

JOINT EXHIBIT 1

FILED

August 4, 2017

**INDIANA UTILITY
REGULATORY COMMISSION**

**STIPULATION, SETTLEMENT AGREEMENT AND JOINT PROPOSED
ORDER**

ON BEHALF OF

**PIPELINE SAFETY DIVISION AND NORTHERN INDIANA PUBLIC
SERVICE COMPANY**

**STATE OF INDIANA
UTILITY REGULATORY COMMISSION**

PETITION OF THE PIPELINE SAFETY DIVISION)	
OF THE INDIANA UTILITY REGULATORY)	
COMMISSION PURSUANT TO IND. CODE CH. 8-1-)	
22.5 FOR VIOLATIONS OF PIPELINE SAFETY)	
STANDARDS)	CAUSE NO.
)	
RESPONDENT: NORTHERN INDIANA PUBLIC)	
SERVICE COMPANY)	

STIPULATION, SETTLEMENT AGREEMENT AND AGREED ORDER

The Indiana Utility Regulatory Commission, Division of Pipeline Safety and Northern Indiana Public Service Company (“NIPSCO”) (collectively, the “Settling Parties”) submit this Stipulation, Settlement Agreement and Agreed Order in full resolution of all issues in the above titled cause.

A. Background.

1. The Division of Pipeline Safety (the “Division”) is a division of the Indiana Utility Regulatory Commission (the “Commission”) established by Ind. Code § 8-1-22.5-2, and has the powers and duties identified in Ind. Code § 8-1-22.5-4 including, *inter alia*, administration of pipeline safety standards under the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 60101 *et seq.*), as amended and as incorporated into state law through 170 IAC 5-3.

2. NIPSCO is a “public utility” within the meaning of Ind. Code § 8-1-2-1 and provides natural gas utility service to more than 821,000 retail customers in 32 counties of Indiana pursuant to authority granted by the Commission. NIPSCO also provides

electric utility service to more than 468,000 retail customers in 20 counties in Indiana pursuant to authority granted by the Commission.

3. NIPSCO owns and operates pipeline facilities and is engaged in the transportation of natural gas, and as such is subject to the provisions of 49 CFR Part 192 as incorporated by 170 IAC 5-3.

4. On or about November 30, 2016, the Division issued two Notices of Probable Violation alleging non-compliance with the provisions of state and federal pipeline safety statutes and regulations relating to (1) the obligation to timely and accurately locate its underground facilities in compliance with the written procedures for conducting operations and maintenance activities pursuant to 49 CFR 192.605 and 170 IAC 5-3-0.6, and (2) relating to the obligation to maintain accurate facility maps and records pursuant to 170 IAC 5-3-2(10) (the "NOPVs").

B. Terms

1. Project Locates means any ticket requiring over 60-minutes of locate time spent locating Owner's underground facilities or combination of multiple tickets by the same Excavator associated with the same excavation that would require multiple trips for locate services.

2. Ticket means a request through Indiana 811 by an individual or entity to request the location of underground facilities in NIPSCO's gas service area.

3. At fault damage means a damage to NIPSCO's underground facility occurring because of a late or missed locate, incorrect maps or records, or other reasons primarily attributable to NIPSCO.

C. Specific Conditions of Settlement.

1. Complaint. NIPSCO agrees that the Division will file a Complaint in this cause concurrently with the filing of this Agreement.

2. Organizational Chart. NIPSCO agrees to provide the Division and the OUCC with an organizational chart showing its personnel involved in any substantial way with pipeline safety and compliance activities and shall explain each individual's role in pipeline safety and compliance. NIPSCO agrees to promptly provide the Division and the OUCC with updates to the chart referenced above.

3. Communication. NIPSCO agrees to provide a comprehensive list identifying points of contact for the Division and for excavators. The Division agrees that it will utilize these points of contact for communication with NIPSCO and will refer excavators to the individuals identified by NIPSCO. NIPSCO agrees to update the list promptly after any changes.

4. Locate Contracts. NIPSCO agrees to provide information about its locate contractors to the Division and the OUCC, and the Division and the OUCC acknowledge receipt of redacted versions of NIPSCO's contracts with those locate contractors. NIPSCO

agrees to promptly provide the Division and the OUCC with updates to the contracts referenced above including any amendments, addendums, or appendices thereto.

