STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY FOR (1) APPROVAL OF A TRANSMISSION, DISTRIBUTION AND STORAGE SYSTEM IMPROVEMENT CHARGE ("TDSIC") RATE SCHEDULE, (2) APPROVAL OF PETITIONER'S PROPOSED COST ALLOCATIONS, (3) APPROVAL OF THE TIMELY RECOVERY OF TDSIC COSTS THROUGH PETITIONER'S PROPOSED TDSIC RATE SCHEDULE, AND (4) AUTHORITY TO DEFER APPROVED TDSIC COSTS, PURSUANT TO IND. CODE CH. 8-1-39.	)	**CAUSE NO. 44371**

PETITIONER'S RESPONSE TO THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S PETITION FOR RECONSIDERATION

I. Introduction

Northern Indiana Public Service Company ("NIPSCO"), by counsel, hereby responds to the Petition for Reconsideration filed by the Indiana Office of Utility Consumer Counselor ("OUCC") on March 10, 2014 as follows and requests the Commission to deny the OUCC's Petition for Reconsideration in its entirety.

As the Commission is well aware, this Cause involves the first petition filed under Ind. Code Ch. 8-1-39 (the "TDSIC statute") which was enacted by the Indiana General Assembly in 2013. A robust group of stakeholders was represented by eight (8) different parties—five (5) of which offered evidence in this Cause. All intervenors filed or joined in post-hearing briefs to provide input into the Commission's final decision in this Cause. After careful consideration of the plain language of the TDSIC statute, the evidence of record, and the persuasive briefs filed by the parties, the Commission rendered a thorough and thoughtful final Order in this Cause on February 17, 2014. The OUCC now requests the Commission to reconsider its findings regarding two specific issues in this Cause, but the OUCC has not offered any new arguments that have not already been addressed in the parties' testimony and/or post-hearing briefs. Because the Commission has already considered all of the arguments set forth in the OUCC's Petition for Reconsideration, and because the Commission's February 17, 2014 Order properly interprets and applies the TDSIC statute, the Commission should deny the OUCC's Petition for Reconsideration.

II. Section 5(A)(i) Customer Class Revenue Allocation under Ind. Code § 8-1-39-9(a)(1)

There appears to be no dispute that Joint Exhibit C to the Stipulation and Settlement Agreement approved in the Commission's December 21, 2011 Order in Cause No. 43969 ("43969 Order") is the proper set of allocation factors to use for purposes of allocating TDSIC costs because Joint Exhibit C literally allocates base revenues to classes. The adjustments to the Joint Exhibit C allocators that were proposed by NIPSCO, supported by NIPSCO Industrial Group and U.S. Steel, and approved by the Commission in its February 17, 2014 Order simply ensure that the factors are based on firm load (as required by Ind. Code § 8-1-39-9(a)(1)) and ensure that the factors refrain from allocating distribution-related TDSIC costs to rate classes that do not utilize the distribution system.

The OUCC's assertion (at 12) that the Joint Exhibit C allocation factors were based solely on firm load is not accurate. The evidence shows that pursuant to the 43969 Order, NIPSCO's old interruptible rates were terminated and replaced by the new firm rates plus an interruptible Rider 675 which established a different method to designate load as non-firm or interruptible. As Industrial Group witness Mr. Phillips testified, customers could not participate in the interruptible program until after the 43969 Order was issued and established the parameters of the interruptible program through Rider 675. Furthermore, the OUCC's continued insistence that any adjustments to the Joint Exhibit C allocators for purposes of allocating costs for the new TDSIC rate adjustment mechanism somehow change or violate the 43969 Order is simply not true. The 43969 Order did not establish allocation factors for all of the existing rate adjustment mechanisms (*e.g.* NIPSCO's Rider 672 – Environmental Cost Recovery Mechanism), let alone future new rate adjustment mechanisms.

For the foregoing reasons, and all of the reasons articulated by NIPSCO, NIPSCO Industrial Group and U.S. Steel in testimony and in post-hearing briefs filed in this Cause, the cost allocation factors approved by the Commission in Section 5(A)(i) of the February 17, 2014 Order comport with the TDSIC statute and with basic cost causation principles, and the Commission should deny the OUCC's request to reconsider its findings regarding the proper allocation of TDSIC costs.

