

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF SOUTHERN)
INDIANA GAS AND ELECTRIC COMPANY)
d/b/a VECTREN ENERGY DELIVERY OF)
INDIANA, INC. (“VECTREN SOUTH”) FOR (1))
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR A)
COMPLIANCE PROJECT TO MEET)
FEDERALLY MANDATED REQUIREMENTS)
TO CLOSE ITS A. B. BROWN POND (THE)
“BROWN POND COMPLIANCE PROJECT”);)
(2) AUTHORITY TO TIMELY RECOVER 80%)
OF THE APPROVED FEDERALLY)
MANDATED COSTS INCURRED DURING)
CONSTRUCTION AND OPERATION OF THE)
BROWN POND COMPLIANCE PROJECT)
INCLUDING POST-IN SERVICE CARRYING)
CHARGES (BOTH DEBT AND EQUITY))
 (“PISCC”) AND DEFERRED DEPRECIATION)
THROUGH VECTREN SOUTH’S)
ENVIRONMENTAL COST ADJUSTMENT)
MECHANISM; (3) AUTHORITY TO DEFER)
FOR RECOVERY IN VECTREN SOUTH’S)
ENSUING GENERAL RATE CASE 20% OF)
SUCH APPROVED FEDERALLY MANDATED)
COSTS; AND (4) IN THE ALTERNATIVE,)
APPROVAL TO INCLUDE THE BROWN)
POND COMPLIANCE PROJECT IN RATE)
BASE PURSUANT TO IC 8-1-2-23.

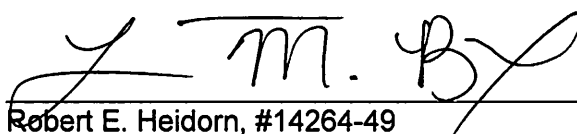
FILED
February 20, 2020
INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 45280

SUBMISSION OF PROPOSED ORDER

Petitioner, Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc., a CenterPoint Energy Company (“Vectren South” or “Petitioner”), by counsel, submits the form of proposed order agreed upon by the parties in this Cause.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. E. Heidorn", written over a horizontal line.

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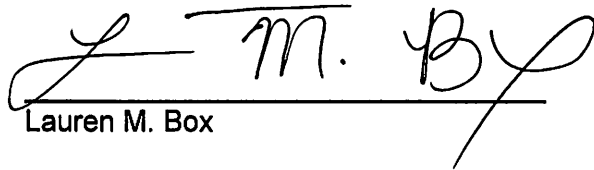
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served via electronic transmission, this 20th day of February, 2020, addressed to:

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DEBT AND EQUITY) (“PISCC”) AND)
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VECTREN SOUTH’S ENVIRONMENTAL COST)
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20% OF SUCH APPROVED FEDERALLY)
MANDATED COSTS; AND (4) IN THE)
ALTERNATIVE, APPROVAL TO INCLUDE)
THE BROWN POND COMPLIANCE PROJECT)
IN RATE BASE PURSUANT TO IC 8-1-2-23.)

CAUSE NO. 45280

APPROVED:

ORDER OF THE COMMISSION

Presiding Officers:

Stefanie Krevda, Commissioner

Brad Pope, Administrative Law Judge

On August 14, 2019, Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. (“Petitioner” or “Vectren South”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking (1) a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Ind. Code ch. 8-1-8.4 for the compliance project to close the Brown Ash Pond in compliance with the Environmental Protection Agency’s (“EPA”) Coal Combustion Residual (“CCR”) rule (the “Brown Pond Compliance Project”); (2) authority to timely recover 80% of the approved federally mandated costs incurred during construction and operation of the Brown

Pond Compliance Project, including post-in-service carrying costs, both debt and equity, and deferred depreciation expense associated with the Brown Pond Compliance Project through Petitioner's environmental cost adjustment ("ECA") mechanism; and (3) authority to defer for recovery in Petitioner's ensuing general rate case 20% of such approved federally mandated costs.

On August 15, 2019, Petitioner filed the direct testimony and attachments of the following witnesses in support of its Verified Petition: Wayne D. Games, Vice President Power Generation Operations, for Petitioner; Angila M. Retherford, Vice President, Environmental and Corporate Responsibility, for Petitioner; Jay D. Mokotoff, Senior Engineer Group Manager, Civil and Environmental Engineering, AECOM Technical Services, Inc. ("AECOM"); Claire Schmit, Principal Process Engineer, AECOM; David M. Bowler, Director, Accounting, for Petitioner; J. Cas Swiz, Director, Rates and Regulatory Portfolio Management, for Petitioner. On October 4, 2019, Petitioner filed a Notice of Substitution of Witness notifying the Commission and the parties that Mr. Keith Benton, Senior Project Engineer, AECOM is being substituted for and is adopting the direct testimony previously filed by Vectren South Witness Claire Schmit.

Also, on August 15, 2019, Petitioner filed a Motion for Protection of Confidential and Proprietary Information ("Motion") in this Cause. In its Motion, Petitioner indicated certain information ("Confidential Information") that it intended to submit in this matter contains trade secrets as that term is defined under Ind. Code § 24-2-3-2. The Presiding Officers by Docket Entry dated September 10, 2019 found there was sufficient basis for a determination that the Confidential Information should be held as confidential by the Commission on a preliminary basis. Petitioner submitted the confidential materials in accordance with the terms of the Docket Entry on September 11, 2019.

On September 19, 2019, Citizens Action Coalition of Indiana, Inc. ("CAC") filed a Petition to Intervene, which was granted by Docket Entry dated September 30, 2019.

On December 19, 2019, Petitioner and the Office of Utility Consumer Counselor ("OUCC") jointly submitted a Stipulation and Settlement Agreement resolving all matters raised in this proceeding as among Petitioner and OUCC (the "December Settlement Agreement"). Contemporaneously, Petitioner filed supplemental testimony of David M. Bowler, Director, Accounting, for Petitioner, in support of the December Settlement Agreement. In addition, the OUCC filed the Settlement Testimony of Cynthia M. Armstrong, Senior Utility Analyst, Electric Division, for the OUCC, in support of the December Settlement Agreement.

On January 10, 2020, Petitioner, OUCC, and CAC ("collectively referred to herein as the "Settling Parties") jointly submitted a Stipulation and Settlement Agreement pursuant to which the CAC joined in the December Settlement Agreement and the Settling Parties agreed to additional terms pertaining to the Brown Ash Pond Compliance Project (the "Joint Settlement Agreement"), thereby resolving all matters raised in this proceeding as among the Settling Parties. Contemporaneously, Petitioner filed supplemental testimony of Angila M. Retherford, Vice President, Environmental and Corporate Responsibility, for Petitioner, in support of the Joint Settlement Agreement.

On February 11, 2020, the Presiding Officers issued a Docket Entry requesting updates of certain information related to the settlements. Petitioner filed its Second Motion for Protection of Confidential and Proprietary Information on February 13, 2020, seeking confidential treatment for certain information related to Petitioner's response to the February 11, 2020 Docket Entry (also referred to herein as part of the "Confidential Information"). The Motion was granted, and Petitioner

filed its response on February 14, 2020, including submitting confidential materials supporting the response in accordance with the terms of the February 13, 2020 Docket Entry granting confidential treatment.

