

from the growth forecast proxies (Column 3). Pet. Ex. FF, p. 25. Dr. Morin testified that historical growth rates are inappropriate proxies for expected growth at this time, as are dividend growth rates, both historical and prospective. [\*94] Excluding the historical proxies and the outlying dividend growth forecast from Mr. Kaufman's numbers, he said, produced average growth estimates of between 5% and 6%. Pet. Ex. FF, p. 25. Use of a 5% growth rate, he said, would have raised Mr. Kaufman's DCF estimates by at least 100 basis points. A similar bias applies to Mr. Kaufman's estimates derived from his second group of vertically integrated electric utilities. Pet. Ex. FF, pp. 25-26.

With respect to Mr. Kaufman's use, as proxies for the DCF growth component, of historical ten-year and five-year growth rates, Dr. Morin stated that, under circumstances of stability, it would be reasonable to assume that historical growth rates in dividends/earnings influence investors' assessment of the long-run growth rate of future dividends/earnings; however, Dr. Morin concluded that these are anything but stable times in the electric utility industry. Pet. Ex. FF, p. 26. Dr. Morin went on to indicate that historical growth rates are downward-biased by the sluggish earnings performance in the last five years. In addition, Dr. Morin testified that he believes historical growth rates are largely redundant, because such historical growth patterns [\*95] are already incorporated in analysts' growth forecasts, which, he said, should be used in the DCF model. Pet. Ex. FF, p. 26. Dr. Morin added that published studies in academic literature demonstrate that growth forecasts made by security analysts are reasonable indicators of investor expectations and that investors rely on such forecasts. Pet. Ex. FF, p. 28. These studies, he said, present detailed empirical evidence that the average analysts' expectation is more similar to expectations being reflected in the market place than are historical growth rates. Pet. Ex. FF, p. 28. Based on the foregoing analysis, Dr. Morin recommended that this Commission reject the use of historical growth rates as proxies for expected growth in the DCF calculation in this proceeding.

While Dr. Morin agreed with Mr. Kaufman's proxy used for the risk-free rate in his CAPM analysis, he said that he believes that Mr. Kaufman utilized an understated beta. Pet. Ex. FF, p. 29. He also criticized Mr. Kaufman's use of the geometric average of realized returns in measuring market return, as well as Mr. Kaufman's use of the "plain vanilla" CAPM without adjustment. Pet. Ex. FF, pp. 29-30. Dr. Morin maintained that [\*96] the problem he saw with Mr. Kaufman's beta estimates of 0.61 and 0.64 for his two samples of electric utilities, is that historical betas are downward-biased estimates of the true risk of electric utilities. Pet. Ex. FF, p. 30. The true underlying beta of electric utilities, he said, has been gradually increasing in past years because of increasing risk for electric utilities. Yet, the historical beta measured over a five-year estimation period lies midway between the true beginning-of-period beta and the current end-of-period beta, seriously underestimating the current beta. Pet. Ex. FF, p. 31. Dr. Morin said that use of a beta of 0.70, rather than Mr. Kaufman's beta of 0.61-0.64, would increase his ROE estimate by approximately 40-50 basis points, assuming a market risk premium in the range of 6.0%-7.0%. Pet. Ex. FF, p. 32.

Dr. Morin maintained that only arithmetic averages are appropriate when measuring investor expected returns and criticized Mr. Kaufman for using geometric, as well as arithmetic, mean returns in his CAPM analysis. Pet. Ex. FF, pp. 32-33. He pointed out that the effect of using both the geometric and arithmetic mean market risk premiums of 4.7% and 6.4%, rather [\*97] than the arithmetic mean of 6.4% alone (see Pub. Ex. 8, Schedule 5), was to decrease Mr. Kaufman's estimate of the required market return by 0.90%. Pet. Ex. FF, p. 33. This, in turn, biased his CAPM result downward by some 55-65 basis points, using Mr. Kaufman's beta estimates 0.61-0.64. Pet. Ex. FF, p. 33. Dr. Morin noted that the widely-cited Ibbotson Associates publication from which Mr. Kaufman's market return estimate is derived, and from which Mr. Kaufman quotes in his testimony, contains a detailed and rigorous discussion of why geometric averages should not be used in estimating the cost of capital. Pet. Ex. FF, p. 33. Dr. Morin maintained that performance appraisal is one thing and cost of capital estimation is another matter entirely. In estimating the cost of capital, he said, the goal is to obtain the rate of return that investors expect, that is, a target rate of return. On

average, investors expect to achieve their target return. This target expected return is, in effect, an arithmetic average. The achieved or retrospective return is the geometric average. In statistical parlance, the arithmetic average is the unbiased measure of the expected value of repeated observations [\*98] of a random variable, not the geometric mean. Pet. Ex. FF, p. 34.

Dr. Morin also disagreed with Mr. Kaufman's sole use of the raw form of the CAPM to estimate the cost of capital. He said that there have been countless empirical tests of the "plain vanilla" CAPM to determine to what extent security returns and betas are related in the manner predicted by the CAPM. The results of the tests, he said, support the conclusion that beta is related to security returns, that the risk-return tradeoff is positive, and that the relationship is linear. The contradictory finding is that the risk-return tradeoff is not as steeply sloped as the predicted CAPM. That is, low-beta securities earn returns somewhat higher than the CAPM would predict, and high-beta securities earn less than predicted. Pet. Ex. FF, p. 37. The result of these observations, he said, is that a CAPM-based estimate of the cost of capital underestimates the return required from low-beta securities and overstates the return from high-beta securities. He said that Mr. Kaufman's CAPM based estimate understated PSI's equity cost by about 50-60 basis points from this bias alone, as shown by a comparison of Dr. Morin's CAPM and ECAPM [\*99] studies. Pet. Ex. FF, p. 37.

Dr. Morin also noted that Mr. Kaufman's original ROE recommendation for PSI of 9.15% implies a risk premium of only 3.75% over long-term U.S. Treasury bonds, given that long-term Treasury bonds were yielding about 5.4% in the month of August, 2003. Pet. Ex. FF, p. 39. He said that the implied risk premium over "A"-rated electric utility bonds would be about 2.35%, given that A-rated electric utility bonds are currently yielding about 6.8%. Pet. Ex. FF, p. 39. Dr. Morin cited empirical risk premium literature and evidence that indicates that current risk premiums are much higher, and concluded that the risk premium implied in Mr. Kaufman's recommendation is much lower than generally found in empirical finance literature. Pet. Ex. FF, p. 40.

Dr. Morin did not agree with Mr. Kaufman's view that the market risk premium between stocks and bonds has narrowed over time. Pet. Ex. FF, p. 40. In fact, he stated that he believes the opposite to be true, particularly for the electric utility industry, citing studies by Brigham, Shome, and Vinson (1985), Harris (1986), Harris and Marston (1992), Carleton, Chambers and Lakonishok (1983), and Maddox, Pippert and Sullivan [\*100] (1995), who, he said, have demonstrated that, beginning in 1980, utility risk premiums varied inversely with the level of interest rates, rising when interest rates fell and declining when interest rates rose. Pet. Ex. FF, pp. 40-41. Concurrent with the steady decrease in interest rates in the last decade, he said, utility risk premiums have thus escalated -- not narrowed. Pet. Ex. FF, p. 41. The reason for the inverse relationship, he said, is that when interest rates rise, bondholders, whose interest rates are fixed, often suffer a decrease in the market value of their bonds, experiencing a capital loss. This is referred to as interest rate risk. Stockholders, on the other hand, are more concerned with the firm's earning power. In order to avoid interest rate risk in an environment of rising interest rates, investors tend to become more willing to undertake equity investment which, although subject to some fear of loss of earning power, is less sensitive to the fear of interest rate risk. Pet. Ex. FF, p. 41. The resulting increase in the supply of funds available for such equity investments causes a downward pressure on the market price for equity. So, generally it is observed that [\*101] if bondholders' fear of interest rate risk exceeds shareholders' fear of loss of earning power, the risk differential will narrow and hence the risk premium will shrink. Pet. Ex. FF, p. 41. This is particularly true, he said, in high inflation environments. Interest rates rise as a result of accelerating inflation, and the interest rate risk of bonds intensifies more than the earnings risk of common stocks, which are partially hedged from the ravages of inflation. This phenomenon, he said, has been termed as a "lock-in" premium. Conversely, in low interest rate environments, he said, as in the case currently, when bondholders' interest rate fears subside and shareholders' fear of loss of earning power dominate, the risk differential will

widen and hence the risk premium will increase. Pet. Ex. FF, pp. 41-42. To corroborate this phenomenon further, Dr. Morin said that regulators have, in fact, systematically and correctly increased the authorized risk premium when interest rates declined, and conversely decreased the authorized risk premium when interest rates increased. Pet. Ex. FF, p. 42.

Dr. Morin pointed out that Mr. Kaufman's contention that the market risk premium has declined **[\*102]** over time is undermined by his own references, citing the Ibbotson Associates study often quoted in Mr. Kaufman's testimony, which finds no evidence that the market price of risk or the amount of risk in common stocks has changed over time. Pet. Ex. FF, p. 42. Rather, Ibbotson said that there is no significant statistical correlation in successive annual market risk premiums, that is, there is no trend. Pet. Ex. FF, p. 42.