5. Progress Report. The Parties agree to in-person meetings with the Division and with the OUCC every other month in 2017 and every quarter thereafter unless otherwise agreed between the Settling Parties. In each meeting, NIPSCO shall provide an update on its pipeline safety and compliance efforts, including but not limited to the following:

- a. Discussion of metrics related to NIPSCO's locate performance as discussed in Paragraph 6 below.
- b. Excavation damages experienced by NIPSCO.
- c. A progress report on NIPSCO's GIS mapping project.
- d. Personnel and/or organizational changes or updates.
- e. A status report on communication activities with all stakeholders.
- f. Discussion of emerging issues/problem areas.
- g. A progress report on NIPSCO's implementation of American Petroleum Institute's Recommended Practice 1173 (2015) – Pipeline Safety Management Systems ("API RP 1173") and its ongoing efforts to enhance its pipeline safety culture.
- h. An overview of the NIPSCO's organization structure with a focus on specific details regarding NIPSCO's pipeline safety regulatory compliance

program and organization structure and how it supports the elements of API RP 1173 – Pipeline Safety Management Systems.

6. Ongoing Reporting – Facility Locating. NIPSCO agrees to provide the Division and the OUCC, not less frequently than each quarter, a written report providing monthly data applicable to each preceding calendar period. Upon a determination by the Commission as to the confidentiality of the data under 170 IAC 1-1.1-4, the ongoing reporting may be provided on a confidential basis. The report shall contain at least the following:

- a. Number of Project Locate requests received.
- b. Number of non-Project Locate requests not completed within two working days of the request.
- c. Number of missed locates reported to NIPSCO from company reports and/or contractor provided reports.
- d. Number of tickets turned back to NIPSCO by locate contractors where facilities were identified but not marked with reasonable accuracy (including but not limited to “untoneable” lines).
- e. Number of excavation damages resulting from inaccurate or late locates.
- f. Number of customers with service interruptions and approximate duration of time before repairs are completed resulting from missed or late main locates.

- g. Collective data on reasons for late and missed locates and any corrective actions taken to prevent any reoccurrence.
- h. For Project Locates, NIPSCO will require the maintenance of a call log or similar record that documents communication made to excavators prior to the expiration of two working days, and will provide documentation of communications with excavators for specific Project Locates as requested by the Division.
- i. Listing of dates and number of in-person meetings or trainings between NIPSCO and contractors and excavators.

7. Pipeline Safety Management System (“PSMS”). NIPSCO agrees to develop and implement a PSMS to continuously improve its overall safety performance and compliance with federal and state pipeline safety standards. In furtherance of that agreement, NIPSCO agrees to provide the Division and the OUCC with the following on or before August 1, 2017:

- a. A gap analysis of its existing policies, procedures, and practices against API RM 1173 performed by an objective independent party with experience in performing PSMS gap analyses.
- b. An assessment of its pipeline safety culture by means of observations, survey, interviews and other methods performed by an objective

independent party with experience in performing safety culture assessments.

Upon a determination by the Commission as to the confidentiality of (a) and (b) above under 170 IAC 1-1.1-4, the information may be provided on a confidential basis.

8. Maps and Records. NIPSCO agrees that at least in one meeting in 2017, NIPSCO shall meet with the Division and the OUCC to discuss the following in detail:

- a. Its program to electronically scan maps and records and geocode the information through a GIS system.
- b. The completeness and accuracy of the NIPSCO's maps and records.
- c. The availability of the electronic records to field personnel.
- d. A description of the feedback loop between locate contractors and the electronic records.
- e. A description of how NIPSCO identifies, assesses, monitors, and addresses risks related to its overall damage prevention program.