A public evidentiary hearing was held in this Cause at 9:30 am on February 18, 2020, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and CAC appeared at, and participated in, the hearing and their respective evidence was admitted into the record without objection.

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

1. Notice and Commission Jurisdiction. Notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Petitioner is a “public utility” as defined in Ind. Code §§ 8-1-2-1(a) and an “energy utility” as defined in Ind. Code § 8-1-8.4-3. Petitioner is subject to the jurisdiction of this Commission in the manner and to the extent provided by Indiana law. Pursuant to Ind. Code ch. 8-1-8.4, Petitioner may apply to the Commission for Certificates of Public Convenience and Necessity and recovery of federally mandated costs. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner’s Organization and Business. Petitioner is a public utility incorporated under the laws of the State of Indiana. Petitioner has authority to engage in and is engaged in rendering electric service within Indiana. Vectren South owns, operates, manages, and controls, among other things, plants, property, equipment, and facilities that are used and useful for the convenience of the public in the production, storage, transmission, distribution, delivery and furnishing of electric utility service to approximately 145,000 customers in southwestern Indiana.

3. Relief Requested. Petitioner requests: (1) a finding that public convenience and necessity will be served by the proposed Brown Pond Compliance Project, (2) granting Petitioner a Certificate of Public Convenience and Necessity (“CPCN”) for the Brown Ash Pond Compliance Project pursuant to Ind. Code ch. 8-1-8.4; (3) a finding that the Brown Ash Pond Compliance Project constitutes a compliance project that will allow Petitioner to comply directly or indirectly with “federally mandated requirements” under Ind. Code § 8-1-8.4-5 and finding that the associated costs are “federally mandated costs” under Ind. Code § 8-1-8.4-4 and therefore eligible for cost recovery set forth in Ind. Code § 8-1-8.4-7; (4) making the required findings under each of the factors set forth in Ind. Code § 8-1-8.4-6(b); (5) authorizing Petitioner to timely recover 80% of the stipulated federally mandated costs incurred during construction and operation of the Brown Ash Pond Compliance Project, including post-in-service carrying costs, both debt and equity, and deferred depreciation expense associated with the Brown Ash Pond Compliance Project through Petitioner’s ECA mechanism; (6) authorizing Petitioner to defer for recovery in Petitioner’s ensuing general rate case 20% of such approved federally mandated costs until such costs are reflected in Petitioner’s retail electric rates pursuant to Ind. Code § 8-1-8.4-7(c)(2); (7) authorizing Petitioner to accrue post-in-service carrying costs, both debt and equity, related to the Brown Ash Pond Compliance Project after its in-service date using the overall cost of capital approved in Petitioner’s TDSIC cases; (8) authorizing Petitioner to defer depreciation and operating and maintenance expenses relating to the Brown Ash Pond Compliance Project until such expenses are recovered through either a rate adjustment mechanism or in base rates; and (9) approving depreciation rates for the Brown Pond Compliance Project.

4. Petitioner's Case-in-Chief

Mr. Wayne Games, Petitioner's Vice President Power Generation Operations, described the Brown Ash Pond, the evaluation that led to the selection of a closure by removal Compliance Project (the "Brown Pond Compliance Project"), the overall benefits of the Brown Pond Compliance Project and its estimated cost, and how that compliance cost compares to other pond closure options. Witness Games also provided support for the request for the Commission to issue Petitioner a CPCN for the Brown Pond Compliance Project.

Mr. Games testified the Brown Ash Pond was placed in service in 1979 and remains in use. He explained that while all bottom ash produced by the Brown plant is deposited in the Brown Ash Pond, since 2009, most of the dry ash produced by the plant has been provided to a manufacturer for beneficial reuse. Mr. Games explained Petitioner's consistent supply of local Indiana coal coupled with its operating practices and procedures has allowed Petitioner to ship over 1.4 million tons of fly ash for reuse, all of which has met acceptable specifications and never been rejected. Mr. Games testified the manufacturer has not paid Petitioner for the fly ash and that providing it for beneficial reuse has benefited both the Petitioner and its customers by providing a more environmentally friendly solution, avoiding costs for disposal, extending the life of the Brown and F.B. Culley ash ponds, and eliminating the expense of excavating ash and transporting it to other locations for disposal.

Mr. Games testified that the CCR Rule requires that the Brown Ash Pond be closed, explaining Petitioner must cease ash disposal by October 2020 and commence closure of the Brown Ash Pond within 6 months of cessation of disposal as discussed in greater detail in the testimony of Petitioner's Witness Ms. Angila Retherford. Mr. Games explained challenges associated with closing the Brown Ash Pond include the ravine's irregular shape and varying depth of up to 70 feet deep; the very fine and saturated nature of the ash material causing it to be unstable, absent dewatering; and the fact the Ash Pond continues to accept water from higher ground water around the edges. Mr. Games continued his testimony by describing the selection process for identifying AECOM as the engineering firm to assist Petitioner in evaluating its compliance options as well as the work performed by AECOM related to CCR compliance, such as its assessing the structural stability of the ponds to continue to accept CCR material and development of alternative plans for the potential closing of the Brown Ash Pond. Mr. Games then explained while internally evaluating Petitioner's compliance options for the Brown Ash Pond under the CCR Rule, an entity approached Petitioner expressing interest in the reuse of the ash, yielding another opportunity for the Petitioner to explore.

Next, Mr. Games described the compliance options presented by AECOM. First, Mr. Games described the Cap (or Close) in Place ("CIP") option, explaining it requires dewatering the pond, leaving the CCR material in place, constructing a synthetic membrane cap, installing a system to drain all surface water away from the cap, adding topsoil and establishing a vegetative cover. Mr. Games testified the CIP option requires long-term groundwater monitoring and cap maintenance. Next, he described two Closure by Removal ("CBR") options, which involve dewatering the pond and removing the CCR material for disposal or beneficial reuse. Mr. Games testified while the CIP approach, at first, would appear to be less expensive than the CBR approaches, there are multiple reasons to select CBR over CIP. First, as further explained by Witness Retherford, Mr. Games testified the Indiana Department of Environmental Management ("IDEM") has been unwilling to approve a CIP approach where significant amounts of ash remain in contact with groundwater and other states are moving to require CBR. Mr. Games added if required to remove the ash from the groundwater under a CIP approach, Petitioner's upfront costs for CIP would no longer be lower. Mr. Games continued by explaining, the CIP (even if a viable option), poses risk for future

groundwater contamination and associated remediation due to CCR material being left in the closed pond. Per Mr. Games, the CBR options, on the other hand, remove the requirement for 30 years of groundwater monitoring, mitigate groundwater issues and eliminate the potential future requirement for CCR material to be excavated and placed in a lined landfill because of future regulations and/or more stringent groundwater standards and/or changes in interpretations of existing regulations or standards.

