appeals;

WHEREAS, the Supreme Court Decision was certified on October 15, 2018, and the Commission then resumed jurisdiction over TDSIC-4 in order to carry out the remand instructions;

WHEREAS, as of October 15, 2018, NIPSCO’s next proceeding on its 7-Year Gas Plan, TDSIC-9, was pending before the Commission with an evidentiary hearing scheduled for November 29, 2018;

WHEREAS, upon certification of the Supreme Court Decision, the Industrial Group, NIPSCO and the OUCC engaged in negotiations in an effort to resolve by agreement the issues raised in the TDSIC-4 remand, the pending appeals in TDSIC-5, TDSIC-6, TDSIC-7 and TDSIC-8, and the pending TDSIC-9 proceeding;

WHEREAS, on November 2, 2018, the Industrial Group, NIPSCO and the OUCC reached an agreement in principle and, on that basis, moved at the Commission to consolidate the TDSIC-4 remand and TDSIC-9, and further moved at the Court of Appeals to stay the appeals from the orders in TDSIC-5, TDSIC-6 and TDSIC-7;

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WHEREAS, on November 5, 2018, the Industrial Group, NIPSCO and the OUCC executed the TDSIC Settlement and filed it with the Commission;

WHEREAS, a provision in the TDSIC Settlement calls for the Industrial Group and the OUCC, by separate agreement contingent on approval of the TDSIC Settlement, to determine a mutually acceptable award for recoverable fees and expenses consistent with common fund principles and established Commission practice;

WHEREAS, the OUCC, in its capacity as the statutory representative of the public served by NIPSCO, has reached agreement with the Petitioning Parties on an award of attorney fees and litigation expenses that the Settling Parties all believe to be reasonable and in the public interest in the context of this case; and

WHEREAS, the Settling Parties desire to avoid the hazards, costs and uncertainties associated with further litigation relating to the award of attorney fees and litigation expenses under the common fund doctrine in these consolidated causes;

NOW, THEREFORE, for good and sufficient consideration, receipt of which is hereby acknowledged, the Settling Parties stipulate and agree to an award of \$1.5 million, contingent on Commission approval of the TDSIC Settlement, and further in accordance with and subject to the following provisions:

**Article I**  
**Scope of Supplemental Settlement**

1.1 This Supplemental Settlement sets forth the entire and only agreement reached among the Settling Parties with respect to the award of attorney fees and litigation expenses from the common funds arising from the Supreme Court Decision and the TDSIC Settlement.

1.2 This Supplemental Settlement settles and resolves all issues, claims, contentions, rights, obligations and remedies which the Petitioning Parties, or any of them, may now or in the

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future have under the common fund doctrine with respect to the consumer benefits provided for in the Supreme Court Decision and the TDSIC Settlement.

**Article II**  
**Procedure Before the Commission**

2.1 The Settling Parties shall each be represented at any conference or hearing that the Commission may hold concerning the subject matter of this Supplemental Settlement, and shall affirmatively support this Supplemental Settlement. The presentation by the Settling Parties at any such conference or hearing shall be discussed and agreed upon in advance by all the Settling Parties.

2.2 The Settling Parties shall support this Supplemental Settlement before the Commission and request that the Commission accept and approve the Supplemental Settlement without change or condition that is unacceptable to any of the Settling Parties. The Petitioning Parties shall be responsible for the preparation and submission of any and all evidence and other written materials supporting the Supplemental Settlement, subject to OUCC review and approval prior to submission. Upon review and approval of such submissions, the OUCC shall agree and stipulate to the admissibility of any such evidence and, except as may be mutually agreed otherwise, shall waive cross-examination of any witnesses offering testimony in support of the Supplemental Settlement. Except as may be mutually agreed among the Settling Parties, no other evidence may be offered by any of the Settling Parties. The Settling Parties shall support the Supplemental Settlement in proposed orders, briefs, motions and other pleadings before the Commission, provided such documents are prepared by the Petitioning Parties and subject to OUCC review and approval prior to filing.

2.3 Contingent on Commission approval of the TDSIC Settlement, the Settling Parties shall request that the Commission enter an order:

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- (a) Accepting and approving the Supplemental Settlement in its entirety, without change or condition unacceptable to any of the Settling Parties;
- (b) Finding that the acceptance and approval of the Supplemental Settlement resolves all issues before the Commission concerning the award of attorney fees and litigation expenses from the common funds arising from the Supreme Court Decision and the TDSIC Settlement; and
- (c) Directing NIPSCO to pay the award to the Petitioning Parties within ten (10) days after a final unappealable order approving the TDSIC Settlement, in accordance with timely and reasonable transmittal instructions to be provided by the Petitioning Parties to NIPSCO.

2.4 If the Commission does not enter an order consistent with the provisions of Section 2.3 above, the Petitioning Parties shall jointly appeal any such Commission order (without first seeking reconsideration or rehearing, unless all Petitioning Parties agree to the contrary) until the legality of the Commission's order and the award have been finally decided. Because of its status as a signatory to this Supplemental Settlement, the OUCC shall be designated as an appellant in any such appeal.