9. Civil Penalty. NIPSCO agrees to pay a civil penalty pursuant to Ind. Code § 8-1-22.5-7 in the amount of \$900,000, such payment being made within thirty (30) days after the issuance of a Final Order by the Commission approving this Agreement, subject to the provisions of Paragraph D.2. below. This civil penalty will represent full resolution of all 261 probable violations alleged by the Division in the two NOPVs. NIPSCO agrees

it will not to seek cost recovery of this civil penalty in a future rate proceeding. The Division agrees not to pursue any further proposed violations related to the failure by NIPSCO to: (1) timely and accurately locate its underground facilities in compliance with the written procedures for conducting operations and maintenance activities pursuant to 49 CFR 192.605 and 170 IAC 5-3-0.6, and (2) maintain accurate facility maps and records pursuant to 170 IAC 5-3-2(10) accurately or timely locate its underground facilities or failed to maintain adequate facilities and records for the time period between January 1, 2015 and June 30, 2017.

10. Future Violations – Civil Penalties. The Settling Parties agree that subsequent violations by NIPSCO of (1) the obligation to timely and accurately locate its underground facilities in compliance with the written procedures for conducting operations and maintenance activities pursuant to 49 CFR 192.605 and 170 IAC 5-3-0.6, and/or (2) relating to the obligation to maintain accurate facility maps and records pursuant to 170 IAC 5-3-2(10) shall be subject to an agreed schedule of civil penalties payable pursuant to Ind. Code § 8-1-22.5-7.

- a. Violations subject to civil penalties must:
 - i. have occurred during a single calendar year, and
 - ii. be supported by a Final Order of the Commission upholding the finding of violation of Ind. Code § 8-1-26-18 by the Division, subject to NIPSCO's right to challenge any such finding(s), or

iii. constitute a failure to communicate with an excavator prior to the
elapse of two full working dates under Paragraph 10.c. below.

b. The Settling Parties agree that civil penalties pursuant to Ind. Code § 8-1-22.5-7(a) may be assessed by the Division at its discretion, and if assessed, will be calculated for each calendar year period through the end of 2019 according to the following schedules:

i. For the remainder of 2017:

At Fault Damages per Year	Civil Penalty per Damage
All	\$5,000

ii. For 2018 - 2019:

At Fault Damages per Year	Civil Penalty per Damage
First 25	\$2,500
26-50	\$3,000
50-75	\$4,000
76-100	\$4,500
100-150	\$5,000
151-200	\$6,000
Greater than 200	\$7,000

c. The Settling Parties agree that civil penalties pursuant to Ind. Code § 8-1-22.5-7(a) may also be assessed in the amount of \$2,500 by the Division at its discretion, for each late locate reported on the written report under Paragraph 6 above if NIPSCO fails to maintain a log of a contact made to

the excavator prior to the elapse of two working days from the locate ticket request.

- d. Any civil penalties so assessed shall be payable on or before June 30 of each succeeding calendar year in a manner consistent with the provisions of Ind. Code § 8-1-22.5-7, with each such assessment undertaken by a filing under this Cause No. pursuant to this Agreement and shall be subject to approval by the Commission.
- e. The Settling Parties agree that penalties that may be assessed pursuant to Paragraph 10.b. above (but not Paragraph 10.c.) shall be adjusted as follows:
 - i. reduced by 50% if NIPSCO achieves damage performance in the top quartile of gas Local Distribution Companies (“LDCs”) evaluated by the American Gas Association in its annual Marking and Locating Annual Report for the preceding year, and
 - ii. reduced by 100% if NIPSCO achieves damage performance in the top decile of LDCs evaluated by the American Gas Association in its annual Marking and Locating Annual Report for the preceding year.
- f. The Settling Parties agree to meet with the OUCC after January 1, 2020, to review changes in locate and/or maps and records performance through 2019, to discuss terms of any successor locating contractors, and to discuss

future performance metrics including enforcement efforts for locate performance not resulting in damage to NIPSCO's facilities.

D. General Terms of Settlement.

1. This Agreement is not to be deemed an admission by any Settling Party in any other proceeding except as necessary to enforce its terms before the Commission, or any Court of competent jurisdiction. This Agreement is solely the result of compromise in the settlement process and, except as expressly provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Settling Parties may take with respect to any or all of the issues resolved herein in any other future regulatory or other proceedings.

2. If this Agreement is not approved by the Commission, the Settling Parties agree that the terms hereof shall be privileged and shall not be admissible in evidence or in any way discussed in any subsequent proceeding. Moreover, the concurrence of the Settling Parties with the terms of this Agreement is expressly predicated upon the Commission's approval of this Agreement in its entirety without modification or further condition deemed unacceptable by any Settling Party. If the Commission does not approve this Agreement in its entirety, this Agreement shall be null and void and deemed withdrawn, unless otherwise agreed in writing by the Settling Parties.