With respect to the CBR options, Mr. Games explained the advantages for selecting beneficial reuse of CCR material over disposal in a landfill include eliminating the requirement to design and permit a new landfill since the one at Brown is nearly out of space and cannot accommodate the ash from the Brown Pond Compliance Project, as well as eliminate the ongoing expense of monitoring and maintaining a landfill in future years. Mr. Games added that an off-site landfill would dramatically increase compliance costs further. Mr. Games explained if the majority or all of CCR material can be beneficially reused, the liability associated with the CCR material would be removed from the site, greatly increasing certainty and reducing risk to Petitioner and customers over time.

Mr. Games testified that in order to comply with the CCR Regulations and complete a closure of the Brown Ash Pond, the Brown Pond Compliance Project contains three major components: (1) building infrastructure to transport and load ash material to the barges on the Ohio River; (2) excavation and blending of the ash to acceptable specifications for reuse; and (3) encapsulating non-conforming CCR material with an impermeable cap that meets EPA and IDEM requirements.

Mr. Games explained the Petitioner entered into a confidential agreement (the “CBR Project Agreement”) with an Ash Reuser to excavate CCR material from the Brown Ash Pond and deliver acceptable material (ponded ash) to the Ash Reuser by loading it on a barge at the Brown loading facility on the Ohio River. Mr. Games confirmed the Ash Reuser will pay Petitioner for the Brown fly ash it accepts; and that the Ash Reuser agreed to accept a specified minimum required amount of ash each year, which will ensure timely removal of the ash material from the Brown Ash Pond. Mr. Games confirmed the CBR Project Agreement also contains security provisions to protect Petitioner financially in the case of default by the Ash Reuser. Mr. Games continued by explaining the Ash Reuser accepts ownership once the material is on the barge and transports it to its manufacturing site. Mr. Games described acceptable material is defined as material that meets or exceeds the Agreement quality specifications, or non-conforming material that is off-spec but accepted by the Ash Reuser prior to its loading on a barge for shipment. Mr. Games testified Petitioner will test the ash quality in an on-site laboratory and will oversee blending of the ash as necessary to meet the specifications.

To effectuate the Brown Pond Compliance Project, Mr. Games explained Petitioner entered in to a confidential agreement with AECOM as the EPCM entity. Mr. Games testified Petitioner selected AECOM based on its impressive expertise and the initial compliance work AECOM completed on Petitioner’s behalf. Per Mr. Games, the scope of work for AECOM services includes: (1) engineering and design; (2) procurement; (3) project management and controls; (4) construction and construction management; (5) technical support during construction and start-up; (6) operator training; and (7) proper disposal of non-conforming material.

Regarding infrastructure investments, Mr. Games explained the Ash Reuser, and not Petitioner, is responsible for any infrastructure investments required at the Ash Reuser’s

manufacturing facility. Mr. Games then testified Petitioner will need to make several infrastructure investments to move the ash from the Brown Pond to the barges on the Ohio River, such as dewatering the ash to a moisture content level specified in the CBR Project Agreement; constructing an above-ground conveyor system to move the ponded ash one mile to the existing tube conveyor; and modifying the current dry handling barge loading system to allow for handling of ponded ash. Mr. Games explained the EPCM Agreement provides AECOM will design, procure, and install the infrastructure required to convey and then handle or load the ponded ash on the barge, and then turn over the infrastructure equipment to Petitioner to own, operate and maintain while AECOM excavates the ash pond by removing the ponded material from the Brown Ash Pond and loading conforming material into the new conveying system. Mr. Games testified the estimated costs for the aforementioned infrastructure construction and dry ash handling modifications is \$47 million in 2018 dollars. Mr. Games explained AECOM provided the estimate and will execute the construction project, as the EPCM entity, for that target price. Mr. Games added, however, that the cost of obtaining permits, clearing trees, providing electrical feed, along with Petitioner's overhead and AFUDC must be added to the estimate to arrive at the total cost.

While the terms of the agreement are confidential, Mr. Games explained the EPCM Agreement offers Petitioner cost risk protections. Mr. Games explained the agreement allows AECOM to pass actual project costs on to Petitioner with a predetermined profit margin. Mr. Games testified a fixed price alternative was not viable given uncertainties related to volume, quantity, and quality of ash in the Ash Pond as well as length of project due to unpredictable amount to be accepted annually by the Ash Reuser. Mr. Games added however that AECOM agreed to a Performance Cost Model with a Target Price that includes sharing in cost-savings and protections for cost overruns to mitigate Petitioner's cost risk and incentivize AECOM to minimize costs. Specifically, Mr. Games explained the performance components of the project related to infrastructure, excavation, and blending build up to a target price that includes a cost of work estimate, contractor's fees and contingency. Per Mr. Games, specific benefits to the Performance Cost Model include the avoidance of contingencies associated with a fixed price; the incentive for AECOM to blend and ship as much as possible to Ash Reuser thereby maximizing revenue received by Petitioner and minimizes the amount of non-conforming ash to be encapsulated; and incentive for AECOM to identify cost reduction opportunities and control costs thereby avoiding loss of profit margin and forfeit fees. Mr. Games confirmed Petitioner has used a Performance Cost Model with a Target Price in the past, citing both large power plant projects where scope is difficult to define and the Brown dam stabilizing project, the latter of which came in below target price resulting in shared savings.

Thereafter, Mr. Games testified regarding the capital and O&M costs for the Brown Pond Compliance Project. Mr. Games indicated Table 1, to his testimony (Petitioner's Exhibit 1), provided the estimated total capital and O&M costs which represents the federally mandated costs, totaling \$164,539,000, adjusted for inflation. Mr. Games explained the ash will be supplied over a period of eleven (11) years and will generate revenue from the Ash Reuser that will be used to offset Brown Pond Compliance Project costs. Mr. Games presented a comparison of those total costs to total project costs adjusted for inflation of the CIP option (\$137,509,000) and the CBR and Landfill option (\$225,526,351). He explained that because the CIP option assumes that ash would be left in contact with groundwater, it is not really a viable option because IDEM has been unwilling to permit such an approach. He also noted that the CIP option has the future risks for future groundwater contamination and associated remediation obligations due to CCR material being left in the closed pond. He noted the costs of CIP compare very differently to the total federally mandated costs of the

Brown Pond Compliance Project when consideration is given to the fact that a portion of the cost will be offset by payments from the Ash Reuser.

Regarding the estimated 1.25 million tons of ponded material that may not be able to be blended to meet Ash Reuser contract specifications or be accepted by the Ash Reuser, Mr. Games explained that as Witness Retherford testifies, Petitioner is in discussions with IDEM to allow placement of CCR material in the current Brown landfill, which if approved and provided space is available, will be the Petitioner's first option. If not approved or space is not available, the excavated CCR material will be placed in an area within the footprint of the pond that is a minimum of five (5) feet above the uppermost aquifer, encapsulated and covered with an impermeable cap that prevents water infiltration at the Brown site.