In rebuttal to Mr. Kaufman's criticism of Dr. Morin's ECAPM analysis, Dr. Morin said that he believes that unadjusted raw betas are inappropriate to use in a CAPM analysis because current stock prices reflect expected risk, that is, expected beta, rather than historical risk or historical beta. Pet. Ex. FF, p. 43. Historical betas, he said, whether raw or adjusted, are only surrogates for expected beta, which is why Value Line and other investment information services report adjusted betas. Pet. Ex. FF, pp. 43-44. He said that one of the most well known results in finance is that a CAPM-based estimate of cost of capital underestimates the return required from low-beta securities and overstates the return from high-beta securities based on the empirical evidence. **[\*103]** Pet. Ex. FF, p. 44. The empirical form of the CAPM that he used in his initial testimony, he said, refines the standard form of the CAPM to account for this phenomenon. Pet. Ex. FF, p. 44.

Dr. Morin also rejected Mr. Kaufman's criticism of his use in his DCF analysis of an analyst's earning growth forecast as a proxy for the growth component, pointing out that near-term dividend growth rates cannot be relied upon, as it is widely expected that energy utilities will continue to lower their dividend payout ratio over the next several years, in response to the gradual penetration of competition in the revenue stream. Pet. Ex. FF, p. 45. Dr. Morin also rejected Mr. Kaufman's claim that additional risks and higher expected returns associated with unregulated activities of electric utility holding companies overstate investors' required returns for their regulated operations. Pet. Ex. FF, p. 47. He pointed out that the energy utilities in his sample groups are largely dominated by their regulated operations and that Mr. Kaufman, himself, included in his proxy groups only those companies with at least 75% of revenues derived from electric utility operations. Pet. Ex. FF, p. 48.

Dr. Morin **[\*104]** testified that he believes that Mr. Kaufman's DCF analysis result is understated by 155 basis points: (i) 20 basis points from the omission of an appropriate flotation cost allowance; (ii) 15 basis points from the understatement of growth in the dividend yield component due to the use of the wrong DCF functional form; (iii) 20 basis points due to the use of the annual DCF model rather than the quarterly version; and (iv) 100 basis points from the understated growth rates, mainly the inappropriate use of the dividend growth rates. Pet. Ex. FF, p. 53. Adjusting these numbers in this manner would raise Mr. Kaufman's original DCF range of ROEs from 7.94% - 10.12% to 9.5%-11.7%, Dr. Morin said. Pet. Ex. FF, pp. 53-54.

Dr. Morin concluded that he believes that Mr. Kaufman's CAPM analysis results are understated by 165-195 basis points: (i) 40-50 basis points from the use of an understated beta; (ii) 55-65 basis points from using geometric means instead of arithmetic means in estimating the market risk premium from historical data; (iii) 50-60 basis points from the understatement of expected return inherent in the "plain vanilla" version of the CAPM; and (iv) 20 basis points from the understatement **[\*105]** of flotation costs. Pet. Ex. FF, p. 54. Allowance for the understatements would raise Mr. Kaufman's recommended original ROE from a range of 7.98%-8.59% for his CAPM studies to a range of 9.7% - 10.6%. Pet. Ex. FF, pp. 54-55.

(b) Rebuttal Concerning PSI-IG's Cost of Common Equity Evidence. Dr. Morin indicated that he believes that Mr. Gorman's procedures and methodologies are generally sound and in keeping with the practices of finance professionals. Pet. Ex. No. FF, p. 56. He agreed with: (i) Mr. Gorman's sample of electric utilities used in his DCF and CAPM analyses; (ii) his use of analysts' growth forecasts as proxies for expected growth in the DCF model; (iii) his use of long-term Treasury bond yields as proxies for the risk-free rate in the CAPM analysis; (iv) part of his market risk premium component of the CAPM analysis; and (v) the broad outline of his risk premium analysis. Pet. Ex. No. FF, pp. 56-57. He disagreed with Mr. Gorman regarding: (i) the absence of a flotation cost adjustment; (ii) the failure of his DCF model to recognize the quarterly payment of dividends; (iii) the beta estimates used in his CAPM analysis; (iv) part of his market risk premium component **[\*106]** in the CAPM analysis; (v) the failure to employ the empirical version of the CAPM in keeping with the vast literature on the subject; and (vi) the failure to account for the inverse behavior between the allowed risk premium and the level of interest rates. Pet. Ex. No. FF, p. 57.

Dr. Morin said that in his opinion Mr. Gorman's dividend yield component in his DCF analysis is understated by 30 basis points as it does not allow for flotation costs, and, as a result, a legitimate expense is left unrecovered. Pet. Ex. FF, pp. 57 and 59. Dr. Morin testified that Mr. Gorman's allegation that a flotation cost allowance is inappropriate if the utility is a subsidiary whose equity capital is obtained from its parent, such as is the case of PSI, ignores the fact that the parent-subsidiary relationship does not eliminate the costs of a new issue -- it merely transfers them to the parent. Pet. Ex. FF, p. 59. Fair treatment, he said, must consider that, if the utility-subsidiary had gone to the capital markets directly, flotation costs would have been incurred by that utility. Pet. Ex. FF, p. 59.

Dr. Morin said that Mr. Gorman's failure to recognize the quarterly nature of dividend payments in his **[\*107]** DCF computation understates his cost of equity capital by about 20 basis points. Pet. Ex. FF, p. 61. He said that Mr. Gorman's use of a 0.64 historic beta for his electric sample understates his results because historical beta measures for an industry in a state of heightened risk are understated. Pet. Ex. FF, pp. 61-62. He observed that use of a more appropriate beta for PSI of 0.70 would raise Mr. Gorman's CAPM estimates by approximately 50 basis points, using Mr. Gorman's market risk premium estimate of 7.0%. Pet. Ex. FF, p. 62.

Dr. Morin believed that, in his risk premium analysis, Mr. Gorman appropriately examined the historical risk premiums implied in the ROEs allowed by state regulatory commissions in hundreds of electric utility ROE decisions over a 16-year period, 1986-2002, relative to the contemporaneous level of long-term Treasury bond yields and A-rated utility bond yields. However, although the average ROE spread over long-term Treasury yields was 4.9% for the 1986-2002 period, Mr. Gorman used a range of 4.4% to 5.6% rather than 4.9%. Pet. Ex. FF, pp. 63-64. Dr. Morin disagreed with the use of this range because of the rising trend of the risk premium in response to **[\*108]** lower interest rates, rising competition and restructuring. Pet. Ex. FF, p. 64.

Dr. Morin testified that in his DCF approach, Mr. Gorman did not allow for flotation costs (30 basis points) and employed underestimated dividend yield data (20 basis points), thereby understating PSI's cost of equity by 50 basis points. Pet. Ex. FF, p. 68. He added that Mr. Gorman's CAPM result was further understated by 50 basis points because of his use of the raw form of the CAPM. Finally, he said, a recognition of the rising allowed risk premium over time in response to lower interest rates and rising competition and restructuring, ignored by Mr. Gorman, would have raised his risk premium estimate to above 11%. Pet. Ex. FF, p. 68.

(c) Rebuttal Concerning Staff's Cost of Common Equity Evidence. In his response to Testimonial Staff's original recommendation of ROE allowance in the range of 10.25% to 10.50%, Dr. Morin said he disagreed with Staff's two adjustments to his DCF analysis. Staff used the one-half year (1 + 0.5g) adjustment factor to the dividend yield, rather than the full

year  $(1 + g)$  factor. Second, Staff reduced his flotation cost adjustment by one half, from 30 to 15 basis points, [\*109] based on the actual costs reported for Cinergy's most recent stock offering. Restoration of the full flotation cost adjustment and application of the functional form of the DCF model he proposed would raise Staff's original range by 30 basis points from 10.25% - 10.50% to 10.55% - 10.80%. Pet. Ex. FF, p. 70.

Dr. Morin also disagreed with two of Staff's adjustments to his CAPM analysis. First, he said that he believes that Staff's risk-free rate needed to be updated to reflect current capital market conditions. Staff used a 4.9% risk-free rate based on a six-month average of 30-year Treasury bond yields. The yield was in excess of 5% for the months of August and September 2003, Dr. Morin said, and was 5.3% at the time Dr. Morin's rebuttal testimony was prepared at the end of September. Pet. Ex. FF, p. 70. He was also critical of Staff's use of geometric means to measure expected returns. Failure to rely exclusively on the arithmetic mean biased Staff's CAPM result downward by some 55-65 basis points, he said. Pet. Ex. FF, p. 70. He also was critical of Staff's ignoring what Dr. Morin considered the overwhelming empirical evidence that the "plain vanilla" CAPM understates the return [\*110] on low-beta stocks. Pet. Ex. FF, p. 71.

#### (7) Discussion and Findings Concerning Cost of Equity Capital Evidence.

Based on the entirety of the testimony presented on this issue, it is apparent that we have been presented with a highly detailed discussion of the cost of equity capital by various parties to this proceeding. In evaluating the evidence presented on this issue we concur with Mr. Inman's observations that: (i) the determination of an exact investor required return on equity is impossible; (ii) the results of the CAPM, DCF and RP methods are driven by the inputs for each, of which there are countless possibilities and legitimate arguments to include this and exclude that; and (iii) a petitioning utility will tend to support methodologies and inputs that support a higher result and those in opposition will tend to support methodologies and inputs which produce a lower result. IURC Staff Ex. No. 1, pp. 22-23. Our discussion and analysis of this issue also serves to illustrate that the goals for setting the fair rate of return for a public utility go well beyond the use of formulas and mathematical calculations which may imply a level of precision which does not really exist. [\*111] With this in mind, we turn our analysis to the cost of capital evidence submitted in this proceeding.