3. This Agreement represents all of the terms and conditions agreed to by the Settling Parties. It shall be construed in accordance with its plain meaning, consistent

with supporting prefiled testimony and the order approving this Agreement. This Agreement shall be binding upon the Settling Parties, successors, and assigns.

4. The Settling Parties will submit prefiled written testimony into the record at the public hearing related to approval of this Agreement sufficient to support the Commission's finding that this Agreement is in the public interest.

5. The Settling Parties have agreed upon an Agreed Proposed Order to be submitted to the Commission in this Cause, a copy of which is attached hereto.

6. The communications and discussions during the negotiations and conferences which have produced this Agreement shall be conducted on the explicit understanding that they are, or relate to, offers of settlement and shall be privileged and confidential, shall be without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

7. Each of the undersigned represents and agrees that he or she is fully authorized to execute this Agreement on behalf of the Settling Party identified above his or her respective signature.

8. The Settling Parties agree that the execution of duplicate signature page(s) hereto shall be binding upon each Settling Party as if each had executed the same original document.

E. List of Appendixes

Appendix A – Joint Proposed Order

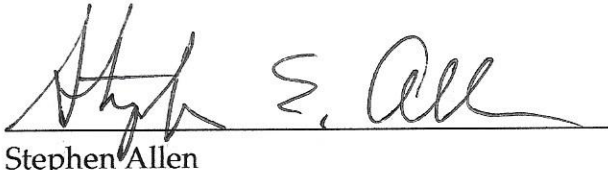
For Northern Indiana Public Service Company



Timothy R. Caister
Vice President, Regulatory Policy
150 West Market Street, Suite 600
Indianapolis, IN 46204

August 3, 2017
Date

For the Indiana Utility Regulatory Commission, Pipeline Safety Division

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

Stephen Allen

Director, Pipeline Safety Division

PNC Center, Suite 1500 East

101 West Washington Street

Indianapolis, IN 46204

August 3, 2017

Date

Appendix A

JOINT PROPOSED ORDER OF THE COMMISSION

STATE OF INDIANA

UTILITY REGULATORY COMMISSION

PETITION OF THE PIPELINE SAFETY)
 DIVISION OF THE INDIANA UTILITY)
 REGULATORY COMMISSION PURSUANT TO)
 IND. CODE CH. 8-1-22.5 FOR VIOLATIONS OF)
 PIPELINE SAFETY STANDARDS.) CAUSE NO.
)
 RESPONDENT: NORTHERN INDIANA PUBLIC)
 SERVICE COMPANY)

ORDER OF THE COMMISSION

Presiding Officers:

_____, Commissioner
 _____, Administrative Law Judge

On August 4, 2017, the Pipeline Safety Division (“Division”) filed with the Indiana Utility Regulatory Commission (“Commission”) a Petition for Penalties Against Northern Indiana Public Service Company (“NIPSCO”) for violations of pipeline safety standards. The parties filed a Stipulation, Settlement Agreement and Agreed Order (the “Settlement”) the same day.

Pursuant to notice as provided by law, proof of which was incorporated into the record, an evidentiary hearing in this matter was held on _____, 2017, at _____ in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Division, NIPSCO, and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared. The Division offered the testimony of Stephen E. Allen (along with Settlement). NIPSCO offered the testimony of Albert A. Stone and Timothy R. Caister (along with the Settlement).

Based upon the applicable law and the evidence herein, the Commission now finds as follows:

1. Notice and Jurisdiction. Due, legal and timely notice of the public hearings in this Cause was given and published as required by law. NIPSCO is a public utility within the meaning of Ind. Code § 8-1-2-1 and is subject to, among other requirements, the gas pipeline safety standards and requirements set forth in Ind. Code ch. 8-1-22.5, 170 IAC 5-3 and incorporated federal pipeline safety regulations. Accordingly, the Commission has jurisdiction over NIPSCO and the subject matter of this proceeding.

