

**STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF NORTHERN INDIANA PUBLIC SERVICE )  
COMPANY FOR AUTHORITY TO MODIFY ITS RATES AND )  
CHARGES FOR ELECTRIC UTILITY SERVICE AND FOR )  
APPROVAL OF: (1) CHANGES TO ITS ELECTRIC SERVICE )  
TARIFF INCLUDING A NEW SCHEDULE OF RATES AND )  
CHARGES AND CHANGES TO THE GENERAL RULES )  
AND REGULATIONS AND CERTAIN RIDERS; (2) REVISED )  
DEPRECIATION ACCRUAL RATES; (3) INCLUSION IN ITS )  
BASIC RATES AND CHARGES OF THE COSTS ASSOCIATED )  
WITH CERTAIN PREVIOUSLY APPROVED QUALIFIED ) CAUSE NO. 44688  
POLLUTION CONTROL PROPERTY, CLEAN COAL )  
TECHNOLOGY, CLEAN ENERGY PROJECTS AND )  
FEDERALLY MANDATED COMPLIANCE PROJECTS; AND (4) )  
ACCOUNTING RELIEF TO ALLOW NIPSCO TO DEFER, AS A )  
REGULATORY ASSET OR LIABILITY, CERTAIN COSTS FOR )  
RECOVERY IN A FUTURE PROCEEDING. )**

**INTEVENORS LAPORTE COUNTY AND CAC'S REQUEST FOR  
RECONSIDERATION AND CLARIFICATION**

Intervenors Board of Commissioners of LaPorte County, Indiana ("LaPorte County"), and Citizens Action Coalition of Indiana, Inc. ("CAC"), by counsel, pursuant to 170 IAC 1-1.1-22(e) hereby respectfully file this Request for Reconsideration and Clarification of the Commission's July 18, 2016 Final Order ("Final Order") in Cause No. 44688. LaPorte County and CAC request that the Commission reconsider and clarify only those discussions and conclusions contained in Section 20(B) entitled: "NIPSCO's Administrative and General Expenses". More specifically, LaPorte County and CAC request the Commission review and reconsider this portion of its finding and clarify that the process and the goals of the collaborative stakeholder process set forth in Section 20(B) is consistent with, fits within and is part of the Commission's previous determinations for NIPSCO and often recited regulatory policy that:

The Commission has a unique role in regulating its jurisdictional utilities, which at times requires us to send a clear and direct message to utility management concerning the need for improvement in the provision of its utility service. Our

determination of the authorized cost of common equity capital can be a very direct means to incent improved service.

*See NIPSCO*, Cause No. 43526, at 32 (IURC Aug. 25, 2010) (hereinafter referred to as “Management Policy”).

This underlying regulatory Management Policy has not only been cited and reiterated in prior NIPSCO rate proceedings, but also multiple, subsequent Commission Orders<sup>1</sup> involving investor owned utilities in Indiana - including the IPL general rate case discussed in the above referenced Section 20(B). This regulatory Management Policy both fundamentally furthers and is consistent with the Commission’s statutory duties, rules and its regulatory oversight obligations of Indiana utilities. Therefore, the potential absence or oversight of the inclusion of this key regulatory Management Policy language in the instant Order as it relates to the goals and objectives of this stakeholder collaborative process could undermine the effectiveness of those efforts. Furthermore, its inclusion in this case is undeniably supported by substantial evidence.

#### **BASIS FOR RECONSIDERATION AND CLARIFICATION**

##### **I. The Commission’s Continuing Concerns about NIPSCO Management Practices Are Warranted and Supported by the Evidence.**

In Section 20(B) of the Order, the Commission reviews and discusses only the testimony of Indiana Office of Utility Consumer Counselor (“OUCC”) Witness Etheridge who questions and discusses the reasonableness of NIPSCO’s administrative and general expenses, overlooking the testimony presented by LaPorte County Witness Cearley. More specifically, in the instant Order, the Commission focuses on Mr. Etheridge’s concerns over, “...whether NIPSCO is cost effectively managing its overall electric operations...” noting that “[i]t is the Commission’s obligation to facilitate effective and efficient management of the utility including continuous

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<sup>1</sup> See e.g., IURC Orders in: Cause Nos.: 43526, at 32 (NIPSCO); 44242, at 35: & 44576, at 42 (IPL).

improvement to the extent it fosters just and reasonable rates.” Order at 93 (emphasis added).