The witnesses testifying concerning Petitioner's cost of capital all used similar approaches. Dr. Morin, Mr. Kaufman and Mr. Gorman, all utilized standard methodologies for determining a cost of common equity capital: DCF studies, the CAPM model, and/or the RP approach. As is typically the case, however, they came to different conclusions. Dr. Morin's updated DCF studies produced a range in the cost of equity from 10.3% to 12.1%. His updated CAPM and RP methods produced costs of equity in the range of 10.9% to 12.5%. Mr. Kaufman, on the other hand, produced lower estimated costs of equity in his updated study, ranging from 8.02% to 9.67% utilizing the DCF methodology, and from 8.48% to 9.09% utilizing the CAPM model. Mr. Kaufman's initial study produced DCF results ranging from 7.94% to 10.12%, and CAPM results ranging from 7.98% to 8.59%. Mr. Gorman calculated a cost of equity in the range of 9.7% to 10.3%, utilizing a DCF analysis, a RP analysis, and the CAPM model. Testimonial Staff witness Inman, analyzing the cost of equity estimates of the other parties, recommended a cost of [\*112] equity range of 10.25% to 10.50% in his profiled testimony. Mr. Inman noted on cross-examination that he did not perform a complete update of his analysis; however, as part of his testimony, Mr. Inman provided an updated range of PSI's cost of equity capital from 10.35%-10.55%.

We note that unlike the last PSI rate case in which there was extensive testimony from the experts regarding the strengths and weaknesses of the DCF, RP, CAPM, and ECAPM models, the issues in the present cause focus more on the *inputs* utilized in the models, rather than the models themselves. While the parties offer little insight as to why their approach has changed, it is apparent based on our review of the evidence in this Cause that unlike the last

rate case in which the DCF model presented lower results compared to the other models, the models utilized in the present proceeding offer a certain level of uniformity in their results. Perhaps this fact alone helped to eliminate any incentive an expert might otherwise have to criticize the results of a particular model as part of this proceeding. n7 While it is not necessary for us to resolve extensive debate regarding the value and utilization of each [\*113] of the models, there are disagreements regarding some of the major inputs used by the experts within the various models. While we do not believe that it is necessary for us to address every issue upon which the experts disagreed, we think that it is important for us to review the major areas of disagreement prior to reaching a conclusion on these issues.

----- Footnotes -----

n7 Only the ECAPM remains as a model subject to any meaningful criticism from the experts in this Cause.

----- End Footnotes-----

The evidence presented in this Cause, on cost of equity issues and the major areas of disagreement among the various experts, is summarized in the following table:

**Summary of ROE Estimates and Areas of Disagreement**

	<b>Witness / Party</b>	<b>Morin / PSI</b>	<b>Inman / IURC</b>	<b>Kaufman / OUCC</b>	<b>Gorman / PSI-IG</b>
Original	CAPM	10.20-10.70%	9.21%	7.98-8.59%	9.50-9.80%
	DCF	10.70-13.60%	10.42-13.52%	7.94-10.12%	10.10%
	RP	10.90-12.30%	9.69-11.02%	NA	NA
	ARP	11.30-11.40%	11.30-11.40%	NA	9.40-10.90%
	Recommendation	11.50%	10.25-10.50%	9.15%	10.00%
Updated	CAPM	10.90-11.40%	NA	8.48-9.09%	NA
	DCF	10.30-12.10%	NA	8.02-9.67%	NA
	RP	10.90-12.50%	NA	NA	NA
	ARP	11.30-11.40%	NA	NA	NA
	Recommendation	11.20%	10.35-10.55%	9.25%	NA
<b>Major Areas of Disagreement-All Models</b>					
All	Floatation costs	0.30%	0.15%	0.05-0.10%	0.00%
	Adjustment				
0.64	CAPM	Beta	0.72	0.72	0.65-0.70
		Market Risk			
	Premium Mean "Arithmetic vs. Geometric"	Arithmetic	Both	Both	Arithmetic
	ECAPM	Accept	Reject	Reject	Reject

DCF	Half-vs. Full-Year Div. Growth Quarterly Compounding Adj.	Full-Year	Half-Year	Half-Year	Full-Year
		0.20%	0.20%	0.00%	0.00%
RP	Risk Premium Mean "Arithmetic vs. Geometric"	Arithmetic	Both	NA	NA

**[\*114]**

The recommended ROE estimates (as adjusted) presented in this Cause range from 9.25-11.20%, a spread of 195 basis points. Several factors contributed to the variation in estimates including: varying weights applied by the experts to several ROE models; the use of Arithmetic vs. Geometric mean returns; Spot vs. Average T-Bond and dividend yields; and, the wide array of proxy groups used in an effort to replicate PSI's risk profile. While we do not find it necessary to resolve each of the sometimes overlapping disagreements between Dr. Morin, Mr. Kaufman, Mr. Gorman and Mr. Inman, in arriving at either an appropriate cost of capital, or a fair rate of return determination, we note that specific aspects of Dr. Morin's analyses raised concerns on the part of the various other parties and are therefore worthy of additional review and discussion by the Commission.

The Commission recognizes that there were disagreements between the Petitioner and the other witnesses with respect to the following issues: 1) The level, or inclusion, of flotation costs by Dr. Morin (Kaufman, Inman and Gorman); 2) Dr. Morin's failure to utilize the one-half year (1 + 0.5g) adjustment factor for the dividend **[\*115]** yield in the DCF model (Kaufman and Inman); 3) the beta estimate utilized by Dr. Morin in his CAPM Model (Kaufman and Gorman); 4) Dr. Morin's use of only the Arithmetic Mean rather than Arithmetic & Geometric mean in his CAPM and/or RP Model (Kaufman and Inman); and, 5) the appropriate inclusion of the ECAPM analysis performed by Dr. Morin (Kaufman, Inman and Gorman). We discuss each of these issues as follows:

*(a) Flotation Costs (Applicable to all Models)*

In his testimony Dr. Morin cited empirical finance literature to support his conclusion that flotation costs are roughly equal to 5% of electric utility stock offering proceeds. Therefore, with an average expected dividend yield of 5% for electric utility stocks, Dr. Morin concluded that the proper adjustment to the return on equity should be  $[5/(1.00-.05)]-5 = 0.3\%$  (thirty (30) basis points). Pet. Ex. G, p. 44.

Mr. Kaufman questioned Dr. Morin's proposed thirty (30) basis point upward adjustment to the cost of equity. Mr. Kaufman took issue with Dr. Morin's use of empirical studies of average electric utility stock issue costs and indicated that the actual flotation costs incurred by Cinergy should be considered when determining **[\*116]** a fair flotation cost adjustment. Mr. Kaufman explained that actual flotation costs associated with Cinergy's most recent stock issuance amounted to \$ 1.55 million, or less than 1% of the stock issue, which Mr. Kaufman contends supports a reduction from the 30 basis points proposed by Dr. Morin. While Mr. Kaufman indicated that he believes that some adjustment for flotation costs is merited, he recommends the adjustment be only 5-10 basis points. Pub. Ex. No. 8 p. 77.

Mr. Gorman indicated that he does not believe flotation costs are applicable to PSI, as the company does not have publicly traded common stock. If Cinergy's flotation costs are applicable to PSI, then PSI should account for them explicitly and not simply add a blanket flotation adjustment as suggested by Dr. Morin.

Testimonial Staff recommended allowing a 15 basis point adjustment to the CAPM and RP

methods and a 2.5% gross up of the dividend yield produced by the DCF method. Mr. Inman's flotation cost adjustment is based on Dr. Morin's flotation cost estimate and Cinergy's actual flotation costs related to their most recent stock offering.

*Analysis and Findings of the Commission on this Issue*

Based on the testimony [\*117] presented, we are faced with a range of recommendations regarding flotation costs. Mr. Kaufman and Mr. Inman both agree that flotation costs may appropriately be included, albeit at a reduced level from that proposed by Dr. Morin. Mr. Gorman contends that if flotation costs are allowed at all, they should be subject to specific accounting treatment to ensure that only costs incurred by PSI are charged to PSI. The witnesses that favor a reduction or elimination of flotation costs are fairly uniform in their assessment that an analysis of the actual flotation costs incurred by Cinergy should result in a determination by the Commission that a reduction of the upward adjustment proposed by Dr. Morin to account for flotation costs is appropriate.

In undertaking a textbook analysis of the flotation costs issue, Dr. Morin provides a formula that estimates flotation costs that typically might be encountered as part of an electric utility stock offering. While Dr. Morin provides testimony as to why he believes the other witnesses are wrong in proposing to reduce flotation costs, and the impact that such a reduction would have on his proposal, he does not explore the possibility that a reduction [\*118] of flotation costs could appropriately occur based on the modification of his flotation cost estimate, which does not consider the actual costs encountered by Cinergy. The fact that Dr. Morin's mathematical equation does not overlay fact specific issues applicable to PSI, demonstrates the shortcomings of a formula as it does not include a mechanism to allow the Commission to consider the actual flotation costs encountered by Cinergy as part of recent stock offerings. We believe that our review of this issue would be incomplete without consideration of this very important fact specific issue.

Accordingly, having reviewed the entirety of the record on this issue, the Commission agrees that an adjustment to the return on equity to account for flotation costs is appropriate. We find the recommendations of Mr. Kaufman and Mr. Inman to be particularly instructive on this issue as they both favor a reduction of the flotation costs proposed by Dr. Morin, based on consideration of actual flotation costs incurred by Cinergy. We find this approach to be reasonable and hereby find that a fifteen (15) basis point upward adjustment to the cost of equity to account for flotation costs is appropriate [\*119] and should be approved in this Cause.

*(b) Quarterly Compounding Adjustment and Expected Dividend Yield (DCF Model)*

In his testimony, Dr. Morin explained that the common practice of companies is to pay dividends quarterly. Therefore, Dr. Morin indicated that investors' required return must be determined with a DCF model that reflects the quarterly nature of dividend payments. Dr. Morin asserted that an upward adjustment to the return on equity should be made to account for quarterly payment and compounding of dividends, based on the assumption that dividends received may be reinvested at the return on equity rate. Dr. Morin explicitly adjusted his DCF estimates upward by 20 basis points to account for the quarterly timing of dividend payments.