III. Section 5(B)(ii) Treatment of Replaced Asset Investment Cost

The Commission's findings regarding the treatment of replaced asset costs set forth in Section 5(B)(ii) of the February 17, 2014 Order are consistent with the TDSIC statute, typical ratemaking practices and general regulatory principles. The Commission properly found that the statutory definition of eligible improvements at Ind. Code § 8-1-39-2 authorizes recovery of investment for replacement projects and the definition of pretax return at Ind. Code § 8-1-39-3 provides that revenues should provide for such investments, without any suggestion of a deduction or netting of the replaced asset. Contrary to the OUCC's argument in its Petition for Reconsideration (at 9-10) (initially raised by NIPSCO Industrial Group in its December 13, 2013 proposed order (at 15)), the Commission properly held that Ind. Code § 8-1-39-13(a), which allows the Commission to consider other information in setting the appropriate pretax return, does not provide statutory support for the netting of investment in determining the appropriate investment to be afforded cost recovery. The Commission properly concluded Section 13(a) addresses "the weighted cost of capital rate rather than the investment amount so as to reconcile the statutory language of Sections 13 and 3." February 17, 2014 Order at 18. Further, the Commission properly considered that the TDSIC statute requires a general rate case before the expiration of the utility's 7-year plan which provides a built-in mechanism to update the net investment of the utility. Notably, this issue was fully addressed by multiple parties in testimony and in post-hearing briefs filed in this Cause, and the OUCC has not offered any new arguments or evidence to support its position. The Commission should reject the OUCC's continued attempt to rewrite, expand or ignore the TDSIC statute.

The OUCC's lengthy dissertation on traditional regulatory concepts is an interesting history lesson, but at bottom, it is simply another attempt by the OUCC to justify its proposed extra-statutory limitations that are intended to thwart the intent of the legislature and unfairly penalize the utility. There is no doubt that traditional regulatory concepts lay the foundation for public utility regulation, but when specific regulatory concepts have been established by statute or rule, the Commission will, as it has done in this Cause, apply those specific regulatory concepts. In this case, the TDSIC statute sets forth the specific regulatory construct to be followed. As much as the OUCC might wish otherwise, the Indiana General Assembly made a policy choice in 2013 to encourage investment in transmission and distribution infrastructure to promote safety and reliability and to encourage system modernization and economic development by providing timely recovery of 80% of the cost of those investments. The Commission correctly concluded in this Cause that the TDSIC statute neither contemplates nor requires the "netting" of new and replaced equipment for purposes of calculating TDSIC costs.

Moreover, contrary to the OUCC's argument, the Commission's decision in this Cause is consistent with traditional regulatory and ratemaking practices. Under typical ratemaking, utilities are allowed to recover both the undepreciated value, and a return on that value, of retired equipment – even retired equipment that is replaced, such as poles, meters, etc.[1] This typical ratemaking is rational and fair. Utility depreciation rates are based on an estimate of the average useful life of a group of assets, and the utility must still recover the full value of its investment for its investors, even if a piece of equipment is retired before it is fully depreciated. Similarly, the utility must still finance or "carry" that undepreciated investment until it is fully recovered. Tr. at C-77-78. Accordingly,

[1] The Commission's rules adopt by reference the FERC Uniform System of Accounts (18 C.F.R. Part 101) which provides guidance on the proper accounting for the retirement of assets. 170 IAC 4-3-1.1 *et seq.*

assuming the retirement decisions are reasonable, if the utility is not allowed to recover both its undepreciated investment and a return on that undepreciated investment, it will not fully recover its prudent costs of providing service and will suffer a financial penalty. Such a penalty would be unfair, especially in the context of the TDSIC statute, which encourages these infrastructure investments.

Contrary to the OUCC's continued insistence that the concept of "used and useful" requires the "netting" of retired investments, the "used and useful" argument has no application here. The "used and useful" standard is used to determine whether or not plant or equipment should ever be reflected in utility rates. For example, the Indiana courts concluded that cancelled and abandoned nuclear generating units that had never provided service failed the "used and useful" test and should not be reflected in rates. See *Citizens Action Coalition of Ind., Inc. v. Northern Ind. Pub. Service Co.*, 485 N.E.2d 610 (Ind. 1985). As NIPSCO noted in its December 20, 2013 Reply Brief filed in this Cause, the Commission and Indiana Courts have consistently recognized that utilities should be permitted to recover the original costs of retired assets so long as they have been used and useful. The Indiana Supreme Court specifically discussed the principle of recovery for retired facilities that have been used and useful in *Citizens Action Coalition of Ind., Inc. v. Northern Ind. Pub. Service Co., supra*. The Court also noted a long Commission history of allowing cost recovery for plants that were "used and useful" property and then retired from service." *Id*. (*citing Commercial Club v. Terre Haute, I & E Traction Co.,* (Ind. Pub. Serv. Comm'n April 27, 1917), Cause No. 317, P.U.R. 1917 D., 743, 747-748; *Owensville Light Co*., (Ind. Pub. Serv. Comm'n, Sept. 29, 1920), Cause No. 5556; *Toner v. Martinsville Gas & Elec. Co*., (Ind. Pub. Serv. Comm'n, April 27, 1923), Cause No. 6959, P.U.R. 1923 E., 69, 71-73; *Indianapolis Railways, Inc*., Pub. Serv. Comm'n, May 7, 1953), Cause No. 23408, 382-A, 100 P.U.R. (N.S.) 207, 217). The court distinguished these cases involving retired property that had been used and useful from the Bailly N-1 nuclear facility which never went into service and never became used and useful. *Id*. The Commission has similarly recognized the long standing regulatory policy of allowing for recovery of undepreciated portion of property which, having been used and useful, is then removed from service. *See GTE North, Inc*., Cause No. 38427, p. 48 (IURC 8/31/88). *See also, e.g., Petition of South Haven Sewer Works, Inc*., Cause No. 40398 (IURC 5/28/97); *Application of Southside Utilities, Inc*., Cause No. 36569 (IURC 7/12/82); *Application of Old State Utility Corp*., Cause No. 36470 (IURC 3/16/82); *Petition of South Haven Sewer Works, Inc*., Cause No. 40398 (IURC 5/28/97). Consequently, the concept of "used and useful" does not require the type of "netting" of retired investments that the OUCC seeks to implement in this Cause.