Ms. Angila Retherford, Petitioner's Vice President of Environmental and Corporate Sustainability, testified regarding the CCR Regulation; how CCR applies to the Brown Ash Pond, and Petitioner's planned closure and remediation of the Brown Pond to achieve compliance with the CCR regulation. In addition, Ms. Retherford's testimony provided support for the request for the Commission to issue Petitioner a CPCN for the Compliance Project. In addition to describing the CCR Rule and how it applies to the Brown Ash Pond, Ms. Retherford described the requirements under the CCR Rule to continue to use an existing ash pond beyond October 2020. Ms. Retherford described the Petitioner's Ash Ponds and current ash handling practices. She then explained the closure of the Brown Ash Pond was triggered under the CCR Rule for not only the violating the location restrictions enumerated in the CCR Rule but also due to detection of lithium and molybdenum in groundwater above acceptable levels. She explained that removing ash from the pond means Vectren South will be removing all ash out of the groundwater and capping any remaining non-spec ash (i.e. ash that cannot be recycled) under an impermeable cap. In addition to describing IDEM's authority under the CCR Rule, Ms. Retherford explained how the costs associated with the closure of the Brown Ash Pond qualify as federally mandated costs. Specifically, Ms. Retherford testified the CCR Rule requiring closure satisfies the requirements of a federally mandated requirement in I.C. § 8-1-8.4-5 because it is a requirement imposed on Petitioner by the federal government in connection with the Resource Conservation and Recovery Act ("RCRA") by virtue of being an energy utility that generates electricity. She added the Brown Pond Compliance Project is directly related to Petitioner's compliance with the federal mandated requirement as applicable to the Brown site, therefore, the costs associated with closure of the pond qualify as federally mandated costs.

Ms. Retherford also testified as to whether the Brown Pond Compliance Project would extend the life of an existing utility facility. She explained while the compliance project will not extend the overall life of the Brown Generating Station, the CCR Rule applies regardless of when coal generation ceases at that site. Ms. Retherford described the Brown Ash Pond as a significant part of the Brown site, explaining remediation of the Ash Pond to achieve compliance with the CCR Rule allows Petitioner to retain a compliant brownfield generation site that can continue to be used in the future.

David M. Bowler, Petitioner's Director of Accounting, testified regarding the accounting and ratemaking treatment for the Brown Pond Compliance Project pursuant to the Federal Mandate Statute. Mr. Bowler noted that the Brown plant depreciation rates never contemplated a cost of removal associated with the ash pond since the rates were set prior to adoption of CCR regulations, and thus no funds have been collected for pond closure activities. Mr. Bowler described the capital and O&M costs of the Brown Pond Compliance Project, as well as the cash proceeds from potential insurance recoveries and the Ash Reuser that would be used to offset O&M costs. Relying on the

Federal Mandate Statute, he discussed the manner in which eligible Brown Pond Compliance Project costs would be recovered over time, including the treatment of construction work in progress (“CWIP”) and allowance for funds used during construction (“AFUDC”). He noted that once capital investments were placed in-service, the accumulated depreciation would be included as a reduction to gross plant. He also explained that until such time as investments are included for recovery in rates, they would be eligible for post in-service carrying costs (“PISCC”). He set forth the method for calculation of depreciation expense as well as the cost of capital that would be used for this investment. He presented Vectren South’s proposal to use a depreciation rate of 7.69%, representing a 13-year life, coincident with the life of the Project. He stated a smaller ash impoundment to be constructed toward the end of the Brown Pond Compliance Project would obtain a 3.33% depreciation rate, representing a 30-year life, which coincides with the length of time the impoundment must be operated and managed pursuant to regulatory guidelines discussed by Witness Retherford. With respect to the cost of capital, Mr. Bowler testified that, as was approved in Cause No. 45052, the weighted average cost of capital (“WACC”) proposed to be utilized in the ECA is the most recent approved WACC from the Company’s TDSIC mechanism (Cause No. 44910). Based on the terms of the Federal Mandate Statute, Mr. Bowler described how 20% of the Brown Pond Compliance Project investment would be deferred until the Petitioner’s next base rate proceeding. He also covered the recovery of O&M costs related to the Brown Pond Compliance Project. Finally, Mr. Bowler reviewed how the revenue requirement for the Brown Pond Compliance Project would be calculated for purposes of recovery in the ECA mechanism. He attached illustrative ECA schedules to his testimony to demonstrate how the ECA filings would be prepared to reflect inclusion of the Brown Pond Compliance Project. He also discussed the proposed adjustment to Vectren South’s authorized return amount utilized in its Fuel Adjustment Clause (“FAC”) net operating income earnings tests under Ind. Code § 8-1-2-42(d) and Ind. Code § 8-1-2-42.3 because of the proposed ECA, consistent with the Federal Mandate Statute.

J. Cas Swiz, Petitioner’s Director, Rates and Regulatory Portfolio Management, provided additional testimony regarding use of the ECA to recover Brown Pond Compliance Project costs pursuant to the Federal Mandate Statute. He explained that consistent with the Federal Mandate Statute, 80% of the Brown Pond Compliance Project costs will be recovered via the already approved ECA mechanism, with the remaining 20% deferred and recovered in a future base rate case. Mr. Swiz described how the revenue requirement related to the Brown Pond Compliance Project will be calculated for purposes of ECA filings, and he discussed the illustrative ECA schedules that will be submitted to the Commission once costs have been incurred. He provided the cost allocation percentages that will be applied in the ECA. He also discussed the timing of annual ECA filings. Mr. Swiz presented a revised ECA tariff to be used once the Brown Pond Compliance Project is approved and proposed that the tariff be approved by the Commission. He concluded by setting forth a schedule of projected bill impacts resulting from recovery of Brown Pond Compliance Project costs.

Mr. Jay D. Mokotoff, Senior Engineer Group Manager, Civil and Environmental Engineering at AECOM and Mr. Keith Benton, Senior Project Engineer in the Process Development and Consulting Department of the Process Technologies Organization of AECOM (Petitioner’s civil and environmental engineering consultant for the Brown Pond Compliance Project), testified as to the process of option development and the evaluation and engineering work completed by AECOM related to closure of the Brown Ash Pond in accordance with applicable federal and state regulations. Mr. Mokotoff described AECOM’s qualification and experience related to CCR projects.

Mr. Mokotoff then defined AECOM's role in evaluating closure options for the Brown Ash Pond. He described the nature and contents of the *ABB Evaluation of Options for Pond Closure Report* (the "Report") with a high-level description of the various options and how those options were compared and evaluated. He then described the work performed by AECOM in order to prepare the Report including the development of option concepts and the application of design and regulatory criteria to each option. He then explained how the two main options, CIP and CBR, were further analyzed by evaluating alternatives related to the six main components of the closure process: Pond Closure, Excavation, Dewatering, Handling, Processing, and Storage. He then testified as to how each of these options were analyzed including the formulation of conceptual engineering designs.

Mr. Mokotoff testified as to how the Report documents the analysis process and that CBR with Beneficial Reuse was ultimately selected. He then described the CBR with Beneficial Reuse process including stormwater control and how the ash material will be loaded onto barges on the Ohio River. Lastly, he testified as to how the public convenience and necessity will be served by the chosen approach. Specifically, he testified that CBR with Beneficial Reuse represents the preferred alternative in terms of compliance, risk and cost and how it provides the best approach for this site in terms of balancing upfront project cost, cost certainty, and long term risk.

