

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF WHITING CLEAN ENERGY, INC., )  
AND BP PRODUCTS NORTH AMERICA, INC., )  
SEEKING TERMINATION OF ALTERNATIVE )  
REGULATORY TREATMENT PURSUANT TO )  
IND. CODE 8-1-2.5 AND ESTABLISHMENT OF )  
ASSOCIATED SERVICE TERMS, IN LIGHT OF ) CAUSE NO. 45071  
MATERIAL CHANGES IN CIRCUMSTANCES. )  
\_\_\_\_\_)  
)  
RESPONDENT: NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY )  
)

**JOINT SUBMISSION OF STIPULATION AND SETTLEMENT AGREEMENT**

Whiting Clean Energy, Inc. and BP Products North America, Inc. (“Petitioners”), by counsel, on behalf of itself and the Indiana Office of Utility Consumer Counselor (“OUCC”) and Northern Indiana Public Service Company LLC (“NIPSCO”) (collectively, the “Settling Parties”), respectfully submit the attached Stipulation and Settlement Agreement (“Settlement Agreement”).

Respectfully submitted,

LEWIS & KAPPES, P.C.

*/s/ Todd A. Richardson*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served via electronic mail, this 2<sup>nd</sup> day of November, 2018, upon the following:

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SERVICE COMPANY )  
)

**STIPULATION AND SETTLEMENT AGREEMENT**

Petitioners Whiting Clean Energy, Inc. (“WCE”), and BP Products North America, Inc. (“BP”) (together “Petitioners”), respondent Northern Indiana Public Service Company (“NIPSCO”), and statutory party Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively the “Settling Parties”) enter into this Stipulation and Settlement Agreement (“Settlement”) in order to resolve the issues raised in this proceeding on terms appropriate for approval in a final order.

WHEREAS, WCE was the subject of a December 29, 1999 order in Cause No. 41530 (“1999 Order”), in which the Indiana Utility Regulatory Commission (“Commission”) declined to exercise jurisdiction pursuant to Ind. Code §8-1-2.5-5 subject to specified conditions; and

WHEREAS, there has subsequently been a material change in circumstances, insofar as WCE is now owned by a BP affiliate and WCE is no longer an affiliate of NIPSCO, and further insofar as WCE filed a Form 556 with the Federal Energy Regulatory Commission (“FERC”) on March 29, 2018, self-certifying as a Qualifying Facility (“QF”); and

WHEREAS, Petitioners concurrently commenced this proceeding to establish that the conditional declination of jurisdiction under the 1999 Order is moot under the changed circumstances, and to address as needed any disputes relating to the applicable tariff provisions and legal standards relating to QFs; and

WHEREAS, NIPSCO has filed an electric rate case on October 31, 2018 (the “Rate Case”), in which the applicable tariff provisions will be addressed and determined; and

WHEREAS, the Settling Parties, being duly informed, seek to conclude this proceeding on terms that the Settling Parties consider to be reasonable, lawful, consistent with the unique circumstances, supported by the evidence of record, and in the public interest.

NOW, THEREFORE, the Settling Parties stipulate and agree as follows:

1. The Settling Parties will jointly request a final order containing the following determinations:
  - a. In light of materially changed circumstances subsequent to the 1999 Order in Cause No. 41530, WCE is no longer a “public utility” subject to regulation under Indiana law, hence the conditional declination of jurisdiction in the 1999 Order is moot and no longer in effect;
  - b. Because WCE and NIPSCO are no longer affiliates, the requirement in the 1999 Order calling for approval of certain transactions between WCE and NIPSCO is moot and no longer in effect, WCE may market power as a QF subject to the provisions of Indiana and federal law relating to QFs, and in particular the capacity transaction at issue in the Motion for Interim Approval filed on May 18, 2018 in this proceeding does not require further regulatory approval; and

c. All other reporting requirements and other conditions placed on WCE by the 1999 Order premised on the “public utility” finding are moot and no longer in effect.

2. The Settling Parties agree that no ruling by the Commission is required with respect to the meter aggregation or transmission-only service options as described at ¶¶16-17 of the Petition in this Cause. The parties agree that an available option to implement the QF arrangement is the installation of a private line as described at ¶18 of the Petition. Any further alternative would be subject to terms and conditions to be addressed in the Rate Case.

3. The Form 556 filed with FERC on March 29, 2018 specifies an expected implementation date of May 1, 2019. Petitioners agree to amend that filing in order to postpone the implementation date to a date after completion of the Rate Case.

4. No change or exception is being sought in this proceeding with regard to the provisions in NIPSCO’s tariff and other relevant law concerning (a) standby services, or (b) the disposition of excess energy and capacity. The rendering of standby services by NIPSCO and the marketing of excess WCE energy and capacity, accordingly, will be governed by applicable law, including tariff provisions approved in the upcoming Rate Case.

