

August 4, 2017

INDIANA UTILITY

REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC)
SERVICE COMPANY FOR (1) APPROVAL OF AND A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY FOR A FEDERALLY MANDATED)
ENVIRONMENTAL COMPLIANCE PROJECT; (2))
AUTHORITY TO RECOVER FEDERALLY MANDATED)
COSTS INCURRED IN CONNECTION WITH THE)
ENVIRONMENTAL COMPLIANCE PROJECT; (3))
APPROVAL OF THE ESTIMATED FEDERALLY)
MANDATED COSTS ASSOCIATED WITH THE) CAUSE NO. 44872
ENVIRONMENTAL COMPLIANCE PROJECT; (4))
AUTHORITY FOR THE TIMELY RECOVERY OF 80% OF)
THE FEDERALLY MANDATED COSTS THROUGH RIDER)
787 – ADJUSTMENT OF FEDERALLY MANDATED COSTS)
AND APPENDIX I – FEDERALLY MANDATED COST)
ADJUSTMENT FACTOR; (5) AUTHORITY TO DEFER 20%)
OF THE FEDERALLY MANDATED COSTS FOR)
RECOVERY IN NIPSCO’S NEXT GENERAL RATE CASE;)
(6) APPROVAL OF SPECIFIC RATEMAKING AND)
ACCOUNTING TREATMENT; (7) APPROVAL TO)
DEPRECIATE THE ENVIRONMENTAL COMPLIANCE)
PROJECT ACCORDING TO PREVIOUSLY APPROVED)
DEPRECIATION RATES; AND (8) APPROVAL OF)
ONGOING REVIEW OF THE ENVIRONMENTAL)
COMPLIANCE PROJECT; ALL PURSUANT TO IND. CODE)
§ 8-1-8.4-1 *ET SEQ.*, § 8-1-2-19, § 8-1-2-23, AND § 8-1-2-42.)

NIPSCO’S OPPOSITION TO ICC
REQUEST TO MODIFY PROCEDURAL SCHEDULE

Northern Indiana Public Service Company, by counsel, respectfully
opposes the Indiana Coal Council’s (“ICC”) Verified Petition to Intervene and
Request to Modify Procedural Schedule (“ICC Petition”) filed August 1, 2017 in

this Cause, specifically its request to modify the procedural schedule and its alternative request to take administrative notice of the ICC's Comments and Supplemental Comments, which were filed in response to NIPSCO's 2016 Integrated Resource Plan ("IRP") ("ICC IRP Comments"), as follows:

1. In the ICC Petition, the ICC asks that the Commission grant its request for leave to intervene and be made a party to this proceeding and "requests that the procedural schedule in this Cause be modified to allow the ICC an opportunity to present evidence opposing the settlement agreement or in that [sic] alternative that the Commission take administrative notice of the ICC's Comments and Supplemental Comments, which were filed in response NIPSCO's 2016 IRP." (ICC Petition at p. 4, final par.) The ICC also summarily asserts that granting the requests contained in the ICC Petition "will not unduly broaden the issues or result in unreasonable delay of this proceeding[.]" (ICC Petition at par. 8)

2. In support of the ICC Petition, the ICC states that it was not aware of the settlement agreement reached among NIPSCO, the Indiana Office of Utility Consumer Counselor, NIPSCO Industrial Group, and Citizens Action Coalition of Indiana, Inc. ("Settling Parties") and that "[h]ad the ICC been made aware of the settlement proposal to close Bailly Units 7 and 8, the ICC would have intervened in this Cause to submit testimony opposing the settlement agreement as it relates to the closing of coal-fired generation plants." (ICC Petition at par. 6) Notably,

however, the ICC does not allege that it was not aware of *this proceeding*, only the contents of the publicly-filed settlement agreement. This is telling.

3. NIPSCO does not oppose the ICC's request to intervene in this proceeding. However, it strongly opposes the request to modify the procedural schedule to allow the ICC an opportunity to present evidence opposing the settlement agreement, as doing so would undoubtedly delay this proceeding and modify the record and the Commission's rulings in this proceeding, in contravention of 170 IAC 1-1.1-11(e). NIPSCO also opposes the ICC's alternative request to take administrative notice of the ICC IRP Comments.

Extension of Procedural Schedule and Allowing to Present Evidence

4. While the ICC Petition may appear benign on its face, the ICC is really asking the Commission to excuse the ICC's inattention to a docketed and publicly-noticed proceeding. Not only that, after a settlement agreement has been reached among all but one of the parties to the proceeding *and* publicly filed, and after the time for presentation of pre-filed evidence in support of or opposition to that settlement agreement has ended, the ICC requests that its dilatoriness be excused and that it be given a second chance to present evidence to undermine a settlement agreement. This is inappropriate, as a matter of law and as a matter of policy.