Mr. Keith Benton adopted the pre-filed testimony of Claire Schmit, Principal Process Engineer at AECOM, and testified as to the preparation of the Report, specifically the elements related to the infrastructure to support CBR with Beneficial Reuse, including loading, storage, handling, and transport of CCR materials. He then provided an overview of the Report including the description of a separate study to determine the market value of the reclaimed ponded ash and an evaluation of the infrastructure required for a CBR option in which the CCR material is transported off-site for beneficial reuse. He described the process used for evaluating CCR pond closure and infrastructure options including, but not limited to, the development and comparison of estimates of the capital cost of the infrastructure equipment, anticipated operating cost, anticipated revenue from ash reclaimed for beneficial use and total project duration for each option.

Mr. Benton's testimony described Section 4 of the Report which defines the phases of the closure process including how the CCR material will be processed, then transported to the upgraded barge loading system, which will transfer the processed ponded ash into waiting river barges for transport to the third party for beneficial reuse. He then explained what other options were considered and how AECOM evaluated the cost of each alternative as part of its analysis. He then testified as to how AECOM prepared the capital cost estimates for the selected pond closure and infrastructure options with a specific discussion of the bidding process. He also explained how AECOM developed life cycle cost estimates for the pond closure and ash handling systems. He stated that lifecycle costs are a combination of utility costs, operations and maintenance costs, replacement parts, and for the CIP option, post-closure maintenance.

Thereafter, Mr. Benton testified as to the design basis for the cost estimates for the pond closure and ash handling systems including the costs (services, equipment, construction, lifecycle, fee, and contingency) included in the cost estimates. He then testified that the estimate set forth in the Report was accurate within a range of -20% to +30% and the final project costs (as provided in Mr. Games' testimony) should have an accuracy range of -10% to +20%. Mr. Benton concluded his testimony by stating that AECOM supports Petitioner's conclusions with respect to the selection of CBR with Beneficial Reuse.

5. Settlement Agreements

After the filing of Petitioner's case-in-chief and before the submissions of any responsive testimony, two Settlement Agreements were submitted to the Commission supporting the proposed Brown Pond Compliance Project and resolving all issues in the proceeding. Initially, the OUCC and Petitioner entered into the December Settlement Agreement, and subsequently the CAC, OUCC and Petitioner entered into the Joint Settlement Agreement wherein the CAC also joined in the December Settlement Agreement. The two Settlement Agreements provide for approval of the relief requested in this proceeding by Petitioner and add additional customer safeguards that the Settlement Parties agreed upon after good faith negotiations. The terms of the two Settlement Agreements comprise the complete agreement of the Settling Parties and will be considered together and referred to hereafter as the Settlement Agreements. The key provisions are set forth below.

A. Agreement that a CPCN Should Be Granted For The Brown Pond Compliance Project. The Settling Parties have entered into the Settlement Agreements in which they agreed that the Commission should grant Petitioner a CPCN pursuant to Ind. Code ch. 8-1-8.4 for the Brown Pond Compliance Project in order to close the Brown Ash Pond in compliance with CCR regulations, as described in Petitioner's case-in-chief.

B. Recovery of Federally Mandated Costs. The Settling Parties agree that the Commission should find that the Brown Pond Compliance Project constitutes a compliance project that will allow Petitioner to comply with "federally mandated requirements" under Ind. Code § 8-1-8.4-5 and that the associated costs, as modified herein, are "federally mandated costs" under Ind. Code § 8-1-8.4-4 and therefore eligible for cost recovery set forth in Ind. Code § 8-1-8.4-7. The Settling Parties agree that the total estimated federally mandated costs of \$156,205,000 are reasonable and should be approved. This agreed upon amount reflects the Settling Parties' agreement that, in light of Ind. Code § 8-1-8.4-7(c)(3) and without waiver of the rights provided to the parties thereunder, Petitioner shall remove the contingency of \$8.33 million from the federally mandated costs.

C. Agreement on A Project Cost Credit Based Upon Cash Proceeds Received by Petitioner. The Settling Parties agree that the total federally mandated costs will be offset by total cash proceeds to be received from the Ash Reuser ("Ash Payments" in Table 1 of Petitioner's Exhibit No. 1C, p. 20) and insurance proceeds (Exhibit No. 5, p. 6, lines 1-5) and that these proceeds will be at least \$25 million. These cash proceeds will be used to offset incurred operations and maintenance ("O&M") Costs to excavate and convey the ash to the loading facility, as described in Petitioner's direct testimony.

D. Agreement for Timely Cost Recovery Through ECA Mechanism. The Settling Parties agree that the Commission should grant Petitioner's request to timely recover 80% of the approved federally mandated costs incurred during construction and after placement in service and operation of the Brown Pond Compliance Project, including post-in-service carrying costs, both debt and equity, and deferred depreciation expense associated with the Brown Pond Compliance Project through Petitioner's Environmental Cost Adjustment ("ECA") mechanism, as described in Petitioner's Exhibit No. 5, p. 6.

E. Agreement Regarding Treatment of Cost of Removal. The Settling Parties agree that the costs of removal associated with retirements of existing or future capital assets in

connection with the Brown Pond Compliance Project are not reflected in the total projected federally mandated costs and they will not be reflected in the ECA mechanism in future proceedings. The Settling Parties agree that such costs of removal, if incurred, will be addressed in future general base rate cases to the extent of their effect on net original cost rate base. In the event the Brown Pond Compliance Project results in a retirement of existing assets, Petitioner will offset the incremental depreciation expense included in the revenue requirement calculation with the impact of the retired assets. (Petitioner's Exhibit No. 5, p. 8.)

F. Agreement to Deferral Authority. The Settling Parties agree the Commission should grant Petitioner's request to defer 20% of the approved federally mandated costs until such costs are reflected in Petitioner's retail electric rates pursuant to Ind. Code § 8-1-8.4-7(c)(2), as presented in Petitioner's Exhibit No. 5, p. 6.

G. Agreement on Other Accounting and Ratemaking Treatment. The Settling Parties agree that the Commission should grant Petitioner's requested accounting and ratemaking treatment.

H. Agreement on Preservation of Rights Regarding Effect of Environmental Liability on Rates. The Settling Parties agree in the event Petitioner is held liable for damages or made subject to enforcement action with respect to the handling of the ash from the Brown Ash Pond, the Settling Parties reserve their respective positions with respect to any request for rate recovery related thereto and preserve their rights to defend such positions in future proceedings.

I. Agreement to Submit Plans and Notice Regarding Dewatering. The Settling Parties agree that, prior to commencing dewatering of the Brown Ash Pond, for purposes of closing the Brown Ash Pond, Petitioner shall submit the dewatering plans to IDEM for approval. Petitioner shall provide a copy of the dewatering plans and the notice to IDEM of the commencement of dewatering to the Settling Parties.