The OUCC's assertion that the "CWIP Rules" (170 IAC 4-6-1 et seq.) are the *only* exception to the used and useful "rule" (at 10) is similarly misplaced. As the court cases discussed above make clear, the used and useful standard does not apply to plant and equipment that has provided service and been used for years. Furthermore, the Commission's "CWIP Rules" are not relevant to this proceeding and are based on a completely different statute than the TDSIC statute at issue here.

With respect to the recent Commission cases cited by the OUCC in support of its position, NIPSCO presumes the Commission is well aware of prior Commission decisions that have addressed "replacement property," especially since various parties discussed them at length in post-hearing briefing. NIPSCO also assumes the Commission has evaluated the facts and underlying statutory authority of each case in evaluating those cases in the context of the TDSIC statute. Indeed, the facts and circumstances of all the cases cited by the OUCC differ from this case. For example, the *Indiana Michigan Power Co*. case (IURC Cause No. 44182, involving a nuclear life cycle management project under Ind. Code Ch. 8-1-8.8) and the *Vectren Energy Delivery* case (IURC Cause No. 44429, a case pending under Ind. Code Ch. 8-1-8.4 and the TDSIC statute) involve *utility proposals* to use a net investment basis for calculating depreciation to be recovered. In Cause No. 44182, the Commission simply adopted Indiana

Michigan Power Company's proposal; Cause No. 44429 is still pending. The *Indiana-American Water Co*. case (IURC Cause No. 42351-DSIC-8, a water DSIC case under Ind. Code Ch. 8-1-31) involved an entirely different statute with very different language than the TDSIC statute. In the *Indiana-American* case, the Commission relied on the words "net original cost" in Ind. Code § 8-1-31-11 in upholding the treatment of retirements originally approved in 2003 in Cause No. 42351-DSIC-1 which netted the original cost of the retired asset from the DSIC improvement. Order, Cause No. 42351-DSIC-8 (IURC 12/18/13), p. 13. Importantly, there is no "net original cost" language in the TDSIC statute. Similarly, the NIPSCO ECR-21 case (IURC Cause No. 42150-ECR-21, brought under Ind. Code Ch. 8-1-8.7, Ch. 8-1-8.8 and § 8-1-2-6.8 (the "ECR statutes")) also involved entirely different statutes which do not explicitly address replacement assets whereas the TDSIC statute explicitly provides for recovery of replacement projects. *See* Ind. Code § 8-1-39-2. Further, unlike the TDSIC statute, which only provides for timely recovery of 80% of TDSIC costs, the ECR statutes provide for timely recovery of 100% of the costs of approved qualified pollution control property, clean coal technology and clean energy projects. Thus the TDSIC statute already provides for a type of offset. Finally, the TDSIC statute requires the utility to file a full rate case within seven (7) years whereas the ECR statutes do not. The fact is that the TDSIC statute is different from all of the other statutes at issue in prior Commission orders, and in this Cause, the Commission appropriately recognized that the TDSIC statute does not support a deduction or netting of a replaced asset.

Finally, it is worth noting that for all of the OUCC's hand-wringing about how the TDSIC statute will eviscerate "traditional regulatory concepts" and lead to "confiscatory takings," the OUCC fails to recognize that Indiana Law does provide protection against over earning by an electric utility. Specifically, the earnings test set forth in Ind. Code § 8-1-2-42(d)(2) ensures that a utility, over time, may not recover more than its authorized amount. The OUCC also fails to recognize that the record evidence shows that it is highly unlikely that NIPSCO will be in a position of over-earning any time soon. The evidence shows NIPSCO has never come close to earning the return authorized by the Commission in NIPSCO's last electric rate case (Tr. at C-166) and NIPSCO's earnings and expense tests from NIPSCO's FAC proceedings since the last electric rate case support this as well. *See* Petitioner's Exhibit No. FAS-R3.

The TDSIC statute specifically authorizes recovery of the costs of eligible replacement projects and does not require any adjustment or offset. Furthermore, the Commission and Indiana Courts have consistently recognized that utilities should be permitted to recover the original costs of retired assets so long as they have been used and useful. For these reasons, the Commission should again reject the OUCC's extra-statutory recommendation that TDSIC costs be adjusted to remove any return and depreciation expense embedded in base rates that is associated with original transmission and distribution investments that will be retired as a result of new TDSIC investments and deny the OUCC's Petition for Reconsideration.

IV. Conclusion

WHEREFORE, for all the foregoing reasons, the Commission should deny the OUCC's Petition for Reconsideration in its entirety.

Respectfully submitted,

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