Mr. Kaufman agreed with Dr. Morin's reasoning, but did not agree that an explicit adjustment should be made to the DCF model. Mr. Kaufman reasoned that utilities receive payments from customers on a monthly basis instead of a yearly basis. This allows the utility to invest their monthly profits in projects that earn a fair return for the utility. However, no downward adjustment is made to the utility's return on equity to account for the [\*120] monthly timing of these payments. Therefore, Mr. Kaufman concluded that an adjustment should not be made for quarterly payment of dividends. Mr. Gorman testified that he believes that



adding the adjustment suggested by Dr. Morin would allow shareholders to earn the dividend compounding return twice, once on the authorized return on equity and the second time when dividends are received. PSI-IG Ex. No. 3, p. 33.

Dr. Morin and Mr. Gorman both used the full-year method to estimate the expected dividend yield. Dr. Morin indicated that he believes that the use of a one-half year adjustment to the dividend yield in the DCF model results in the understatement of the appropriate dividend yield, which in turn results in an understatement of PSI's cost of equity. In contrast to the position set forth by Dr. Morin and Mr. Gorman, Mr. Kaufman and Mr. Inman utilized a one-half year (1+0.5g) adjustment factor to the dividend yield in the DCF model. Mr. Kaufman recognized that Dr. Morin's analysis was based on a DCF model adjusted to capture a full year's future growth, and indicated that he believes this approach overstates the forward yield. Mr. Inman agreed with Mr. Kaufman's criticism of applying [\*121] the full year's growth to the current dividend yield. Citing recent Commission rate case proceedings, including *In re Indiana American Water Company*, Cause No. 42029 (*Ind. Util. Reg. Comm'n*, November 6, 2002), Testimonial Staff recommended use of the half-year method of calculating forward dividend yields.

#### *Commission Analysis and Findings on these Issues*

With respect Dr. Morin's testimony in which he indicates that an adjustment to the DCF model must be made to reflect the quarterly nature of dividends, we note that this issue is not new. This very issue was presented to the Commission in Cause No. 40003, (*Ind. Util. Reg. Comm.*, September 27, 1996). In Cause No. 40003, the Commission found, in resolving a dispute on this issue between the OUCC witness and Dr. Morin, that:

We find the logic of the quarterly DCF a useful alternative, and no sufficiently sound reason has been presented for rejecting it. We find it difficult to believe that the timing of dividend payments is not reflected in the price of a stock. We agree with Dr. Morin that it is inconsistent to use a stock price which reflects quarterly dividends in a model which assumes annual dividend payments [\*122] unless the model is adjusted to reflect the quarterly dividends which lend to the investor expectations which give rise to the stock price.

Cause No. 40003 at 28-29

While we may appropriately be guided by precedent on this issue, we also find that we could revisit this issue if faced with a persuasive argument. However, the only persuasive argument put forth on this issue was presented by Dr. Morin. Therefore, we again find, based on the evidence presented in this Cause that it would be inconsistent to use a stock price which reflects quarterly compounding of dividends in a model that assumes annual dividend payments unless the model is adjusted to reflect the quarterly compounding of dividends. Therefore, we agree with Dr. Morin on this issue and find that his upward adjustment to the return on equity was appropriately included to account for quarterly payment and compounding of dividends.

With respect to our consideration of forward dividend yield, the Commission is persuaded by the arguments presented by Mr. Kaufman and Mr. Inman in support of their use of the half year method of calculating the forward dividend yield. In reaching this determination we also recognize that we [\*123] have recently accepted this approach in other proceedings, including Cause No. 42029 (*Ind. Util. Reg. Comm'n*, November 6, 2002), which was referenced by Mr. Inman. In Cause No. 42029 we stated that:

The Commission has considerable experience with the DCF model for estimating the cost of equity. We are well aware of the advantages and limitations of the various approaches used by each of the witnesses. For example, the half-year method used by the OUCC for calculating the forward yield is the most frequently used approach in this jurisdiction and is rarely a point of contention in DCF analysis. We believe it fairly represents the dividend payments expected and received by investors, while the full-year method employed by Petitioner overstates dividend yield.

Cause No. 42029 at 31.

Therefore, based on our review of the specific evidence presented in this case, we find that the proposal set forth by Mr. Inman and Mr. Kaufman to use of the half year method of calculating the forward dividend yield, is appropriate as it fairly represents the dividend payments expected and received by investors. We find that the full-year method employed by Dr. Morin overstates the dividend [\*124] yield, and is therefore rejected by the Commission in this Cause.

*(c) Arithmetic and Geometric Means (CAPM and RP Models)*

The application of geometric and/or arithmetic mean risk premiums was an important point of dispute in both the CAPM and RP models in this Cause. Dr. Morin testified that he believes that only arithmetic averages are appropriate when measuring expected risk premiums. Dr. Morin pointed out that the effect of using both the geometric and arithmetic mean risk premiums, rather than the arithmetic mean alone, is to decrease estimates of expected risk premiums. This in turn, according to Dr. Morin, biases the CAPM and RP results downward. Consistent with Dr. Morin, Mr. Gorman utilized arithmetic averages in the calculation of his risk premiums.

In performing his CAPM analysis Mr. Kaufman averaged his calculated geometric and arithmetic market risk premium means for use as the market risk premium. Mr. Kaufman stated that this approach is consistent with the Commission's past approval of arithmetic and geometric means. Mr. Kaufman directed us to two final orders of this Commission, *People's Gas and Power*, Cause No. 39315, (Ind. Util. Reg. Comm'n, October 21, 1992); [\*125] and, *Indiana American Water*, Cause No. 40103, (Ind. Util. Reg. Comm'n, May 30, 1996), which he indicated support his conclusion that the use of geometric and arithmetic mean risk premiums are appropriate. Mr. Inman stated that Testimonial Staff agrees with Mr. Kaufman's approach in which he gives weight to both the arithmetic and geometric means when computing the appropriate risk premium means to apply to the CAPM and RP models.

*ECAPM and Beta.*

Dr. Morin used "plain vanilla" and "empirical" versions of the CAPM. He was the only expert that performed an ECAPM analysis. In his testimony, Dr. Morin asserted that empirical studies have shown that betas tend to converge to unity over time (i.e., historical betas below one are expected to rise to 1.00, and betas above 1.00 are expected to fall to one). Therefore, the use of historical betas necessarily biases a security's market risk downward for a security with a beta less than 1.00. Dr. Morin testified that the ECAPM adjusts beta for its tendency to move to 1.00.

Mr. Kaufman, Mr. Gorman, and Mr. Inman made exclusive use of the "plain vanilla" version of the CAPM and expressly rejected Dr. Morin's use of the ECAPM. Each stated [\*126] that Value Line (the source of Dr. Morin's beta estimates) adjusts betas for their tendency to move to 1.00 over time. Therefore, the ECAPM analysis performed by Dr. Morin is redundant.

These witnesses also noted that the ECAPM model was rejected by the Commission in Cause No. 40003.

While all parties used Value Line as their source for beta estimates in their CAPM models, there was no overall consensus among the experts with respect to the use of an appropriate *estimate* of the beta to be utilized. As with the foregoing issues, the variation in the approaches taken by the experts only serves to further demonstrate that expert opinions will differ with respect to the inputs they utilize -- as well as the conclusions they ultimately reach -- in undertaking an individual analysis of the issues.

In his testimony, Dr. Morin examined the average betas of two proxy groups: the average of Value Line's reported betas for the electric utility industry, which is 0.71; and, the average beta of Value Line's natural gas distribution universe with a market value in excess of \$ 500MM, which is 0.72. Based on his evaluation of these two proxy groups, and his assertion that backward looking betas [\*127] do not fully reflect a company's risk profile, Dr. Motion utilized the higher of the two betas, or 0.72.

While Mr. Inman accepted Dr. Morin's beta of 0.72, Mr. Kaufman and Mr. Gorman both expressed concern regarding the beta utilized by PSI's witness. Mr. Kaufman and Mr. Gorman both rejected Dr. Morin's use of a proxy group of Natural Gas Distribution companies that are not involved in electric operations, as they do not believe that this group can serve as a reasonable proxy for PSI. Based on his analysis of this issue, Mr. Kaufman established a beta of 0.610, for the proxy group that he developed; an average beta of 0.642 based on his review of Dr. Morin's proxy group; and, a beta of 0.70 for Cinergy. Based on this overall review, Mr. Kaufman initially recommended a beta in the range of 0.610 to 0.70. In updating his testimony in this Cause, Mr. Kaufman revised his beta range to 0.65-0.70. Mr. Gorman testified that he used a beta of 0.64, obtained by averaging the group betas for his comparable group of electric utilities.

#### *Commission Analysis on these Issues*

The application of geometric and/or arithmetic mean risk premiums has been previously presented to the Commission for [\*128] consideration. This issue was raised in *Indiana American Water*, Cause No. 40103, (*Ind. Util. Reg. Comm'n*, May 30, 1996), in which the Commission stated:

The debate over the proper use of the arithmetic and geometric means is an issue we consider resolved. As we stated in *Indianapolis Water Company*, Cause No. 39713-39843, each method has its strengths and weaknesses, and neither is so clearly appropriate as to exclude consideration of the other.

Cause No. 40103 at 41.

Mr. Kaufman and Mr. Inman utilized arithmetic and geometric means, while Dr. Morin and Mr. Gorman utilized only arithmetic means. Based on the disparate results from the experts, and consistent with our findings in Cause No. 40103, we find that we must analyze this issue based on our understanding that each method has its strengths and weaknesses, and neither is so clearly appropriate as to exclude consideration of the other.