J. Agreement on Closure Activities. The Settling Parties agree that, prior to commencing any closure-in-place of CCR at the Brown Ash Pond, Petitioner shall submit and receive IDEM approval of a closure plan for the Brown Ash Pond pursuant to applicable IDEM regulations. Petitioner shall include a revised Fugitive Dust Plan for the Brown Ash Pond as part of the closure plan application. The full closure plan for the Brown Ash Pond shall be made publicly available.

K. Agreement to Worker Protections. The Settling Parties agree that Petitioner shall work with its contractors to include worker protection provisions in the revised Fugitive Dust Plan submitted as part of Petitioner's closure plan for the Ash Pond. Those worker protection provisions should include protections for workers engaged in the removal of CCR from the Brown Ash Pond, onsite processing of the CCR, and conveying of the CCR from the Brown Ash Pond to any barge that will transport it to off-site locations.

L. Additional Terms. The Settling Parties agree that the Settlement Agreements are a complete, interrelated package and should be accepted or rejected in their entirety without modifications or conditions that may be unacceptable to any Settling Party. If not approved in their entirety, the Settlement Agreements shall be null and void to the extent a Settling Party issues notice within fifteen (15) business days of the date of the Final Order that the modifications made by the Commission are unacceptable.

6. Evidence Supporting the Settlement Agreement

A. Petitioner's Testimony in Support of the Settlement Agreement

Petitioner's witness Bowler testified in support of the December 19, 2019 Settlement Agreement with the OUCC which was later joined by the CAC. He explained that the Settlement Agreement supports the relief requested regarding the Brown Pond Compliance Project, including agreement that a CPCN pursuant to the Federal Mandate Statute should be granted, and that the Settlement Agreement adds certain customer safeguards that further support a finding that the Brown Pond Compliance Project is in the public interest. Mr. Bowler described the following customer protections set forth in the Settlement Agreement: (1) removal of a contingency of over \$8 million from the Brown Pond Compliance Project costs, thereby reducing the approved federally mandated costs to \$156,205,000, (2) setting a \$25 million minimum offset of Brown Pond Compliance Project O&M costs based on projected cash proceeds to be received from both the Ash Reuser and insurance policies, and (3) to the extent Petitioner is found liable for damages or faces an enforcement action related to handling of fly ash, the parties reserve their rights as to any request for recovery of such costs. Mr. Bowler noted that the Settlement Agreement also clarifies how costs of removal will be handled once existing assets are retired. Mr. Bowler stated that the Settlement Agreement represents a negotiated compromise that produces a fair and balanced outcome and asked the Commission to issue an order approving the terms of the Settlement Agreement in its entirety.

Petitioner's witness Retherford testified in support of the Joint Settlement Agreement and explained the conditions included therein related to Petitioner's dewatering plans, closure plans, fugitive dust plan and worker protections with respect to fugitive dust. She testified that Petitioner's commitment to provide a copy of the dewatering plans, as well as a copy of the notice to IDEM regarding commencement of dewatering activities, to the OUCC and CAC does not change Vectren South's obligations under applicable regulations or its communications with IDEM, but it does allow the other parties to remain aware of Petitioner's interactions with that agency related to dewatering at the Brown Pond Compliance Project.

Ms. Retherford further testified as to conditions imposed with respect to Petitioner's closure plan under the Joint Settlement Agreement. She explained that Vectren South will submit and receive IDEM approval of its closure plan for the Brown Ash Pond, pursuant to applicable IDEM regulations, prior to commencing any CIP for materials that do not meet the specifications for reuse by the Ash Reuser. Additionally, she explained that Petitioner commits to provide the revised Fugitive Dust Plan (as required under the CCR Rule) as part of its closure plan application to IDEM and to make the full closure plan publicly available.

She also testified that the worker protections Vectren South has committed to include in the closure plan to be submitted to IDEM are already contemplated in the anticipated contractor and subcontractor agreements to be utilized to complete the Brown Pond Compliance Project. She concluded her testimony by stating that the Joint Settlement Agreement is in the public interest due in part to the fact that it provides a reasonable resolution without the time and expense that would be incurred in connection with litigation.

B. The OUCC's Testimony in Support of the Settlement Agreement

Ms. Cynthia M. Armstrong, Senior Utility Analyst, Electric Division, OUCC, testified in support of the December Settlement Agreement. In her testimony she summarized the primary

components of the December Settlement Agreement. She explained that the Settlement Agreement is in the public interest for the many reasons. First, she stated that the Settlement Agreement mitigates the impact on consumers of potential cost overruns of the project by removing the contingency Vectren originally proposed in its application for a Federally Mandated CPCN. She explained that under I.C. § 8-1-8.4-7(c)(3), actual costs that exceed the projected federally mandated costs of the approved compliance project by more than 25% require specific justification by the energy utility and specific approval by the Commission before being authorized in the next general rate case filed by the energy utility with the Commission. She concluded that a utility does not have to receive specific Commission approval for cost overruns until the project costs exceed 25% of the approved amount, so the Federally Mandated Requirements statute naturally allows a utility a reasonable level of contingency for a federally mandated project.

Second, she testified that the Settlement Agreement further mitigates the rate impact of the project on ratepayers by offsetting O&M costs with the cash proceeds received from the ash re-user and insurance proceeds. She also noted that if the Brown Ash Pond Compliance Project results in a retirement of existing assets, Vectren will offset the incremental depreciation expense included in the revenue requirement calculation for the ECA with the impact of the retired assets.

Third, she stated the Settlement Agreement allows for the closure of the A.B. Brown ash pond in a manner that is more protective of public health and the environment than the complete closure in-place of the pond. She explained that by removing the ash and allowing it to be beneficially re-used in a manner that will encapsulate it, Vectren is minimizing the likelihood that dangerous constituents within the ash will leak into local groundwater supplies. She testified that beneficially re-using the ash also mitigates Vectren's future liability associated with remediation and decreases costs that could potentially be passed onto ratepayers. She noted that the OUCC does not necessarily agree that such remediation costs are appropriate to pass onto ratepayers, but stated that the project minimized the risk of a future conflict between Vectren and the OUCC on additional remediation costs.

Finally, she stated that public policy supports the Settlement Agreement. She explained that by collaborating to resolve the issues in this proceeding, the Settlement Agreement also serves the public interest by avoiding contentious and costly litigation. She affirmed that the Settlement Agreement provides ratepayer benefits and a reasonable compromise among the Settling Parties and recommended its approval.

Ms. Armstrong also addressed the OUCC's opposition to recovery under the Federal Mandate Statute in other cases before the Commission and explained the agency's differing position in this case. She testified that after reviewing Vectren's CCR Compliance Plan, the OUCC found Vectren put forth an approvable plan that met the requirements of I.C. § 8-1-8.4-6(b). She stated that Vectren developed an innovative plan for dealing with its legacy ash waste and that it was clear to the OUCC that Vectren investigated reasonable alternatives to closing the ash pond in a manner that mitigated the costs passed onto ratepayers. She noted that although that a CCR Compliance Plan similar to Vectren's may not be possible for other utilities to implement, a utility should show that it reasonably considered and investigated the possibility of re-using its ash when submitting an application for rate recovery before the Commission. She further explained that Vectren appears to be taking all actions possible to further reduce the costs of closure beyond selling the ash for re-use by actively pursuing compensation under its insurance policies and providing an offset to costs recovered in the ECA tracker to account for the retirement of the ash ponds.