5. While the ICC "acknowledges that under 170 IAC 1-1.1-11(e), an

intervenor takes the case as it finds it on the date of intervention[,]" its motion belies this claim. That is, the ICC is requesting that the Commission revise the procedural schedule it has established pursuant to the docket entry dated June 9, 2017, thereby attempting *not* to be "bound by all rulings and other matters of record prior to the time the intervenor is made a party and takes the case as the intervenor finds it as of the date of intervention[,]" as provided under 170 IAC 1-1.1-11(e). The ICC is not taking all rulings and other matters of record prior to the time of its intervention as it found them at the time it intervened; it is doing the exact opposite by requesting modification of the established procedural schedule and attempting to offer pre-filed evidence into the record after the time established for such submissions has passed. On the basis of 170 IAC 1-1.1-11(e), this portion of the ICC Petition should be denied.

6. Additionally, were the Commission to modify the procedural schedule and allow the ICC to present evidence after the time for such submissions has passed, this would interrupt the already-established procedural schedule, delay both the hearing and the order that will ultimately be issued, and reward the ICC's behavior by allowing it the advantage of offering evidence opposing the settlement agreement well after all parties have laid out their arguments in support of or opposition to the settlement. This would set a harmful and dangerous precedent. This proceeding was publicly noticed as required by law —

a fact that the ICC has not disputed—and the ICC’s lack of participation in it is attributable solely to the ICC.

7. The Commission should, therefore, deny the ICC’s request to change the procedural schedule that has been agreed-to by all other parties to this proceeding and approved by the Commission. To do otherwise would disrupt the established procedural schedule, causing harmful effects to all Settling Parties, including specifically to NIPSCO’s compliance efforts by potentially impacting its ability to timely and cost-effectively complete environmental compliance controls at other generating units.

Taking Administrative Notice of ICC IRP Comments

8. If the Commission were to deny the ICC’s request to extend the procedural schedule and allow it to submit evidence, as it should, the ICC requests in the alternative that “the Commission take Administrative Notice under 170 IAC 1-1.1-21(h) of the ICC’s Comments and Supplemental Comments, which were filed in response to NIPSCO’s IRP.” (ICC Petition at par. 13)

9. This is nothing more than a back-handed attempt to submit via “administrative notice” the same type of evidence that the ICC should be disallowed from submitting through pre-filed testimony. NIPSCO, therefore, also opposes the ICC’s alternative request that the Commission take administrative notice of the ICC IRP Comments, as the deadline for submission of pre-filed

evidence and factual matters that should be included in pre-filed testimony has passed as well.

10. The Commission should, thus, deny the ICC's alternative request to take administrative notice of the ICC IRP Comments. The underlying statute that allows the Commission to take administrative notice mandates that such submission "of a factual matter *that should be included in a party's prefiled testimony* shall be made at the same time the related evidence is prefiled." (170 IAC 1-1-21(j) (*emphasis added*)) The ICC IRP Comments that the ICC has requested the Commission to take administrative notice of are the precise type of factual matters that should have been included in pre-filed testimony. This time has passed, and the opportunity for the ICC to request that the Commission take administrative notice of the ICC IRP Comments has, consequently, also passed.

11. Were the Commission to grant either ICC's request for an extension of the procedural schedule and allow it to submit evidence *or* grant the request to take administrative notice of the ICC IRP Comments, NIPSCO (and all other parties to this proceeding) would be placed in the untenable position of deciding whether it should (1) not respond to the ICC to preserve the existing procedural schedule and thereby waive its right to due process or (2) exercise its due process right and respond to the ICC, thereby inflicting harm on itself by delaying this proceeding. Neither of these is appropriate, and placing NIPSCO (and other

parties) in this position can be avoided by the Commission denying both the ICC's request to modify the procedural schedule and its alternative request to take administrative notice of the ICC IRP Comments.

12. In the alternative, if the Commission were to grant the ICC's request to take administrative notice of the ICC IRP Comments, then the Commission should provide each party to this proceeding the opportunity to submit a motion for the Commission to also take administrative notice of that party's comments in NIPSCO's 2016 IRP proceeding. While not preferable, to the extent administrative notice of the ICC IRP Comments were granted, this avenue would allow parties to this proceeding with an opportunity to respond to the ICC IRP Comments in a way that is the least disruptive to the established procedural schedules.

Claims that the ICC Was Not Aware of Contents of the Settlement Agreement

13. NIPSCO and all other parties to this proceeding engaged in numerous settlement discussions over a period of months. This process was open to and participated in by all parties to this proceeding. Thus, the ICC had an opportunity to participate in the settlement discussions and likewise had an opportunity to know what was being discussed in the settlement discussions.

14. Furthermore, while the substance of the communications related to settlement were and are confidential, the settlement agreement amongst the Settling Parties was publicly filed with the Commission on June 9, 2017, thereby

making public NIPSCO's agreement to close Bailly Units 7 and 8 in 2018. The public filing of the settlement agreement was nearly two (2) months before filing of the ICC Petition.