With respect to the appropriate beta to be utilized, we have been presented with a number of options by the experts regarding this input, ranging from 0.64-0.72. In reviewing this issue the Commission recognizes that the modification of this single input in the CAPM model results in [\*129] dramatically different proposals regarding the recommended cost of

equity. A comparison between Dr. Morin and Mr. Gorman's CAPM analysis, and the beta they utilized, is instructive regarding the impact of this single input. While these two witnesses agreed on many issues, they did not agree on beta. Dr. Morin concluded that 0.72 was an appropriate beta and Mr. Gorman indicated that he believed a beta of 0.64 should be utilized. The difference in this single input, between these two experts, accounted for a swing of 54 basis points and resulted in vastly different outputs from their respective CAPM models. While we do not believe that it is necessary for us to choose a single beta from among those utilized by the experts, we recognize that this issue is one important factor for us to consider in reaching a determination on an appropriate cost of equity.

With respect to the ECAPM analysis performed by Dr. Morin we note that the Commission rejected this model in Cause No. 40003, and found that: "the Empirical CAPM is not sufficiently reliable for ratemaking purposes." Cause No. 40003 at 32. We went on to conclude that the ECAPM ". . . would adjust, in essence, future expectations with **[\*130]** regard to investor perceptions of relative risks for further change which may occur years hence." The Commission concluded that ". . . we do not believe exercises in approximating future cost of capital are conducive to such precise estimation as the Empirical CAPM would suggest." *Id.* We find that nothing presented in this Cause has changed our prior determination that ECAPM is not sufficiently reliable for ratemaking purposes and hereby reject the model in this proceeding.

*(d) Other Evidence Relevant to the Determination of a Fair Return*

(1) Petitioner's Current Financial Condition and Financial Objectives. PSI witnesses Reising and Esamann testified concerning PSI's current financial condition and financial objectives. Pet. Ex. B, pp. 3-5, and 32-41; Pet. Ex. E, pp. 10-19; and Pet. Ex. DD, pp 3-10 and 27-35. PSI's capital structure on a financial basis as of September 30, 2003 reflects 52.60% common equity, including a \$ 200 million capital infusion from Cinergy. According to Mr. Reising, PSI's general financial objective is to achieve the fundamentals necessary to provide assured and reasonable access to capital markets in order to continue to provide cost effective, **[\*131]** safe, adequate, environmentally compliant and reliable service to its customers. Specific financial objectives necessary to enhance or maintain the desired financial strength include: (1) achieving and maintaining at least a 50% common equity ratio for PSI on a financial capitalization basis; and (2) maintaining PSI's credit ratings at current levels (*e.g.*, an "A-" rating for PSI's senior secured debt), with an ultimate goal of improving PSI's credit ratings one notch (to "A" for PSI's senior secured debt). Pet. Ex. E, pp. 10-11.

With respect to PSI's stated objective of improving its credit rating, Dr. Morin offered an analysis of what he believes the optimal bond rating for an electric utility's senior secured securities should be. Dr. Morin explained that when a company substitutes lower cost debt for equity, the average weighted cost of capital decreases up to a point, while the bond rating progressively deteriorates. Dr. Morin testified that over the long run, a strong "A" bond rating will minimize the cost of capital to customers. According to Dr. Morin, the implication for PSI is clear that long-term achievement and maintenance of a strong "A" bond rating is in both investors' **[\*132]** and customers' best interests; and this Commission should establish rates so as to create the financial conditions conducive to PSI achieving an "A" credit rating. Pet. Ex. G, pp. 47-51; and Pet. Ex. FF, pp. 76-78.

Mr. Fetter testified that recent events have negatively impacted the views of credit rating agencies and investors with regard to the utility sector. According to Mr. Fetter, utilities operating within today's financial environment should seek to minimize the uncertainties that could affect a utility's financial health and its credit ratings. Pet. Ex. H, pp. 15-17; Pet. Ex. E, pp. 6-8; and Pet. Ex. EE, pp. 7-8.

Mr. Fetter testified that PSI's securities are currently rated by the three major credit rating agencies as follows:

	<b>Fitch</b>	<b>Moody's</b>	<b>Standard &amp; Poor's</b>
Senior Secured Debt	A-	A3	A-
Senior Unsecured Debt	BBB+	Baal	BBB
Junior Unsecured Debt	BBB	Baa2	BBB-
Preferred Stock	BBB	Baa3	BBB-

Pet. Ex. E, p. 12.

In recent assessments of PSI's credit ratings, the three major credit rating agencies have all emphasized PSI's large capital expenditure requirements and the importance of constructive regulatory support. For example, Fitch's August 2001 report stated that **[\*133]** "PSI's rising capital requirements related to compliance with environmental regulations and planned new capacity additions is a credit concern and will require regulatory support to prevent a decline in credit quality." Pet. Ex. E, p. 13. Similarly, Fitch's June 2002 report on PSI summarized PSI's key credit concerns as "the relatively high level of capital expenditures needed to comply with environmental regulations and the need for rate increases in Indiana to support the asset transfers." Pet. Ex. E, p. 13. Moody's September 2002 report commented on its rating of PSI as follows: "The rating, however, considers PSI's somewhat high debt load, future capital expenditures for environmental compliance, and financial measures which on a stand alone basis are relatively low when compared to most other companies in their peer rating category." Pet. Ex. E, p. 14. S&P's July 2002 report on PSI addressed certain regulatory challenges facing PSI, including: "uncertainty involving environmental issues related to new source review, as well as the potential for stricter emission standards." Pet. Ex. E, p. 14. Finally, Moody's third quarter 2002 report on PSI noted the following concerns: "PSI's **[\*134]** liquidity will continue to be negatively affected by large environmental expenditures for its coal plants and its somewhat high debt load" and "PSI's cash flow has been variable in recent years and generally insufficient to cover dividend requirements and capital expenditure needs." Pet. Ex. E, pp. 14-15.

Mr. Fetter explained that regulation is a key factor in assessing the credit profile of a utility, because a state public utility commission determines rate levels and terms and conditions of service. Investors want to be confident that the utility operates within a stable regulatory environment that will allow the utility the opportunity to earn a reasonable return on its investment while meeting the demand, reliability, service, and environmental requirements of its service area. Important considerations include the allowed rate of return, the cash quality of earnings, the timely recovery of capital investments, the stability of earnings, the strength of its capital structure and moderation of the utility's need to finance externally. Positive consideration is also given to mechanisms that enable rates to be adjusted expeditiously to accommodate major swings in costs which cannot **[\*135]** be reasonably forecasted to fit into a standard base rate case proceeding. Pet. Ex. H, pp. 7-10.

Mr. Fetter, along with PSI witnesses Reising and Paul G. Smith, General Manager, Budgets and Forecasts for Cinergy Services, examined several rate increase scenarios and their expected impact on PSI's credit quality. Mr. Fetter initially examined both a "status quo" (*i.e.*, no rate relief) scenario and a full rate relief scenario. He concluded that if the Commission did not approve substantially all of the rate relief requested by PSI, certain key credit ratios for PSI -- specifically, cash flow, interest protection, and leverage measures -- would significantly decline within a very short period of time. PSI would be reviewed for a possible credit rating downgrade. Pet. Ex. H, pp. 16-22; Pet. Ex. E, p.19; Pet. Ex. F, pp. 3-9; Pet. Ex. GG, pp. 2-10; Pet. HH, pp. 2-5; and Pet. Ex. EE, pp. 3-6.

In rebuttal testimony, PSI and Mr. Fetter analyzed the potential impact of the OUCC's \$ 18 million rate increase recommendation on PSI's credit quality. Additionally, in response to Mr.

Inman's observation that PSI failed to examine alternative rate increase scenarios and their impact on PSI's credit [\*136] quality, PSI and Mr. Fetter analyzed the potential impact of a \$ 150 million rate increase on PSI's credit quality.

Mr. Fetter emphasized that a small increase, such as that proposed by the OUCC, would be inconsistent with PSI maintaining its current "BBB+" corporate credit rating status and would preclude PSI from having any opportunity to improve its credit rating. In Mr. Fetter's judgment, given PSI's ongoing need for capital expenditures, under this \$ 18 million rate increase scenario, credit rating agencies would not only review PSI for a likely downgrade, but might even downgrade PSI two notches. Pet. Ex. GG, pp. 2-6. Additionally, if this Commission authorized a \$ 150 million annual increase, Mr. Fetter indicated that from a credit quality perspective, PSI would likely be on the dividing line between its current "BBB+" rating and a downgraded "BBB" credit rating. At a minimum, Mr. Fetter felt that serious consideration would be given to a negative watch or outlook if current rating levels were maintained.

(2) Relative Risk Faced by PSI. The various parties in this case held divergent views concerning the risks currently facing the energy industry in general and PSI in particular.

[\*137] PSI's witnesses were of the view that the energy industry is in a highly uncertain state, stemming from a number of extreme and unexpected industry events. Mr. Rogers explained that PSI faces both expected and unexpected challenges. Chief among these challenges is the substantial uncertainty associated with environmental regulation; the ownership, operation, pricing, and reliability of the transmission grid; continuing uncertainty about wholesale market design and operation; and risks associated with achieving fair returns demanded by investors. Pet. Ex. A, pp. 3-4 and 16-29; Pet. Ex. DD, pp. 7-10; and Pet. Ex. EE, pp. 7-8.