2. NIPSCO’s Characteristics. NIPSCO provides natural gas utility service to more than 821,000 retail customers in 32 counties of Indiana pursuant to authority granted by the Commission. NIPSCO also provides electric utility service to more than 468,000 retail customers in 20 counties in Indiana pursuant to authority granted by the Commission. NIPSCO owns and operates pipeline facilities and is engaged in the transportation of natural gas, and as such is subject to the provisions of 49 CFR Part 192 as incorporated in state law through 170 IAC 1-1.1-11.

NIPSCO is therefore engaged in the operation, distribution, and provision of natural gas to the public within the State of Indiana.

3. The Division. The Division is a division of the Commission established by Ind. Code § 8-1-22.5-2, and has the powers and duties identified in Ind. Code § 8-1-22.5-4 including the administration and enforcement of federal pipeline safety standards under the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 60101 *et seq.*), as amended and incorporated into state law through 170 IAC 1-1.1-11. The Division is a certified pipeline safety program in accordance with 49 U.S.C. §60105 through the US Department of Transportation, Pipeline & Hazardous Materials Safety Administration. The Division employs inspectors and engineers tasked with, among other duties, inspecting Indiana pipeline facilities.

4. Background and Requested Relief. NIPSCO is subject to pipeline safety standards applicable to transportation and related pipeline facilities established under the Natural Gas Pipeline Safety Act of 1968 as those federal laws are incorporated into state law.

The Commission has authority under Ind. Code § 8-1-22.5-7, after notice and opportunity for public hearing, to impose a civil penalty against a person who violates Ind. Code ch. 8-1-22.5 or any rules issued pursuant to that chapter. The Division brings this petition to request the Commission exercise its authority under Ind. Code ch. 8-1-22.5. Penalties ordered by the Commission may not exceed \$25,000 for each violation for each day that the violation persists, not to exceed \$1,000,000 for any related series of violations.

On September 11, 2013, the Commission approved two (2) Consent Agreements between NIPSCO and the Division dated August 14, 2013 constituting a final resolution of (1) 49 CFR § 192.605 – Failure to follow written procedures, and (2) 49 CFR § 192.603 and 170 IAC 5-3-2 – Failure to keep accurate records.

The Division's petition in this Cause requests the Commission (a) impose a penalty on NIPSCO under Ind. Code § 8-1-22.5-7 for violations, which were the subject of a Notice of Probable Violation alleging non-compliance with the provisions of state and federal pipeline safety statutes and regulations relating to the obligation to (1) timely and accurately locate its underground facilities in compliance with the written procedures for conducting operations and maintenance activities pursuant to 49 CFR 192.605 and 170 IAC 5-3-0.6, and (2) maintain accurate facility maps and records pursuant to 170 IAC 5-3-2(10), and (b) require NIPSCO to undertake corrections actions with regard to its violations.

4. Evidence Presented.

A. Pipeline Safety Division Evidence.

Mr. Allen testified on behalf of the Division that the Settlement reached between NIPSCO and the Division is in the public interest. Mr. Allen gave the history of the Division's investigations concerning potential violations by NIPSCO. He also described the Settlement attached to his testimony.

Mr. Allen testified that the Settlement consists of four main parts: (1) ongoing communication and exchange of information between the parties; (2) ongoing reporting of performance metrics related to pipeline safety standards; (3) NIPSCO's agreement to implement a safety management system; and (4) a penalty NIPSCO agrees to pay, as well as a table that will determine future penalties for any future violations through 2019.

Mr. Allen stated the penalties and other provisions in the Settlement are reasonable and in the public interest. In so determining, he testified that the Division took into account the gravity and seriousness of the violations, the cooperation of NIPSCO, and a number of other factors.

Finally, Mr. Allen described the ongoing monitoring that the Division will undertake to continue to ensure NIPSCO's compliance with pipeline safety standards.

B. NIPSCO Evidence.

Mr. Caister provided an overview of the Settlement and explained why the Settlement is consistent with the public interest and should be approved. He testified the Settlement reflects resolution of all issues associated with two Notices of Potential Violation issued by the Division on November 30, 2016 alleging 261 individual violations of specific state and federal performance standards related to the locating of underground facilities. He stated that under the Settlement, NIPSCO admits those violations and has agreed to commitments in four principal areas: communications, information exchange, pipeline safety management systems, and civil penalties.