7. Commission Discussion and Findings

A. Consideration of Settlement Agreements. In various Orders of the Commission in other proceedings, we previously have discussed our policy with respect to settlements:

Indiana law strongly favors settlement as a means of resolving contested proceedings. *See, e.g., Manns v. State Department of Highways*, (1989), Ind., 541 N.E.2d 929, 932; *Klebes v. Forest Lake Corp.*, (1993), Ind. App. 607 N.E.2d 978, 982; *Harding v. State*, (1992), Ind. App., 603 N.E.2d 176, 179. A settlement agreement “may be adopted as a resolution on the merits if [the Commission] makes an independent finding, supported by substantial evidence on the record as a whole, that the proposal will establish ‘just and reasonable’ rates.” *Mobil Oil Corp. v. FPC*, (1974), 417 U.S. 283, 314.

Indianapolis Power & Light Co., Cause No. 39936, p. 7 (IURC 9/24/95); *see also Commission Investigation of Northern Ind. Pub. Serv. Co.*, Cause No. 41746, p. 23 (IURC 9/23/02). This policy is consistent with expressions to the same effect by the Supreme Court of Indiana. *See, e.g., Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) (“The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes”); *In re Assignment of Courtrooms, Judge’s Offices and Other Facilities of St. Joseph Superior Court*, 715 N.E.2d 372, 376 (Ind. 1999) (“Without question, state judicial policy strongly favors settlement of disputes over litigation”).

Nevertheless, pursuant to the Commission's procedural rules, and prior determinations by this Commission, a settlement agreement will not be approved by the Commission unless it is supported by probative evidence. 170 Ind. Admin. Code 1-1.1-17. Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). Any settlement agreement approved by the Commission “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406. Furthermore, a Commission decision, ruling or order must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreements are reasonable, just, and consistent with the purpose of the governing statutory provisions, and that such agreements serve the public interest.

In this case, the Commission has before it a large body of evidence with which to judge the reasonableness of the terms of the Settlement Agreements, including the Settling Parties’ agreement that the Commission should grant Petitioner a CPCN pursuant to Ind. Code ch. 8-1-8.4 for the Brown Pond Compliance Project. We are also mindful that settlements represent the product of negotiations, and modifications to the terms can result in nullification of the entire settlement.

As we will discuss below, the record includes substantial evidence supporting each element of the Federal Mandate Statute. The evidence of record supports the Settling Parties’

agreement that the Brown Pond Compliance Project constitutes a compliance project that will allow Petitioner to comply directly or indirectly with “federally mandated requirements” under Ind. Code § 8-1-8.4-5 and that the associated costs, as modified herein, are “federally mandated costs” under Ind. Code § 8-1-8.4-4 and therefore eligible for cost recovery as set forth in Ind. Code § 8-1-8.4-7.

B. Certificate of Public Convenience and Necessity. Before approving the Settlement Agreements, and thus granting Petitioner a certificate of public convenience and necessity under Ind. Code ch. 8-1-8.4, we must: (1) find that public convenience and necessity will be served by the proposed Brown Pond Compliance Project; (2) approve the projected costs associated with the Compliance Project; and (3) make a finding on each of the factors in Ind. Code § 8-1-8.4-6(b). Those factors include:

(A) A description of the federally mandated requirements that the energy utility seeks to comply with through the proposed compliance project.

(B) A description of the projected federally mandated costs associated with the proposed compliance project.

(C) A description of how the proposed compliance project allows the energy utility to comply with the federally mandated requirements described by the energy utility under clause (A).

(D) Evaluation of alternative plans that demonstrate that the proposed compliance project is reasonable and necessary.

(E) Information as to whether the proposed compliance project will extend the useful life of an existing energy utility facility and, if so, the value of that extension.

Ind. Code § 8-1-8.4-6(b)(1).

i. Federally Mandated Requirements And Petitioner’s Compliance With The Mandate. Ind. Code § 8-1-8.4-5 defines a federally mandated requirement to include a “requirement that the commission determines is imposed on an energy utility by the federal government in connection with . . . [a]ny other law, order, or regulation administered or issued by the United States Environmental Protection Agency[.]” Petitioner’s Witness, Ms. Retherford, testified that the EPA’s CCR rule requires Petitioner to commence closure of its Brown Ash Pond. She explained that the results of ground water testing at the Brown Ash Pond, as required by the CCR rule, mandate the pond closure. Therefore, the Brown Pond Compliance Project is being undertaken to comply with these federally mandated requirements under Ind. Code § 8-1-8.4-5. The EPA promulgated the CCR Rule under the federal Resource Conversation and Recovery Act (“RCRA”), which is one of the federal mandates explicitly listed in Ind. Code § 8-1-8.4-5.

Witnesses Games and Retherford both explained how the proposed Brown Pond Compliance Project allows Petitioner to comply with the CCR Rule. The Settling Parties agree that the proposed Brown Pond Compliance Project is reasonable and necessary to meet a federally mandated requirement. Based on the evidence presented, we find that Petitioner’s Brown Pond Compliance Project will allow it to comply with EPA’s CCR Rule, which is a “federally mandated requirement” under Ind. Code § 8-1-8.4-5.

ii. Federally Mandated Project Costs. Ind. Code § 8-1-8.4-4 defines federally mandated costs, in part, as “costs that an energy utility incurs in connection with a compliance project, including capital, operating, maintenance, depreciation, tax or financing costs.” Petitioner’s witnesses testified to a total Brown Pond Compliance Project cost of \$164,539,000. Under the Settlement Agreements, Petitioner agreed to remove a contingency cost, thereby reducing the total federally mandated cost to \$156,205,000. The Settling Parties agree that this cost estimate constitutes a reasonable estimate of the costs for the Brown Pond Compliance Project. Under the Settlement Agreements, Petitioner has agreed to a minimum amount of cash proceeds from the Ash Reuser and insurance policy recoveries of \$25 million to offset the O&M Project Costs to be recovered. Actual recoveries in excess of this minimum will also be applied to offset O&M costs. Petitioner explained in detail the unique aspects of this Brown Pond Compliance Project whereby beneficial reuse of the excavated ash results in the ash being safely removed from the pond, and transported off site to the Ash Reuser. Project costs are offset by the proceeds from the Ash Reuser, and the insurance recoveries, to the point that the Brown Pond Compliance Project costs are comparable to a cap-in-place project. We recognize the benefits of this approach to achieving CCR compliance. The record in the proceeding sets forth the many benefits of a removal project compared to a cap-in-place project, including long-term mitigation of risk to the extent a cap-in-place approach would expose Petitioner to future additional remediation requirements at the pond.