2.5 If some entity or person not a Settling Party appeals or seeks rehearing or reconsideration of a Commission order consistent with Section 2.3 above, then the Settling Parties individually and collectively shall actively defend and support, or in the case of the OUCC not oppose, the Commission's order on appeal or on rehearing or reconsideration, which may include the submission of appropriate briefs, motions and other pleadings in support of such order, to be prepared by the Petitioning Parties and reviewed and approved by the OUCC prior to filing.

**Article III**  
**Award of Fees, Costs and Expenses**

3.1 The Petitioning Parties performed valuable services for the benefit of consumers in NIPSCO's service territory throughout the proceedings in TDSIC-4 through TDSIC-9 and the associated appeals, culminating in the tangible immediate and long-term benefits under the Supreme Court Decision and the TDSIC Settlement. The Petitioning Parties are entitled to an award of reasonable attorney fees, litigation expenses and court costs pursuant to the common fund doctrine and in accordance with the principles explained in Northern Indiana Public Service Co. v. Citizens Action Coalition, 548 N.E.2d 153 (Ind. 1989), and Citizens Action Coalition v. PSI Energy, Inc., 664 N.E.2d 401 (Ind. App. 1996).

3.2 Following a review of the proceedings, pertinent records and supporting information provided by the Petitioning Parties, the Settling Parties have negotiated and now agree that an award of \$1.5 million would be reasonable and in the public interest in the context of these proceedings. Such an award reflects the attorney time reasonably expended on the relevant proceedings, times the established hourly rates for the particular attorneys, enhanced with a multiplier of less than 3.2, plus recoverable expenses. Such an award also amounts to less than 14.4% of the readily quantifiable rate benefits to NIPSCO customers directly achieved through the legal efforts in the relevant proceedings, not counting additional and substantial rate benefits that cannot be quantified with precision, will be derived in future rate proceedings, or arise as an indirect consequence of the Supreme Court Decision.

3.3 In accordance with Section B ¶9 of the TDSIC Settlement, the Settling Parties agree and stipulate that the foregoing award is consistent with common fund principles and established Commission practice.

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3.4 The Supplemental Settlement was negotiated in good faith and at arm's length following full disclosure of all relevant information, including time and expense records of the Petitioning Parties. The pertinent time and expense records are those reasonably related to the regulatory proceedings in TDSIC-4, TDSIC-5, TDSIC-6, TDSIC-7, TDSIC-8 and TDSIC-9 and the related appeals.

3.5 In accordance with Section B ¶9 of the TDSIC Settlement, the agreed award of attorney fees and litigation expenses will be netted against the reduction in revenue requirements to be implemented in TDSIC-9.

3.6 In consideration of the payment of the agreed award and the other provisions of this Supplemental Settlement, but subject to Section 4.2, the Petitioning Parties jointly and severally release and otherwise discharge NIPSCO and its retail gas customers from any and all claims that they individually or collectively may now or in the future have for reasonable attorney fees, litigation expenses and court costs arising from and out of the regulatory and appellate proceedings that culminated in the TDSIC Settlement.

**Article IV**  
**Conditions**

4.1 Neither the making of this Supplemental Settlement nor any of its provisions shall constitute in any respect an admission by any Settling Party in this or any other litigation or proceeding.

4.2 The release in Section 3.6 is expressly conditioned upon the entry by the Commission or a court of competent jurisdiction of a final, unappealable order consistent with the provisions of Section 2.3 above and the payment of the award described in Section 3.2 of this Supplemental Settlement.

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4.3 Neither the making of this Supplemental Settlement, nor the execution of any of the other documents or pleadings required to effectuate its provisions, nor any of the provisions thereof, nor the entry by the Commission of an order consistent with the provisions of Section 2.3 above, shall establish any principles or precedent. No Settling Party shall be deemed foreclosed by this Supplemental Settlement from making any contention or taking any position in any other proceeding or investigation, except that no contention shall be made or position taken challenging the validity or binding nature of this Supplemental Settlement or the legality of a Commission order approving it consistent with the provisions of Section 2.3.

4.4 This Supplemental Settlement shall inure to the benefit of and be binding upon the successors, heirs and assigns of the Settling Parties.

**Article V**  
**General Provisions**


5.1 The Settling Parties have executed this Supplemental Settlement in their respective capacities and on behalf of themselves and any one claiming through or under them, individually or collectively. The Petitioning Parties have expressly executed this Supplemental Settlement on behalf of themselves and their members. The OUCC has expressly executed this Settlement Agreement pursuant to its authority under Ind. Code §§8-1-1.1-4.1 and 5.1 as the representative of consumers served by NIPSCO.

5.2 The members of the Industrial Group consist of: ArcelorMittal USA; Arconic, Inc.; BP Products North America, Inc.; Cargill, Inc.; Fiat Chrysler Automotive; General Motors LLC; Praxair, Inc.; USG Corporation; and United States Steel Corporation.

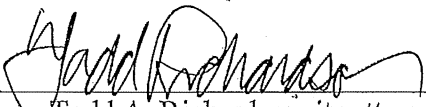
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THEREFORE, the Petitioning Parties and the OUCC enter into this Supplemental Settlement through their duly authorized representatives this 9<sup>th</sup> day of November, 2018.

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

By: 

NIPSCO INDUSTRIAL GROUP

By:   
Todd A. Richardson, its attorney

LEWIS & KAPPES, P.C.

By:   
Todd A. Richardson