Mr. Caister testified NIPSCO has not disputed any of the facts underlying the specific damages at issue, and is focused on improving its damage prevention and pipeline safety performance consistent with its obligation to provide safe and reliable service to its customers. He stated that NIPSCO recognizes that it is important to continue its efforts to reduce the number of damages to its underground facilities and to that end, indicated that it made more sense for NIPSCO to work with the Division to improve not only NIPSCO's performance in this area but to also improve the level of communication and information exchange so that NIPSCO and the Division can help each other develop the best program performance possible.

Mr. Caister testified the Settlement is in the public interest because it promotes implementation of best practices in damage prevention including improved communication and development of an enhanced safety culture around pipeline safety and compliance consistent with industry leading practices. He stated that the focus of the Settlement is on improvement and facilitation of safety and promotion of public awareness. Finally, he testified that payment of a significant civil penalty penalizes NIPSCO for violations of state and federal performance standards and expectations and that NIPSCO's payment is made in recognition of the fact and resolves past violations as alleged in the Notices of Probable Violation.

Mr. Caister noted that the Settlement does not solely address past issues or violations. Rather, it also incorporates a prospective mechanism or matrix for assessing future damages. He testified the Settlement would be in the public interest with this aspect, but it does not stop there. To the extent NIPSCO is able to achieve specific milestones relative to those damage metrics, NIPSCO is able to mitigate or eliminate the level of penalties through 2019. This is aligning the public interest with NIPSCO's performance insofar as improved performance leads to less or no penalties. He stated that by rewarding achievement of industry leading performance across the full

spectrum of damage prevention activities including public outreach and excavator engagement, the public interest is well served through improvements achieved in safety and construction practices.

Mr. Stone, along with the Division, sponsored Joint Exhibit 1 – the Settlement. He explained how the provisions of the Settlement fit into NIPSCO's pipeline safety and damage prevention strategy and why the Settlement is consistent with the public interest and should be approved.

Mr. Stone testified the Division issued two NOPVs on November 30, 2017 alleging 261 violations of federal pipeline safety performance standards. He explained that those violations fell into two categories, both related to the accuracy and timeliness of locates performed of NIPSCO underground gas facilities. He stated that 230 of the violations alleged non-compliance with NIPSCO's operations and maintenance plan by not timely performing accurate locates and the remaining 31 alleged errors in locating were driven by the inaccuracy or inaccessibility of NIPSCO's maps and records. Mr. Stone testified NIPSCO does not dispute the factual basis for those alleged violations.

Mr. Stone testified NIPSCO performs line locates as a member of Indiana 811 through contract locate providers except for the territory previously served by Kokomo Gas and Fuel Company where NIPSCO performs its own locates with its own employees. He stated that consistent with national trends and the experience of other Indiana LDCs, NIPSCO has experienced consistent increases in locate requests in recent years. He stated that while the increase in locate requests is an indication that public awareness about underground facility risks is improving, it also puts additional pressure on all aspects of the 811 system to perform. He stated that NIPSCO's performance has been improving, but the number of system damages per year has not dropped consistently due in part to the increased locate ticket volume.

Mr. Stone testified NIPSCO is committed to reducing the number of damages on its gas system. To that end, NIPSCO elected to replace its locate contractor effective April 1, 2017 and has entered into contracts with two new vendors. He stated that while these vendors have been on the job in Indiana for only three months, NIPSCO has begun to see improvements in the accuracy and timeliness of locates as well as the extent to which the vendors have engaged with the excavator community in its service territory. He stated that combined with other improvements undertaken and to be undertaken in the damage prevention and pipeline safety arena, it is NIPSCO's expectation that both locater performance and damage reduction will continue to trend in a positive direction. He stated that one such improvement NIPSCO has already implemented is Positive Response on all locate ticket requests. This feature enables excavators to view maps, photos, and the 811 ticket request along with confirmation that underground utilities have been located via a response email.