This appears to be the basis for the Commission’s decision to adopt a process similar and cross-referenced to what was ordered in the Commission’s recent IPL general rate case order<sup>2</sup>, namely a stakeholder collaborative to discuss and propose management performance metrics for NIPSCO. The Commission concludes that NIPSCO should “facilitate a meeting...to collaborate on a path to move forward with a performance metrics initiative.” *Id.*, at 94.

In its discussion of the Section 20(B) collaborative process at page 94, the Commission overlooks relevant evidence and erroneously fails to tie the success of the collaborative to conditions like those set forth in NIPSCO’s prior rate case order, IURC Cause No. 43526 at 32, namely a “determination of the authorized cost of common equity capital [being] a very direct means to incent improved service.” The Commission’s discussion in the instant docket only focuses and reviews the evidence submitted by OUCC Witness Etheridge. The Commission failed to raise or discuss the related evidence of LaPorte County Witness Cearley who also presented testimony, evidence and concerns over NIPSCO management practices where he testified that, “NIPSCO still remains in the bottom quartile of the 2015 J.D. Power reports for Midwest Region. Of greater concern is that NIPSCO has been consistently below average in this region since its last contested rate case. (See RWC Exhibits 2-6: J.D. Power Electric Residential Customer Satisfaction Survey 2011 – 2015.)” LaPorte County Witness Cearley Testimony at 4. Mr. Cearley also stated that:

In the 2015 J.D. Power Electric Business Customer Service Satisfaction Survey, NIPSCO ranked 86th out of the 87 listed utilities surveyed with a customer

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<sup>2</sup> See *Indianapolis Power & Light Co.*, Consolidated Cause Nos. 44576& 44602, at 19 (IURC March 16, 2016).

satisfaction service index number of only 612. This was during a period when the other utilities<sup>3</sup> were seeing significant improvements in their index numbers.

*Id.*, at 5. This additional evidence of record raised significant concerns over NIPSCO's management performance and lack of customer accountability and provides ample record support for further action, including within this collaborative process resulting from this Order.

If, however, upon reconsideration the Commission decides the evidence of record is still insufficient to tie these collaborative efforts to a further review of NIPSCO's proper expense recovery and return on equity as was previously done in IURC Cause No. 43526, then, at a minimum, this record evidence unquestionably still supports a basis to reiterate and reaffirm that any metrics or efforts arising from the collaborative process should be considered by and under the often cited Management Policy. Furthermore, these metrics and collaborative proposals will and should directly factor into the Commission's future review of management practices and determinations of an appropriate authorized cost of common equity. As repeatedly stated by this Commission, a determination of a proper return on equity is a means to incent improved management and utility customer service. *See* IURC Cause No. 43526 at 32. Clearly and explicitly restating and tying this regulatory foundational concept to the efforts of this collaborative process is not only warranted by the record evidence, it is essential to guiding and directing the efforts of the stakeholder parties participating in that process.

## **II. The Settlement Agreement is Silent on Management Practices**

As discussed above, the Commission reviewed substantial evidence presented by the OUCC on NIPSCO's management practices in Section 20(B) of the Order. This was not the only testimony and evidence on this topic in this substantial record. As noted above, LaPorte

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<sup>3</sup> These JD Power Surveys also included Indianapolis Power & Light.

Witness Cearley filed significant testimony and submitted several JD Powers Customer Satisfaction Survey exhibits, which this Commission has considered and relied upon in several past cases as a basis for adopting the Management Policies. Further, while the comprehensive settlement in this Cause involved resolution of many issues including the recovery of expenses and setting reasonable rates, it did not raise, resolve, or directly address ongoing management issues raised by the OUCC *and LaPorte County*. Thus, LaPorte County and CAC believe the Commission's findings in Section 20(B) to be concerning. The Settlement Agreement is silent on any discussion of management practices, customer satisfaction and how, if at all, this issue impacted the settled upon and approved return on equity. Obviously, from its review of the record, the Commission found and determined that further considerations are warranted. Toward that end, the Commission created and directed the stakeholder collaborative process as outlined in Section 20(B) to address concerns it sees with NIPSCO management practices. However the Commission fails to elaborate beyond the limited, vague statement that "The level and trend utility performance as measured against itself and compared to other utilities is a crucial element if the Commission is to optimally understand how well management is performing." IURC Cause No. 44688 at 93-94. Further clarification is needed and warranted for all parties involved. Accordingly, LaPorte County and CAC respectfully submit that a foundational consideration for the stakeholder collaborative parties is to consider the regulatory management precept as set forth above.