5. The application of the demand charge in the rate schedule under which BP is served will be governed by such provisions as may be approved in the Rate Case.

6. The Settling Parties agree an order approving the Settlement will be non-precedential, will not establish any principles or policies, and will not be citable as legal authority except if needed to enforce its terms. The Settlement is for the purpose of resolving the proceeding on a mutually acceptable basis in light of the unique circumstances involved in this case, and should not be construed as taking a position on any issue or as waiving any position for

purposes of any future proceeding. By entering into this Settlement, the Settling Parties seek only determinations applicable to the specific circumstances raised in this proceeding and do not seek to predetermine or foreclose any other issues that may arise in the future, including without limitation any issues concerning the status of a given entity as a public utility, the application of Indiana and federal law with respect to QFs, the rights and duties of electric utilities in dealings that relate to QFs, or the rights and duties of industrial consumers with operations supported by QFs. Nothing in this Settlement should be interpreted as addressing, approving, expanding or restricting by the Commission any participation of Petitioners in the wholesale energy markets beyond the sales of energy and capacity from WCE subject to Indiana and federal law with respect to QFs.

7. The Settling Parties will jointly request that the Commission review the Settlement and, if it finds the Settlement reasonable and in the public interest, to enter an order approving the Settlement as soon as practicable and preferably by the end of 2018.

8. The Settling Parties agree to jointly present this Settlement to the Commission for its approval in Cause No. 45071, and agree to assist and cooperate in the preparation and presentation of supplemental testimony as necessary to provide an appropriate factual basis for such approval.

9. If the Settlement is not approved in its entirety by the Commission, the Settling Parties agree that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding. Moreover, the concurrence of the Settling Parties with the terms of this Settlement is expressly predicated upon the Commission's approval of the Settlement in its entirety without any material modification or any material condition deemed unacceptable by any Settling Party. If the Commission does not approve the Settlement in its entirety, the

Settlement shall be null and void and deemed withdrawn, upon notice in writing by any Settling Party within fifteen (15) business days after the date of the Final Order that any modifications made by the Commission are unacceptable to it. In the event the Settlement is withdrawn, the Settling Parties will request that an Attorneys' Conference be convened to establish a procedural schedule for the continued litigation of this proceeding.

10. The Settling Parties agree that this Settlement and each term, condition, and provision contained herein reflects a fair, just and reasonable resolution and compromise for the purpose of settlement, and is agreed upon without prejudice to the ability of any party to propose a different term, condition, or provision in future proceedings. As set forth in the Order in *Re Petition of Richmond Power & Light*, Cause No. 40434, p.10, the Settling Parties agree and ask the Commission to incorporate as part of its Final Order that this Settlement, and the Order approving it, not be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues. This Settlement is solely the result of compromise in the settlement process. Each of the Settling Parties hereto has entered into this Settlement solely to avoid further disputes and litigation with the attendant inconvenience and expenses.

11. The Settling Parties stipulate that the evidence of record presented in Cause No. 45071 constitutes substantial evidence sufficient to support this Settlement and provide an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement, as filed. The Settling Parties agree to the admission into the evidentiary record of this Settlement, along with testimony supporting it without objection.

12. The issuance of a Final Order by the Commission approving this Settlement without any material modification or further condition shall terminate all proceedings in this Cause.

13. The undersigned represent and agree that they are fully authorized to execute this Settlement on behalf of their designated clients who will be bound thereby.

14. The Settling Parties shall not appeal the agreed Final Order or any subsequent Commission order as to any portion of such order that is specifically implementing, without modification, the provisions of this Settlement and the Settling Parties shall not support any appeal of the portion of such order by a person not a party to this Settlement. All Settling Parties shall support the Final Order if appealed by any party not a signatory to this Settlement.


15. The provisions of this Settlement shall be enforceable by any Settling Party before the Commission or in any court of competent jurisdiction.

16. The communications and discussions during the negotiations and conferences which produced this Settlement have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be privileged and confidential.




ACCEPTED AND AGREED this 2nd day of November, 2018.

WHITING CLEAN ENERGY, INC.

 11-01-2018  
RICH GARRIS VICE PRESIDENT WCE

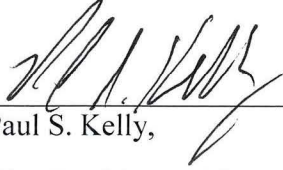
BP PRODUCTS NORTH AMERICA, INC.

 11/1/2018  

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Donald W Porter, VP BP Products North America, Inc

NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC



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Paul S. Kelly,

Vice President, Major Accounts

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

William P. F.