Mr. Stone provided an overview of NIPSCO's commitments under the Settlement. He testified that in addition to providing the Division with a variety of documents, NIPSCO has made commitments to the Division in four principal areas. First, the Settlement sets forth a structure for ongoing and regular communications. He explained that NIPSCO and the Division will hold face-to-face meetings at least quarterly to discuss a wide range of pipeline safety and damage prevention topics (Paragraph 9 of the Agreement). While those meetings will include a discussion of the

progress made by NIPSCO in reducing damages caused by late or inaccurate locates, they will also include a broader discussion of other issues germane to damage prevention and pipeline safety as circumstances warrant. He stated that NIPSCO has also provided the Division with a detailed contact matrix that sets forth appropriate points of contact for the range of pipeline safety and damage prevention functions and will update it to reflect changes (Paragraphs 6 and 7 of the Agreement).

Second, NIPSCO has agreed to provide the Division with updated data on nine specific metrics set out in Paragraph 10 of the Settlement. Mr. Stone explained that NIPSCO already provided the Division with information as required by both state and federal law, but the commitment in the Settlement goes beyond that to include data on timeliness of locates, excavator notification, excavator outreach and other metrics. The face-to-face meetings will include a review of the most recent data provided in an effort to keep the Division apprised of NIPSCO's progress in meeting its own performance goals and improving overall damage prevention.

Third, NIPSCO has agreed to take appropriate steps to develop and implement a comprehensive pipeline Safety Management System ("SMS") consistent with the provisions of Recommended Practice 1173 of the American Pipeline Institute ("API RP 1173") (Paragraph 11 of the Settlement). Mr. Stone explained that API RP 1173 is a series of organizational practices and communication protocols intended to promote and incorporate safety and reporting best practices into the organization's culture. He testified this is a significant, long-term commitment intended to foster a best-in-class safety performance and culture within NIPSCO.

Finally, NIPSCO has agreed to the payment of a civil penalty of \$900,000 for a total of 261 violations of federal pipeline safety performance standards identified in the two NOPVs issued by the Division on November 30, 2016 (Paragraph 13 of the Settlement). Mr. Stone testified there will be no effort to recover the civil penalty from NIPSCO's customers. He testified NIPSCO has also agreed to a structure for the calculation of civil penalties for 2017, 2018, and 2019 in the event such penalties are assessed by the Division (Paragraph 14 of the Settlement).

5. Commission Discussion and Findings.

Indiana Code ch. 8-1-22.5 provides the procedure for the Commission to find violations of the chapter and issue civil penalties. Indiana Code § 8-1-22.5-4 permits the Division to require compliance with pipeline safety standards. Indiana Code § 8-1-22.5-7 permits the Commission, upon the finding of a violation, to issue civil penalties not to exceed twenty-five thousand dollars (\$25,000) for each violation for each day that the violation persists, with the maximum civil penalty not to exceed one million dollars (\$1,000,000) for any related series of violations. These penalties may be imposed "after notice and opportunity for public hearing."

The Settlement provides for performance metrics and increased communication between the Division and NIPSCO. It contains an agreement on a penalty for past violations as well as an agreement on penalties for future violations. It also requires implementation of a pipeline safety management system.

Settlement agreements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). Any settlement agreement that is approved by the Commission "loses its status as a strictly private

contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement agreement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement agreement.” *Citizens Action Coalition*, 664 N.E.2d at 406. Furthermore, any Commission decision, ruling or order—including the approval of a settlement agreement—must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)).

The Commission has previously discussed that in accordance with Indiana law, it favors settlement agreements as a means of resolving contested proceedings. See, e.g., *Manns v. State Department of Highways*, 541 N.E.2d 929, 932 (Ind. 1989); *Klebes v. Forest Lake Corp.*, 607 N.E.2d 978, 982 (Ind. Ct. App. 1993); *Harding v. State*, 603 N.E.2d 176, 179 (Ind. Ct. App. 1992). Although the OUCC was not a party to the Settlement, it neither offered evidence objecting to any provisions of the Settlement nor did it object to the Settlement as a whole.