More specifically, LaPorte County and CAC herein submit that as a part of this collaborative process, the Commission should explicitly reiterate its Management Policy which notes its unique role in regulating jurisdictional utilities to utility management concerning the need for improvement in the provision of utility service. This Management Policy language

certainly ties into and should include those considerations generally outlined by the Commission in this Section 20(B) collaborative process, just as was the case with the cited and similar considerations found in the IPL base rate case order. Further, this will guide the participating stakeholders in their efforts with the understanding and knowledge that the results will be part of the Commission's future considerations and determinations of the authorized cost of common equity capital and not just some abstract exercise. The inclusion of this key Management Policy language with this process provides the necessary linkage and direct means to not only incentive improvement of management of the utility but also NIPSCO's customer service.

### **III. Section 20(B) Stakeholder Collaborative Process Clarification and Guidance**

The inclusion of the additional, previously adopted Management Policy language will clearly guide the stakeholder parties and underscores both the purpose for and how the Commission intends the results of this collaborative process to be used. The explicit inclusion of this key Management Policy language will alert all interested parties that it will be used to evaluate and review NIPSCO's management practices and help to improve the Commission's oversight of the noted management expenses. Unfortunately the Final Order suggests, but fails to specifically link these important goals to direct policy findings on its management oversight and ultimately expense considerations and determinations of proper return on equity considerations as the Commission has done in the past. Therefore, this reading of the Final Order in its present state could, absent the clarification herein requested, create an internal inconsistency between the purposes of this collaborative process and how any collaborative results would and should be used. Finally, the absence of this Management Policy language in the instant situation would also be contrary to the Commission's consistent findings for investor

owned utility management and the Commission's oversight authority and connection to ultimate findings on a reasonable return on equity.

The Commission is free to interpret its own orders. *NIPSCO v. U.S. Steel Corp.*, 907 N.E.2d 1012, 1018-19 (2009) *quoting Employers Ins. of Wausau v. Browner*, 52 F.3d 656, 666 (7th Cir. 1995) *cert. denied*. The Commission, however, remains bound by the need to articulate a rational and principled basis for its interpretation. *See, e.g., Natural Gas Co. of Louisiana v. LPSC*, 634 So.2d 358, 360 (La. 1994); *Browner*, 52 F.3d at 66-67 (applying "arbitrary and capricious" standard to the review of an agency's interpretation of its own order). In the instant matter, the Commission's Final Order suggests but fails to clearly articulate the ultimate purpose for the stakeholder collaborative process and how this will accomplish or implement the Commission's: "[o]bligation to facilitate effective and efficient management of the utility..." (Order, at 93). By clarifying and incorporating the regulatory Management Policy as part of the underlying considerations for the stakeholders within the collaborative process discussion will guide the stakeholder discussions and facilitate a useful proposal and outcome. This regulatory Management Policy has proven to be an effective ratemaking tool and one that directly impacts and improves management accountability and ultimately customer service and satisfaction.

Although the Final Order does not disclaim the above noted regulatory concepts, it likewise leaves the possibility that this fundamental Management Policy is either not relevant to or inapplicable to this collaborative process. LaPorte County and CAC believe this was not the intent and for these reasons requests that the Commission reconsider and clarify its Order to include as part of its Section 20(B) discussion and findings this Management Policy. Furthermore, to the extent that the Commission's discussions and considerations were founded and rely upon its prior orders in Cause Nos. 43526 and 43969 regarding incentivizing

management, LaPorte County and CAC respectfully request that this Order incorporate those regulatory concepts directly and explicitly to avoid any confusion and focus the stakeholder efforts in the ordered collaborative process. This will assure and guide the stakeholders involved in the collaborative process that the results of their efforts will be directly considered by the Commission in future NIPSCO rate proceedings.

In conclusion, this Management Policy has been an underlying regulatory precept and policy adopted by the Commission not only for NIPSCO in its last rate orders, but also specifically cited by the Commission as part of the similar underlying IPL collaborative process. For these reasons, the Commission should reiterate, incorporate, and include as part of its Section 20(B) finding that NIPSCO and the stakeholder participants should consider and be guided by the same Management Policy during these collaborative efforts which will ultimately result in a more focused and workable proposal that can and should become part of the Commission's considerations in NIPSCO's future rate case filings. Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of August 2016, copies of LaPorte County and CAC's Request for Reconsideration and Clarification filed electronically with the IURC has been served via electronic mail delivery to the following counsel of record:

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