15. Despite these facts, the ICC attempts to muddy the waters and excuse its failure to intervene in this proceeding, or even be aware of the goings-on in the proceeding, by alleging that NIPSCO somehow misled it by not informing the ICC that confidential settlement negotiations in this proceeding involved discussions about the possible closure of Bailly Units 7 and 8. (ICC Petition at par. 2, 5, and 10) Even if accurate, which it is not as explained below, this is a red herring that should be ignored by the Commission.

16. First, NIPSCO firmly denies any allegations that it directly or indirectly misled the ICC. Throughout the IRP process, NIPSCO has been clear that it plans to shut down Bailly Units 7 and 8 in 2018. NIPSCO and the ICC have had conversations since November 1, 2016 about the potential closure of the Bailly Generating Station, but, in both the IRP itself and in conversations since, NIPSCO has indicated that it intends to close the Bailly Generating Station if the Midcontinent Independent System Operator ("MISO") approved this request, as it did in late 2016.

17. Second, NIPSCO has clearly communicated to all stakeholders

involved in its IRP process, including the ICC, that it plans to retire Units 7 and 8 at the Bailly Generating Station on or about May 31, 2018. Shortly after receiving approval from MISO to retire Units 7 and 8, NIPSCO publicly posted the following statement on its IRP homepage: “The Midcontinent Independent System Operator (MISO) provided approval for NIPSCO to retire Bailly Generating Station Units 7 and 8 on May 31, 2018. Plans are underway to meet that date.”¹ Additionally, upon receiving the approval from MISO, NIPSCO also provided email notice to its IRP distribution list, which included the ICC, on December 7, 2016. This email is attached to this motion as Attachment A.² Thus, any claims that NIPSCO has not clearly informed stakeholders of its plan to pursue retirement of the Units 7 and 8 are simply false.

18. Finally, and most importantly, NIPSCO reminds the ICC that this proceeding has, since its inception, been a public proceeding in which any interested party could participate. Upon filing of the Verified Petition on November 1, 2016—which NIPSCO notes is the same day it filed its IRP³—public

¹ See the first bullet at the following link: <https://www.nipSCO.com/about-us/integrated-resource-plan>.

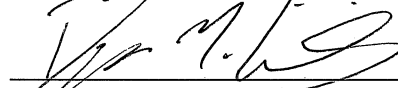
² NIPSCO has reviewed its records of this email from December 7, 2016 and confirmed that, at minimum, the ICC’s lead consultant in NIPSCO’s IRP proceeding, Emily Medine (emedine@evainc.com), was included on this correspondence.

³ NIPSCO also notes that in a presentation that was part of an IRP meeting with stakeholders on October 3, 2016 NIPSCO informed participants that it would be making an “ELG/CCR filing and [requesting a] CPCN for Michigan City 12 and Schahfer 14 & 15 environmental compliance” on November 1, 2016. See slide 76 of the October 3, 2016 presentation, which was also included as Appendix. A, Exh. 6 to the 2016 Integrated Resource Plans, available here: <https://www.nipSCO.com/docs/default-source/about-nipSCO-docs/final-2016-irp-oct-03-public->

notice was published, as required by law, providing the ICC and all other interested parties with notice of and an opportunity to participate in this proceeding. Therefore, the proximate cause of the ICC's lack of knowledge about what is contained in the settlement agreement is the ICC's decision not to intervene and participate in this proceeding, as well as its failure to monitor the public pleadings filed with the Commission.

THEREFORE, NIPSCO respectfully requests that the Commission deny the ICC request to modify the procedural schedule, which would allow the ICC an opportunity to present evidence opposing the settlement agreement, and also deny the ICC's alternative request to take administrative notice of the ICC IRP Comments.

Respectfully submitted:



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[advisory-meeting-slide-deck-web-posting-9-30-16.pdf](#). Thus, to the extent the ICC reviewed NIPSCO's IRP and its appendices, the ICC did not only have constructive notice of this proceeding based on publication, they had actual notice of NIPSCO's intention to initiate this proceeding with the Commission, including the precise date on which NIPSCO planned to file.

CERTIFICATE OF SERVICE

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

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Dated this 4th day of August, 2017.



Bryan M. Likins



Fw: Update on NIPSCO's Electric Generation Retirement

NIPSCO_IRP to: Bryan Likins

Sent by: **Alison Becker**

08/03/2017 09:32 AM

History: This message has been replied to.

----- Forwarded by Alison Becker/NCS/Enterprise on 08/03/2017 09:31 AM -----

From: NIPSCO_IRP
To: Timothy Caister/NCS/Enterprise@NISOURCE,
Date: 12/07/2016 10:34 AM
Subject: Update on NIPSCO's Electric Generation Retirement
Sent by: Alison Becker

NIPSCO wanted to provide an update that the Midcontinent Independent System Operator (MISO) provided approval for NIPSCO to retire Bailly Generating Station Units 7 and 8 on May 31, 2018 consistent with NIPSCO's request. Plans are underway to meet that date. Should you have any questions, please reply to this message. Thank you!