As the Division is tasked with enforcement of the pipeline safety laws, the Commission gives weight to its expertise in determining an appropriate remedy for the violations. We find, in accordance with the Division, that NIPSCO committed 261 violations of pipeline safety standards as set forth in the Division’s petition initiating this Cause. NIPSCO does not contest these violations. Specifically, we agree that by failing to locate its facilities in two working days, NIPSCO thereby violates its own Operating and Maintenance Procedures Manual, Part 10.1, which requires that “facilities will be located and marked in accordance with Indiana state law.” Indiana state law requires that locates be performed within two working days of receipt of notice of excavation. Ind. Code § 8-1-26-18. NIPSCO therefore violated 49 CFR 192.605, adopted into state law through 170 IAC 5-3-0.6 and 170 IAC 5-3-2(1), by failing to follow, for each pipeline, a manual of written procedures for conducting operations and maintenance activities.

The second category of violations includes NIPSCO’s failure to maintain adequate facility records. Indiana law, specifically 170 IAC 5-3-2(10), requires NIPSCO to maintain adequate facility records, stating:

Each operator shall maintain a system of records of its physical plant. These shall include records and maps of its active physical plant in use, and be in a form as to facilitate the operation and maintenance of the plant in a safe manner.

In the instances identified by the Division, NIPSCO’s inaccurate location of its facilities stemmed from inadequate or incorrect facility records or maps, therefore violating 170 IAC 5-3-2(10).

The Settlement is a compromise between both parties intended to increase compliance by NIPSCO and specifying penalties for non-compliance related to the violations at issue in the Division’s petition initiating this Cause and its enforcement objectives overall. The Settlement covers a number of elements.

First, the Settlement requires NIPSCO to provide and update its key contacts to the Division and the OUCC. NIPSCO also agrees to provide its contracts with third-party locate

contracts, and to meet at least quarterly on an ongoing basis to review the progress in its pipelines safety compliance efforts. We find this type of communication and information sharing to be necessary, as it will serve to assist the Division in its future enforcement efforts.

Second, the Settlement sets forth what we find to be a reasonably comprehensive set of performance metrics applicable to pipeline safety. Metrics include the total number of locate requests received, and a straight forward reporting of the number of late and missed locates, the number of excavation damages resulting from late or inaccurate locates, and the number of customer service interruptions applicable to them. We look favorably upon the development of these performance metrics that should serve the Pipeline Safety Division, the OUCC, and ultimately the Commission in obtaining a clearer picture of NIPSCO's level of compliance. We acknowledge, as referenced by Mr. Allen, that the mere act of measuring the metrics may serve to incent NIPSCO and improve outcomes.

Third, as part of the Settlement, NIPSCO agrees to provide the Division with: 1) a gap analysis of American Petroleum Institute's ("API") Recommended Practice 1173 ("API RP 1173") against its existing policies, procedures and practices, 2) an assessment of its pipeline safety culture, and 3) ongoing updates regarding NIPSCO's implementation of API RP 1173. The gap analysis and safety culture assessment are to be completed by objective independent parties with experience in these areas. While we are aware the API RP 1173 is not presently a federal requirement for pipeline operators, we find that NIPSCO's voluntary implementation of the standard is laudable.

Fourth, and finally, as part of the Settlement, NIPSCO agrees to pay penalties for both past violations and future violations that may occur through calendar year 2019. The table in section 14 of the Settlement sets the penalty amount for each violation that may occur during each calendar year. It also provides incentives by allowing for a reduction in penalties based on favorable locating and excavation damage performance by NIPSCO as measured against an index of other members of the American Gas Association. While the Commission may impose a penalty up to \$1,000,000 for each series of violations, because NIPSCO has cooperated with the Division in this case, made necessary adjustments, did not cause injury, and based on Mr. Allen's recommendation, we find that \$900,000 is a reasonable penalty for past violations. We also find the agreed penalties for future violations are reasonable in amount based on NIPSCO's history of past violations.

The Commission finds that based on the evidence described above, the Settlement provisions, including agreed upon penalties, are reasonable, supported by evidence of record, and should be approved. Further, the Commission finds the other provisions are appropriate considering the nature, circumstances and gravity of the violations.

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

1. The Settlement is in all respects approved and the terms of the Settlement are hereby ordered to be carried out.
2. NIPSCO shall pay within thirty (30) days from the date of this Order a civil monetary penalty in the amount of \$900,000 to the Treasury of the State of Indiana, through the Secretary of this Commission.

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

**ATTERHOLT, FREEMAN, HUSTON, WEBER 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**