Other parties to this proceeding took the view that Indiana's constructive regulatory statutes and policies, combined with the numerous trackers utilized by PSI, effectively mitigate virtually all environmental, transmission, and resource adequacy risks that might otherwise be faced by PSI. As pointed out by Dr. Sheehan, the use of trackers allows for periodic cost adjustments between rate cases and thus eliminates financial risk for a utility. These reduced risks, according to Dr. Sheehan, argue for elimination of some of the risk premium received by the utility [\*138] in the ROE determination. CAC Ex. C, p. 33. Mr. Biewald shared Dr. Sheehan's conclusion and observed that, of Dr. Morin's peer group of utility companies used to calculate his ROE, PSI has the highest number of trackers. Mr. Biewald indicated that the large number of PSI's rate adjustment trackers, relative to its industry peers, suggest that the Company is well protected against many risks to which other utilities are often exposed. CAC Ex. B, p.11.

Testimonial Staff also recognized that PSI is protected from certain risks by its use of trackers. Dr. Borum indicated that Indiana law and the rate adjustment tracking mechanisms proposed by the Company give PSI the flexibility to address future challenges and mitigate future uncertainties in a constructive manner. However, he observed, this flexibility and mitigation is achieved by shifting much of the uncertainty and the associated risks to ratepayers. Such shifting of risk must be recognized and reflected in the Commission's decision regarding the cost of equity capital. IURC Staff Ex. No. 3, p. 5. Therefore, Dr. Borum concluded that we should feel comfortable approving a ROE on the lower end of the range recommend by Mr. Inman.

Mr. [\*139] Kaufman shared the concerns expressed by other witnesses and recommended that his proposed cost of equity should be reduced if the trackers requested by PSI in this Cause are approved. While we do not accept Mr. Kaufman's invitation to reduce his proposed cost of equity, clearly the trackers PSI has requested are an important consideration vis-a-vis our overall consideration of risks faced by PSI and our determination of an appropriate cost of equity.

(3) PSI's Operational Performance. PSI presented evidence concerning its operational and financial performance, and encouraged this Commission to consider its performance in this rate setting process. Specifically, PSI urged this Commission to determine a fair return for PSI based on the higher end of the cost of equity range to reward the company for its performance in terms of reliability, efficiency, cost competitiveness, and customer service. Both Mr. Rogers and Mr. Esamann argued that rewarding strong performance represented good public policy. Dr. Borum of the Testimonial Staff opined on cross-examination that rewarding strong performing utilities through the rate setting process, and in particular in the determination of a [\*140] fair return for the utility, was consistent with good public policy. Dr. Borum also testified that he believed that PSI was a strong performer in terms of the various attributes that make up customer service -- reliability, efficiency, cost-competitiveness, etc. Pet. Ex. B, pp. 11-31; Pet. Ex. DD, pp. 10-21 and 31-34; Pet. Ex. FF, pp. 78-80; Pet. Ex. GG, pp. 19-20; Tr. at E39-E43, E106-E109, E118-E119 and R98-R99.

PSI presented evidence demonstrating that its electric delivery system performed reliably in terms of the frequency and duration of customer interruptions, and outage restoration, and had relatively low O&M costs as compared to peers. While cautioning that individual service territory characteristics make comparisons in this area difficult, Mr. Esamann testified that, in 2002, the average number of sustained interruptions for the year per customer, known as the Electric System Average Interruption Frequency Index ("SAIFI") (including severe storm impacts) was 1.57, and the average time to restore power after an interruption, known as the Electric Customer Average Interruption Duration Index ("CAIDI") (again including severe storm impacts) was 1.81 hours. In 2003, PSI's overall [\*141] average SAM and CAIDI results remained good, even including the effect of an extended period of severe weather in July. Pet. Ex. B, pp. 20-23; Pet. Ex. M, pp. 59-63; and Pet. Ex. DD, p. 32.

The evidence also shows that PSI provides quality customer service, at competitive costs, as measured by both external and internal customer satisfaction measurements. According to the most recent J.D. Power and Associates customer satisfaction studies, Cinergy and PSI finished in the top quartile for overall residential and midsize business customer satisfaction. In both surveys -- residential and midsize business -- Cinergy ranked # 2 overall in the Midwest region. PSI's own surveys of its residential customers indicate that 89% of responding customers are "satisfied" or "very satisfied" with PSI's customer service. At the same time, PSI's customer service cost per customer is slightly below the ECAR investor-owned utility average. Pet. Ex. B, pp. 27-31; and Pet. Ex. DD, pp. 31-32.

C. Ultimate Findings Regarding Fair Rate of Return for Petitioner. As we have discussed, the courts have emphasized that the determination of a fair rate of return is the prerogative of this Commission, taking [\*142] into consideration all of the evidence. Our primary objectives in determining a fair rate of return for PSI are to determine a return which is reasonably sufficient to: instill confidence in the financial soundness of the utility; allow PSI to maintain and support its credit ratings; and, to enable PSI to raise the money necessary for the proper discharge of its public utility responsibilities. We have also examined a number of qualitative factors relevant to the determination of a fair return for PSI, specifically: PSI's financial condition and financial requirements; PSI's credit quality; risks facing PSI and the mitigation of those risks through the use of trackers; and PSI's performance as a utility. We find as follows with regard to these important qualitative factors.

First, we find that PSI has continuing, significant financing requirements -- a minimum of \$ 600 million of capital expenditure needs during 2004 and 2005. Next, we find that PSI's current credit quality is investment grade (a BBB+ corporate credit rating), but that the lack of substantial rate relief in light of PSI's current and continuing capital investments could potentially result in a downgrade. The prospect [\*143] of a downgrade or a negative credit outlook -- and the accompanying impact on PSI's ability to access financing on reasonable terms -- could be significant given PSI's ongoing financing needs. Further, we find that

today's energy industry presents numerous risks, perhaps especially to Midwestern utilities that are heavily reliant on coal.

The expert testimony in this Cause presents us with a range of options with respect to our determination of an appropriate cost of equity. As noted previously, the recommended estimates presented in this matter range from 9.25 -- 11.20%, a spread of 195 basis points. Mr. Kaufman's proposal fell at the low end of the range, as he recommended a cost of equity of 9.25% and prefaced this recommendation with a recommendation that this percentage should be reduced if this Commission approves PSI's proposed trackers in this proceeding. Dr. Morin came in with the highest recommended cost of equity of 11.2%. The cost of equity proposed by Mr. Gorman and Mr. Inman fell within the range established by Mr. Kaufman and Dr. Morin. Consistent with our analysis of the specific inputs and issues in dispute, we recognize that it is not necessary for us to agree or [\*144] disagree with the specific inputs or overall cost of equity proposed by any single expert. Rather, our determination regarding the appropriate cost of equity in this matter should be a product of our evaluation of the entirety of the evidence presented on this issue by the various parties.

In the present case, PSI presented their proposed cost of equity of 11.2%, as consistent with the cost of equity approved for most other electric utilities throughout the country. Implicit in this approach is the view that proposals that are lower than that proposed by PSI should be rejected by the Commission as outside of the norm. Dr. Morin testified that Mr. Kaufman's recommended ROE of 9.15% (prior to being updated to 9.25%) was substantially under the average returns on common equity allowed in electric and natural gas utility rate cases in the first six months in 2003 of 11.40% and 11.38%, respectively. Pet. Ex. FF, p. 15. While Dr. Morin was quick to criticize Mr. Kaufman's proposal, conspicuously absent from his own analysis is any consideration of the impact that PSI's requested trackers have (or should have) on his proposed cost of equity.

The use of trackers is a significant issue that [\*145] distinguishes PSI from other electric utilities, and was subject to much discussion in this Cause. While we recognize PSI's strong performance as compared to many of its industry peers, and believe that the ROE approved in this case reflects our positive assessment of PSI on this issue, the inescapable fact is that *trackers reduce risk* to a utility and PSI has many more trackers than its peers. Therefore, we must -- in reaching our determination regarding an appropriate cost of equity -- properly consider the effect these trackers have in reducing risk, to ensure that these reduced risks are properly reflected in the cost of equity approved by the Commission.

Under these circumstances, we recognize that our determination may not readily allow for the side-by-side comparison of PSI's cost of equity to that of its peers, as advocated by Dr. Morin. However, we also recognize that PSI's decision to utilize trackers, coupled with the divergent options of the experts regarding the various inputs used in the models presented in this matter, has made our decision on the cost of equity issue very fact specific. Because of this, any attempt to make a generalized comparison between the cost [\*146] of equity approved in this case, and the cost of equity approved for other electric utilities, will undoubtedly fail, unless the comparison fully and carefully reflects the fact specific issues that underlie the basis of our decision on this issue.

