STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY FOR APPROVAL OF PETITIONER'S 7-YEAR ELECTRIC TDSIC PLAN FOR ELIGIBLE TRANSMISSION, DISTRIBUTION AND STORAGE SYSTEM IMPROVEMENTS, PURSUANT TO IND. CODE § 8-1-39-10(a), FOR AUTHORITY TO DEFER COSTS FOR FUTURE RECOVERY, AND APPROVING INCLUSION OF NIPSCO'S TDSIC PLAN PROJECTS IN ITS RATE BASE IN ITS NEXT GENERAL RATE PROCEEDING PURSUANT TO IND. CODE § 8-1-2-23.	)	**CAUSE NO. 44733**

SETTLING PARTIES' REPLY BRIEF

Northern Indiana Public Service Company, by counsel, on behalf of itself and the Indiana Municipal Utilities Group, the Indiana Office of Utility Consumer Counselor, LaPorte County Board of Commissioners, NIPSCO Industrial Group and United States Steel Corporation (collectively, the "Settling Parties"), respectfully submits the Settling Parties' reply to the Citizens Action Coalition of Indiana, Inc.'s Post-Hearing Brief as follows:

I. The Settlement Fully Complies with All Statutory Requirements

CAC attempts to challenge the Settlement as allegedly being contrary to the letter or spirit of the TDSIC Statute (Ind. Code ch. 8-1-39). This unfounded argument is misdirected in three key respects. First and foremost, CAC confuses

the requirements applicable to Section 9 petitions seeking rate adjustments with the instant Section 10 proceeding that seeks approval of a 7-year plan. Second, CAC attacks the effort to align this Settlement with the pending rate case settlement, ignoring that a mismatch would occur only if the outcomes of the two cases diverged. Third, CAC attempts to argue that the $1.25 billion in TDSIC plan charges will impact rates at the same time as the base rate increase. More accurately, the TDSIC plan addresses investments after the test year cutoff and allows only those incremental adjustments over the next seven years for improvements as detailed in the plan that are not included in base rates.

The TDSIC Statute provides for two distinct types of proceedings: Section 10 governs the approval of 7-year plans, and Section 9 provides for periodic rate adjustments. *See* Ind. Code §§8-1-39-10, 8-1-39-9. This is a Section 10 proceeding. In challenging the Settlement, CAC nevertheless raises irrelevant issues germane to Section 9 proceedings. *See* CAC Brief at 5-9. Citing Section 9(c), CAC misapplies the TDSIC Statute and then asserts it "does not allow for a TDSIC plan to be filed" until nine months after a rate case order. *Id.* at 6. To the contrary, Section 9(c) is specific to petitions under Section 9(a). There is no statutory prohibition against a Section 10 petition seeking approval of a 7-year plan while a rate case is pending. Where, as here, the 7-year plan addresses infrastructure improvements subsequent to the test year cutoff, timely approval of a new plan supports the

seamless implementation of important system work promoting safety, reliability, modernization and economic development.

CAC has it backwards when it argues the relief sought in this Section 10 proceeding will need to be amended if the rate case order issues before the Settlement in this case is approved. *See* CAC Brief at 1, 7, 9. Again, CAC points to Section 9 ratemaking considerations such as allocation factors, capital structure and debt financing in this Section 10 case, and criticizes the Settling Parties for maintaining consistency between the settlements in the two cases. Upon approval of both settlements, the ratemaking in future Section 9 proceedings *should* reflect the determinations in the rate case. (In fact, although not applicable here, Ind. Code 8-1-2-39-15 contemplates how a base rate order should be factored into a TDSIC to ensure that capital investments included in base rates are not also reflected in a TDSIC.) It would only be a problem if the rate case settlement said one thing and the Settlement here called for something else. Aligning the relief in both cases is not an attempt to "circumvent" any requirements or to hold anything "hostage." *See* CAC Brief at 9 n.3. To the contrary, the Settling Parties properly provided for coherence and consistency.

CAC offers the misimpression that there is some kind of "double whammy" arising from the concurrent resolution of the rate case and this proceeding under Section 10 of the TDSIC Statute. *See* CAC Brief at 7-8. Contrary to CAC's

perspective, the Settlement does *not* simultaneously stack $1.25 billion in TDSIC charges on top of the base rate increase. The improvements covered by the 7-year plan all relate exclusively to system work conducted after the test year cutoff, and thus address investments that are not reflected at all in the rates established by the rate case. This Section 10 proceeding, furthermore, does not itself involve any immediate rate adjustments. Future Section 9 proceedings will not affect rates until sometime in 2017, and will involve incremental adjustments over a 7-year period. The instant Settlement functions in exactly the way the TDSIC Statute was designed to operate, supporting infrastructure investment between rate cases through periodic rate adjustments as the planned expenditures are made.