The evidence sufficiently describes the projected federally mandated costs and expenses associated with the Brown Pond Compliance Project and demonstrates that Petitioner used sufficient rigor to develop its estimates, including the testimony of AECOM, an expert engineering firm that frequently engages in such remediation projects. The Commission agrees that the stipulated eligible project cost of \$156,205,000, represents a reasonable estimate of the federally mandated costs for the Brown Pond Compliance Project. Therefore, we approve the stipulated project cost as federally mandated costs and expenses associated with the Brown Pond Compliance Project.

iii. Alternative Plans. Petitioner’s Witness Mr. Games testified to the two approaches, CIP and CBR, as well as the alternatives considered within the CBR approach. He also described in detail the benefits of the CBR Brown Pond Compliance Project over CIP, or disposal in a land-fill. Therefore, we find that Petitioner considered alternative plans for compliance with the CCR rule. Based on the evidence presented, we find that the alternatives to the Brown Pond Compliance Project demonstrate the Project is reasonable and necessary.

iv. Useful Life of the Facilities. In her testimony, Petitioner’s Witness Ms. Retherford explained that the Brown Pond Compliance Project will extend the useful life of the existing Brown generation site, which is a brownfield site with infrastructure to be used for existing and possible future generation resources. We find that the Brown Pond Compliance Project will benefit the continued and future use of the Brown site as a location for generation resources.

v. Conclusion. The evidence presented demonstrates that the proposed Brown Pond Compliance Project will allow Petitioner to comply with the requirements of the CCR Rule. As discussed above, we have made a finding on each of the factors described in Ind. Code § 8-1-8.4-6(b) and we have approved the projected federally mandated costs associated with this Compliance Project. Therefore, we find that public convenience and necessity will be served by the Brown Pond Compliance Project and we approve the proposed Brown Pond Compliance Project and issue Petitioner a certificate of public convenience and necessity for the Brown Pond Compliance Project under Ind. Code § 8-1-8.4-7(b), consistent with the Settlement Agreements negotiated by the Settling Parties.

C. Cost Recovery. Ind. Code § 8-1-8.4-7(c) states:

If the commission approves under subsection (b) a proposed compliance project, including approval of the projected federally mandated costs associated with the compliance project, the following apply:

(1) Eighty percent (80%) of the approved federally mandated costs shall be recovered by the energy utility through a periodic retail rate adjustment mechanism that allows the timely recovery of the approved federally mandated costs. The commission shall adjust the energy utility's authorized net operating income to reflect any approved earnings for purposes of IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).

(2) Twenty percent (20%) of the approved federally mandated costs, including depreciation, allowance for funds used during construction, and post in service carrying costs, based on the overall cost of capital most recently approved by the commission, shall be deferred and recovered by the energy utility as part of the next general rate case filed by the energy utility with the commission.

(3) Actual costs that exceed the projected federally mandated costs of the approved compliance project by more than twenty-five percent (25%) shall require specific justification by the energy utility and specific approval by the commission before being authorized in the next general rate case filed by the energy utility with the commission.

Pursuant to the Settlement Agreements, the Settling Parties have agreed that Petitioner should be authorized to (1) recover 80% of the federally mandated costs for the Brown Pond Compliance Project, including PISCC, both debt and equity using the overall cost of capital approved in Petitioner's TDSIC cases, and deferred depreciation expense associated with the Project, through the Petitioner's ECA Rider; (2) defer 20% of the federally mandated costs for the Brown Pond Compliance Project for subsequent recovery in a base rate case; and (3) defer depreciation and O&M expenses relating to the Brown Pond Compliance Project until such expenses are recovered through either a rate adjustment mechanism or in base rates, all as described in the Direct Testimony of David Bowler (Petitioner's Exhibit No. 5), p. 6. The Settling Parties further agreed that Vectren South's requested accounting and ratemaking treatment should be granted except as expressly modified in the Settlement Agreements (as we have described above). The Settling Parties' agreement on the total federally mandated costs is without waiver of the rights provided to the parties under Ind. Code § 8-1-8.4-7(c)(3). The Settling Parties further agree that in the event the Brown Pond Compliance Project results in a retirement of existing assets, Vectren South will offset the incremental depreciation expense included in the revenue requirement calculation with the impact of the retired assets.

We find that the stipulated accounting and ratemaking treatment set forth in the Settlement Agreements as described above are reasonable and are hereby approved. Additionally, we find the proposed ECA tariff changes described by Mr. Cas Swiz are reasonable and are approved.

8. Conclusion. The evidence presented provides substantive support demonstrating why the Settlement Agreements are reasonable and in the public interest. We find the Settlement Agreements contain reasonable customer safeguards in terms of the project costs to be recovered and represent a reasonable resolution of the issues. Based on the evidence presented, we find that the

Settlement Agreements should be approved in their entirety. Petitioner is authorized to proceed with the Brown Pond Compliance Project, which it has demonstrated is reasonable and necessary for compliance with the CCR Rule.

The Settling Parties agree that the Settlement Agreements should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce their terms. Consequently, with regard to future citation of the Settlement Agreements, we find 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).

9. Confidential Information. Petitioner filed a Motion for Protection of Confidential and Proprietary Information (“Confidential Information”), which was granted on a preliminary basis. The evidence demonstrates the information contains trade secrets as defined in Ind. Code § 24-2-3-2 and that Petitioner takes reasonable efforts to maintain its confidentiality. Accordingly, we find that all such information should continue to be held confidential pursuant to Ind. Code §§ 8-1-2-29 and 5-14-3-4.

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

1. The Settlement Agreements attached hereto are approved in their entirety as set forth above.
2. Petitioner is issued a Certificate of Public Convenience and Necessity for the Brown Pond Compliance Project pursuant to Ind. Code §§ 8-1-8.4-6 and -7. This Order constitutes the Certificate.
3. Petitioner is authorized to timely recover 80% of the stipulated federally mandated costs incurred during construction and operation of the Brown Pond Compliance Project, including post-in-service carrying costs, both debt and equity, and deferred depreciation expense associated with the Brown Pond Compliance Project through Petitioner’s ECA mechanism. Petitioner’s authorized return amount utilized in its Fuel Adjustment Clause (“FAC”) net operating income earnings tests under Ind. Code § 8-1-2-42(d) and Ind. Code § 8-1-2-42.3 shall be adjusted accordingly.
4. Petitioner is authorized to defer for recovery 20% of such approved federally mandated costs until such costs are reflected in Petitioner’s retail electric rates pursuant to Ind. Code § 8-1-8.4-7(c)(2).
5. Petitioner is authorized to accrue post-in-service carrying costs, both debt and equity, related to the Brown Pond Compliance Project after its in-service date using the overall cost of capital approved in Petitioner’s TDSIC cases.
6. Petitioner is authorized to defer depreciation and operating and maintenance expenses relating to the Brown Pond Compliance Project until such expenses are recovered through either a rate adjustment mechanism or in base rates.
7. Petitioner is authorized to utilize the depreciation rates set forth in Petitioner’s Exhibit No. 5, p. 8 with respect to the Brown Pond Compliance Project.

8. Petitioner is authorized to revise its ECA Rider tariffs as shown in Petitioner's Exhibit No. 6, Attachment JCS-2.

9. The Confidential Information is deemed confidential under Ind. Code §§ 8-1-2-29 and 5-14-3-4, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

**HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:
APPROVED:**

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

Mary M. Becerra
Secretary of the Commission