Therefore, based on the entirety of the evidence on this issue, including consideration of the Company's performance, in terms of customer service quality, reliability, efficiency, cost-competitiveness, the results contained in well respected customer satisfaction studies, and the risks faced by PSI, we find that it is appropriate to consider the efficiency and quality with which the utility is managed and the utility's overall performance in our determination of a fair rate of return for the utility. Accordingly, based on our review of the testimony presented by all of the parties, and consistent with our analysis of the specific issues disputed by the parties referenced in the our foregoing discussion of these issues, the Commission is persuaded, that the evidence in this proceeding supports an authorized cost of equity capital



for PSI of 10.5%. Therefore, we find for purposes of this Cause, that PSI's cost of common equity capital should [\*147] be 10.5% and its overall cost of capital is 7.30%, computed as follows:

Description	Capitalization			
	(in thousands)	Ratio	Cost	Weighted Cost
Common Equity	\$ 1,603,374	44.44%	10.50%	4.67%
Preferred Stock	42,333	1.17%	6.11%	0.07%
Long Term Debt	1,402,254	38.87%	6.37%	2.48%
Deferred Income Taxes	519,273	14.39%	0.00%	0.00%
Unamortized ITC -- 1970 & Earlier	193	0.01%	0.00%	0.00%
Unamortized ITC -- 1971 & Later	30,571	0.85%	8.53%	0.07%
Customer Deposits	9,741	0.27%	6.00%	0.01%
Total	\$ 3,607,739	100.00%		7.30%

Having determined the cost of capital we must now determine a reasonable fair rate of return for Petitioner. Given that the Commission's determination of Petitioner's fair value rate base of \$ 4,856,532,000 includes inflation, a comparable amount of inflation must be removed from the rate of return to reach a determination regarding the fair rate of return. The removal of inflation from the cost of equity and/or from the weighted cost of capital provides a reasonable fair rate of return. The inflation factors as provided by OUCC's, witness Mr. Kaufman in Attachment 1, of his testimony, reference inflation from the Consumer Price [\*148] Index ranging from 1.5% to 3.0%. To determine a range for the fair rate of return, inflation was removed from the cost of equity as a first determinant, and then from the weighted cost of capital. Therefore we find that a reasonable fair rate of return is in the range of 4.30% to 6.63%

## 6. Operating Income at Present Rates.

A. General. For the 12 months ending September 30, 2002, PSI's jurisdictional operating income from its electric utility operations on a going level basis; adjusted for changes which were fixed known and measurable at the time of the hearing; and, which occurred during the test year, or on or before September 30, 2003, was shown by PSI to be as follows:

Operating Revenues (including CWIP)	\$ 1,284,140,000
Operating Expenses and Taxes	
Fuel Expense	378,286,000
Purchased & Exchanged Power Expense	9,519,000
Other Operation and Maintenance Expense	391,580,000
Operating Revenue Deduction	(28,917,000)
Depreciation and Amortization Expense	218,316,000
Taxes Other than Income Taxes	58,415,000
Federal and State Income Taxes	69,215,000
Total Operating Expenses and Taxes	\$ 1,096,414,000
Net Operating Income	\$ 187,726,000

Pet. Ex. [\*149] OO-3, updated October 31, 2003.

This represents a rate of return on original cost depreciated rate base under present rates of

5.13%.

B. Undisputed *Pro Forma* Adjustments. PSI proposed a number of *pro forma* adjustments to its operating income, per books, which were undisputed. It proposed other adjustments that, though disputed at some point in the process of this rate case, were compromised or were no longer in dispute at the conclusion of the Evidentiary Hearing in this Cause. All such *pro forma* adjustments proposed by PSI, either as originally proposed and undisputed, or as compromised with the compromised positions having been fully identified by the parties, are hereby accepted even though they may not be specifically discussed herein. The disputed adjustments are hereinafter discussed.

C. Disputed *Pro Forma* Revenue Adjustments. In making our determinations regarding an appropriate level of operating expenses to be used in setting Petitioner's rates, we are guided by our overall objective of achieving a level of expenses which are representative of probable future experience. The Indiana courts have emphasized the importance of viewing test [\*150] year results and out of period adjustments in the context of estimating a representative ongoing level of utility expenses. See, e.g., *City of Evansville v. Southern Indiana Gas & Electric Co.*, 167 Ind. App. 472, 339 N.E.2d 562, 575, in which the Court stated that: "The theory underlying the use of any test year and of any adjustment method in the rate-making process demands that the data used provide an accurate picture of the utility's operations during the period in which the proposed rates will be in effect." In the matter of *L.S. Ayres & Co. v. IPALCO et al.*, 169 Ind. Ct. App. 652; 351 N.E.2d 814, p. 820, the Court stated that: "test-year results are relevant for a determination of utility rates only to the extent that past operations are representative of probable future experience. . . . If future operations will be required to bear higher tax rates or higher levels of wages and salaries than were incurred during the test year, test-year data must be adjusted to reflect increased costs." With these guidelines in mind, we turn to an examination of the disputed *pro forma* revenue and expense adjustments [\*151] at issue in this case.

In this Cause, PSI proposed a Summer Reliability Tracker to allow the Company to adjust its rates to reflect the fluctuating cost of purchased power necessary to meet reserve requirements, and PowerShare(R) costs during the months of June through September. PSI's proposal included an offset to these summer expenses in the form of crediting the adjustment with a portion of annual off-system sales profits. Because this proposed mechanism tracked the off-system sales profits from a zero base, PSI made adjustments to remove retail and wholesale non-firm revenue and expenses from its test period income statement.

The Summer Reliability Tracker and its components; Trading Expenses, Purchased Power and PowerShare(R) costs, are discussed in detail later in this order. We will begin with a discussion of the off-system sales adjustment.

(1) Off-System Sales Profits. As part of its Summer Reliability Tracker PSI proposed to adjust its rates for purchase power costs during the months of June through September. PSI's proposal included an offset to these expenses in the form of crediting the adjustment with a portion of annual off-system sales profits. Because this proposed [\*152] mechanism tracked the off-system sales profits from a zero base, PSI made adjustments to remove retail and wholesale non-firm revenue and expenses from its test period income statement. Through its Summer Reliability Tracker, PSI initially proposed to flow back to its customers 100% of its June through September off-system sales profits, plus 25% of its off-system sales profits earned in the non-summer months (October through May). Mr. Esamann testified that he believes off-system sales profits, like purchased power costs, are variable, can be substantial, and are ultimately unpredictable. He proposed to use a tracking mechanism for such credits to customers, rather than trying to build an ongoing level into base rates. Pet. Ex. B, p. 58. Modifying its initial proposal that its customers be credited with 100% of off-system sales profits achieved during the summer months and 25% of such

profits achieved during the eight non-summer months, PSI ultimately proposed a 50-50 sharing of profits throughout the year. Pet. Ex. DD, pp. 25-26.

The OUCC opposed PSI's Summer Reliability Tracker and proposed instead that test period off-system sales profits of \$ 18.7 million or some other reasonable [\*153] *pro forma* projection be reflected as a credit to PSI's revenue requirements. Pub. Ex. No. 6, p. 16; Pub. Ex. No. 2, p. 28. PSI-IG witness Phillips concurred with the OUCC and indicated that he believed that customers should be credited with the profits from off-system sales in PSI's base rates. Testimonial Staff witness Cvengros testified that while the test year shows approximately \$ 18 million in off-system sales, the Commission could instead choose to utilize a tracking mechanism, comparable to PSI's current purchased power tracker in the amount of \$ 13 million, with or without a sharing mechanism for profits exceeding the amount in base rates.

As discussed in greater detail below, the Commission is persuaded that PSI's off-system sales profits are highly variable and therefore are appropriate for tracking treatment. In addition, the Commission hereby finds that PSI's approximate test period off-system sales profits in the amount of \$ 18.7 million should be recognized in base rates, as discussed below.

(2) Rate Migration.

(a) PSI Proposal. PSI proposed an adjustment to reflect lost revenues from customer migrations in its power rate schedules. Testifying in support [\*154] of the adjustment, PSI witness Bailey observed that any time rates are redesigned or modified to produce a different revenue requirement, there is a potential that specific customers may be better off under a different rate schedule than the one under which they are currently billed. Pet. Ex. BB, p. 7. The Company's analysis in this case showed that 1,537 accounts would migrate from Rate LLF to Rate HLF, resulting in a \$ 3,233,000 net revenue loss. *Id.* Its analysis further showed that the migrations from Rate HLF to LLF will involve 410 customers, with net lost revenue of \$ 3,419,000, for a total of \$ 6,652,000 in lost revenues from customer migration. *Id.* The Company's experience, he said, indicates that, even with notification, only about 50% of customers will actually migrate. Accordingly, PSI reduced the total amount of potential revenue loss by 50% to \$ 3,326,000. This amount was proportionally allocated to the two power rate schedules and used to develop the Company's revenue requirements. *Id.* In addition, as PSI's proposed phasing-in of rate design allows an opportunity to determine the actual number of migrations, the Company proposed to limit the amount to be recovered [\*155] in Phase II rates to the actual effects of the migrations. *Id.* PSI further proposed to reconcile actual lost revenue due to migrations during Phase I to the amount included in rates. Any difference would be returned or charged to customers through one of the Company's standard contract riders. *Id.* at 7-8. n8

----- Footnotes -----

n8 Mr. Bailey observed that for a customer to be considered in the Company's migration analysis, the customer must be able to save at least five percent on its annual bill or have the potential to save at least \$ 600 annually. *Id.* at 8. Mr. Bailey testified that the Company planned to notify customers following an order in this Cause detailing the potential bill savings. It will follow this letter with a personal telephone call if needed and a personal visit in some cases. *Id.*

----- End Footnotes-----

(b) Kroger Position. Kroger opposed Petitioner's migration revenue adjustment, and indicated that PSI's potential for revenue losses from customers switching rate schedules is an ordinary

risk of business under current [\*156] rates. Kroger Ex. No. 1, p. 24. Kroger's witness Mr. Higgins argued that revenue impacts from customers who switched rate schedules prior to the test year cutoff are already included in the Company's proposed revenue requirements, and there is nothing in this case that changes the fundamental relationship between HLF and LLF. So, he contended, there is no reason to reward PSI with additional revenues on the speculation that customers, who have not previously seen fit to change their rate schedules, will suddenly do so now. *Id.*

(c) PSI Response. In response to Mr. Higgins' testimony, Mr. Bailey testified that PSI has strived to provide customers with rate options, among them being rates that reflect more than just differences associated with voltage level, but also rate options relative to their load factor. It would make little sense, Mr. Bailey observed, for PSI actively to identify and notify customers of potential savings if the only end result for PSI was a reduction in revenue. Pet. Ex. SS, pp. 14-15. PSI contends the proper course is to notify customers of potential savings and allow a known, quantifiable revenue shortfall to be reflected in rates. Mr. Bailey rejected [\*157] Mr. Higgins' contention that nothing changes the relationship of HLF and LLF in this case, pointing out how much additional revenue could be potentially lost solely as a result of incorporating the effects of the rate increase into the rate design. *Id.*

(d) Discussion and Findings. We find that PSI's proposed rate treatment associated with expected migrations is reasonable as the procedure provides rate options to affected customers, which allows them to select rates most favorable to their respective operations. In addition, the Company indicated that it makes an extensive effort to notify customers of potential bill savings, and that the phased-in rates provide an opportunity to "true-up" the estimated migrations to actual. In conjunction with the phased adjustment, actual migrations will be known prior to the second phase, so the revenue impact can be readily determined. This revenue figure can then be used to develop Phase II rates, and any over-or under-recovery of funds from Phase I rates can be reconciled. As PSI is seeking a dollar for dollar recovery of funds lost through rate migrations -- no more and no less-- we find that PSI will not be financially rewarded by this [\*158] adjustment. Therefore, we find that, in this instance, this adjustment is reasonable and is hereby approved.