II. The Uncontradicted Evidence of Record Supports the Public Convenience and Necessity and Incremental Benefit of the 7-Year Electric Plan.

CAC contends that the 7-Year Electric Plan is inconsistent with the public convenience and necessity and the incremental benefits associated with the Plan because NIPSCO "ignored the role of energy efficiency and other non-wires alternatives. . . [.]" CAC Brief at 9. That contention is unsupported by the evidentiary record and should be rejected.

A Commission order approving a 7 year plan must include (1) a finding of the best estimate of the cost of the eligible improvements included in the plan, (2) a determination whether public convenience and necessity require or will require

the eligible improvements included in the plan, and (3) a determination whether the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan. Ind. Code § 8-1-39-10(b). Orders of the Commission must be supported by substantial evidence of record to support each of its factual findings, and there must be factual findings to support each ultimate conclusion. *NIPSCO v. U.S. Steel*, 907 N.E.2d 1012, 1015 (Ind. 2009), *see also City of Evansville v. Southern Indiana Gas & Elec. Co.*, 339 N.E.2d 562, 571 (Ind. Ct. App. 1976).

There is no evidence from any Party challenging the projects identified in the 7-Year Electric Plan, no evidence that the methodology used to risk rank those projects was improper or inappropriate, and no evidence that the estimated cost of the projects was not justified by incremental benefits attributable to the Plan. CAC offered no evidence to support the proposition that additional Demand Side Management ("DSM"), customer distributed power or distributed generation would, if included in NIPSCO's Integrated Resource Plan ("IRP"), have had any impact on the risk assessment supporting the need for the projects proposed in the 7-Year Electric Plan -- instead electing to only offer exhibits related to NIPSCO's 2014 IRP and the integration of "non-wire" resources into its next IRP filing.

There is absolutely no evidence of record to support a finding that the critical investments proposed in the 7-Year Electric Plan would have changed in

any way had the analysis CAC claims to be missing actually been performed and offered into the record. It is axiomatic that the arguments of counsel are not evidence. *Piatek v. Beale*, 999 N.E.2d 68, 69 (Ind. Ct. App. 2013) *citing Young v. Butts*, 685 N.E.2d 147, 150 (Ind. Ct. App. 1997). The uncontradicted evidence of record supports the approval of the 7-Year Electric Plan and the Settlement Agreement. In contrast, CAC's unsubstantiated speculation cannot form the basis of a Commission finding.

III. There Are No Identified Grounds for Modification

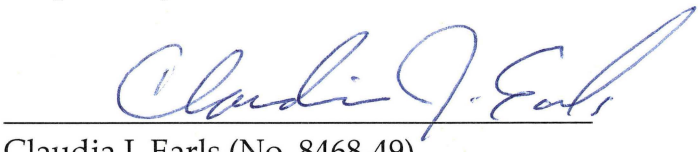
Finally, CAC improperly takes issue with the standard request that the Settlement be approved without modification, even though CAC has not proposed any ascertainable modifications and has conceded that material changes may precipitate continued litigation. CAC has not identified any particular modifications, and instead asks the Commission to fashion some unspecified modifications "to address the concerns listed herein." *See* CAC Brief at 13. A party seeking material changes to a proposed resolution should at least frame a request for defined relief and identify the record evidence supporting such change. Instead, CAC has only expressed dissatisfaction with the TDSIC Statute, asserted policy arguments to favor DSM, and left it to the Commission to figure out how those vague views might translate into viable and supportable revisions to the Settlement.

At the same time, CAC acknowledges that the consequence of a material modification to the Settlement may well be the resumption of contested litigation. *See* CAC Brief at 3. Indiana law, of course, strongly favors settlement. *See Georgos v. Jackson*, 790 N.E.2d 448, 453 (Ind. 2003); *Mendenhall v. Skinner and Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000). Here, all parties except one were able to resolve their differences and reach agreement on a reasonable Settlement. The one party that chose not to join in the Settlement did not offer any testimony on the merits and has not identified any legal defect in the agreed resolution, yet still advocates for undefined modifications that would delay this docket, require additional time and resources of the Commission and the other parties, and could put this case back in to a litigation track. The more prudent course is to review the Settlement in light of the statutory relief sought and evidence presented as being reasonable, in the public interest and soundly supported, and approve it in its entirety without any unspecified modifications.

IV. Conclusion

For the reasons set forth above and in the Settling Parties' testimony, attachments and post-hearing filings and to comply with Indiana law and further the public interest, the Settling Parties respectfully urge the Commission to adopt the findings in the Settling Parties' Proposed Order and promptly issue an order approving the Settlement.

Respectfully submitted:



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