#### D. Disputed *Pro Forma* Expense Adjustments.

##### (1) Depreciation Expense.

###### (a) Rates.

(i) Evidence. PSI proposes to increase its annual depreciation accrual by \$ 79,088,000, for a total *pro forma* annual depreciation expense of \$ 233,022,000, Pet. Ex. X-21, Sch. C-3.36 (as updated by Pet. Ex. OO-3), based on a traditional depreciation study prepared by Mr. John J. Spanos, of Gannett Fleming, Inc. Mr. Spanos testified for PSI, and began his testimony by defining depreciation as the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of the utility plant in the course of service from causes that can be reasonably anticipated or contemplated against which the Company is not protected by insurance. As examples of such causes, Mr. Spanos cited wear and tear, decay, exposure to the elements, inadequacy, obsolescence, change in demand and the requirements of public authorities. Mr. Spanos' depreciation study was presented in Pet. Ex. T-1.

Mr. Spanos stated that he utilized the straight [\*159] line remaining life method of depreciation with equal life group procedures. He testified that annual depreciation is based on a method of depreciation accounting that seeks to distribute the unrecovered costs of fixed capital assets over the estimated remaining useful life of each unit or group of assets in a systematic and rational manner. Pet. Ex. T, p. 7. Mr. Spanos determined his recommended annual depreciation rates in two phases. First, he estimated the service life and net salvage

characteristics for each depreciable group. Then he calculated the composite remaining life and annual depreciation rates based on the service life and net salvage estimates determined in the first phase.

With regard to the first phase, Mr. Spanos stated that his service life and net salvage study consisted of compiling historical data from records related to PSI's plant, analyzing this data to obtain historic trends of survival and net salvage characteristics, obtaining supplementary information from management and operating personnel, interpreting that data and forming judgments of average service life and net salvage characteristics. He analyzed the Company's accounting entries that recorded plant [\*160] transactions during the period 1956 through 2001. These transactions included additions, retirements, transfers, sales and the related balances. Mr. Spanos utilized the retirement rate method to analyze this service life data. He stated this method is most appropriate because it determines the average rate of retirement actually experienced by the Company during the period of time covered by his study.

Mr. Spanos applied the retirement rate method to each different group of property, using the retirement rate method to form a life table, which, when plotted, shows an original survivor curve for that property group. *Id.* at 9. Each original survivor curve, according to Mr. Spanos, represents the average survivor pattern experienced by these several vintage groups during the experience band study. He said that the survivor patterns did not necessarily describe the life characteristics of the property group. Therefore, he must interpret the original survivor curves in order to use them as valid considerations in estimating service life. He utilized the Iowa type survivor curves to perform these interpretations.

Mr. Spanos made field reviews of PSI's properties in September, 1999 and [\*161] April, 2002. The purpose of his field review was to allow him to become familiar with Company operations and obtain an understanding of the function of the plant; the reasons for past retirement; and, the expected future causes of retirement. *Id.* at 10. Mr. Spanos estimated the net salvage percentages by incorporating the historical data for the period 1989 through 2001 and considering estimates for other electric companies. He also utilized the demolition cost estimates prepared by Sargent & Lundy and sponsored by PSI witness Mr. Alan Wendorf.

As to the second phase of his study, in which he calculated the composite remaining life and annual depreciation rates, Mr. Spanos testified that he calculated annual depreciation rates for each group based on the straight line remaining life method, using remaining lives weighted consistent with the equal life group procedure. His calculations of annual depreciation accrual rates were developed as of September 30, 2002. *Id.* at 11. Mr. Spanos stated that the straight line remaining life method of depreciation allocates the original cost of the property, less accumulated depreciation, less future net salvage value, in equal amounts to [\*162] each year of remaining service life. As to the equal life group procedure, he stated the property group is subdivided according to service life. The relative size of each equal life group is determined from the property's survivor curve. This procedure eliminates the need to base depreciation on average lives. The full cost of short lived units are accrued during their lives leaving no deferral of accruals required to be added to the annual cost associated with long lived units. He further stated that the equal life group procedure allocates the capital costs of a property group to annual expense in accordance with the consumption of the service value of the group.

PSI witness Alan Wendorf, Executive Vice President of Sargent & Lundy, LLC, ("S&L") testified regarding the results of a study that estimated the cost of dismantling certain PSI generating stations. Pet. Ex. U, p. 2. Mr. Wendorf testified that in its study S&L made several assumptions with respect to the decommissioning of PSI's plants. For example, they assumed that the only thing necessary to decommission an ash pond was to pump it dry and cover the ash pond with approximately two feet of soft soil. They also assumed [\*163] that there was sufficient room on site to dispose of all the non-hazardous debris and that there was sufficient fill material on site to cover all this debris. *Id.* at 3. They also assumed that tens of

thousands of feet of underground pipe and electrical conduit could be left in place and it would not be necessary to fill in the cooling lake at the Gibson Generating Station. In Mr. Wendorf's opinion, many of these assumptions were conservative and minimized dismantling cost numbers -- *i.e.*, the estimated costs represent the lower end of potential dismantling costs.

Mr. Wendorf estimates of the net cost of dismantling each of PSI's generation stations in 2002 dollars are: Gallagher Generating Station -- \$ 23,691,800; Wabash River Generating Station including the PSI portion of the Wabash River Repowering project -- \$ 33,698,900; Cayuga Generating Station -- \$ 37,544,000; Gibson Generating Station -- \$ 118,434,500; Edwardsport Generating Station -- \$ 12,376,200; and Noblesville Generating Station -- \$ 7,554,000. *Id.* at 6. The details of these estimates are contained in Mr. Wendorf's exhibits, Pet. Ex. U-1 through U-6.

Mr. Michael Majoros testified for the OUCC and indicated [\*164] that before the Commission allows the current recovery of a future dismantlement cost, it should ensure that such cost will in fact be incurred. He said it is doubtful PSI will dismantle plants unless the Company plans to install new plants at the same site and location as the retired plant. In these circumstances Mr. Majoros said that if there were dismantling costs, such costs should be part of the cost of a new plant. In his opinion, based on the probability of actual plant dismantlement for PSI, Mr. Wendorf's dismantlement estimates should be excluded in their entirety in determining depreciation rates in this proceeding. Pub. Ex. No. 9, p. 20.

Mr. Majoros said that he believes that the underlying premise for including dismantling costs is false. In his opinion it is doubtful that PSI will ever dismantle any of its generation plants to "Greenfield" conditions. Based on his observations during his own plant tour, he concluded that the Company has no plans to even retire these plants, let alone dismantle them. He noted that the retired boilers that he observed had been retired in place, yet this was the largest component of Mr. Spanos' dismantlement costs. *Id.* at 18 Mr. Majoros [\*165] also relied on a nationwide survey conducted by his firm of steam generating units exceeding 50 MW that have been retired since 1982. According to Mr. Majoros, as of the date of his testimony, 64% of the retired generating units contained in the nationwide survey were retired in place, not dismantled. *Id.* at 19. Finally, Mr. Majoros indicated that PSI has not recorded any final retirements for any electric generating units or plant sites in the last 15 years, and other than Henry County, has no legal obligation to dismantle any of its plants. Mr. Majoros observed that it is unreasonable to assume that PSI, or any other utility, would spend \$ 700 million to dismantle its production plants, absent a legal obligation to do so. *Id.* at 18-19.

Mr. Majoros went on to state that Mr. Spanos' approach projects substantial past inflation into the future. Thus, he said, Mr. Spanos' future net salvage rates for all other accounts are inflated future net salvage ratios. In Mr. Majoros' opinion, this results in excessive costs of removal charges because the inflated ratios charge current ratepayers for future inflation that has not occurred. Mr. Majoros calculated that over the most recent [\*166] five years, PSI has only experienced \$ 7.1 million in negative net salvage on average. This number, he said, should be contrasted with Mr. Spanos' recommendation of \$ 54.2 million annual recovery of negative net salvage. *Id.* at 24.

Mr. Majoros disagreed with Mr. Spanos regarding the incorporation of future net salvage and terminal net salvage values in depreciation rates. Mr. Majoros indicated that he believes the incorporation of future net salvage and terminal net salvage values increase depreciation rates and inflate estimates of costs that will probably not be incurred. Mr. Majoros also stated that six (6) of the Company's proposed lives in the transmission, distribution and general plant function are too short, thereby overstating the associated depreciation expense. Pub. Ex. No. 9, p. 4. Mr. Majoros proposed a substantially lower annual depreciation expense primarily based on his conclusion that net salvage value should be ignored. *Id.* at 5.

Mr. Majoros also disagreed with Mr. Spanos' use of net salvage ratios in his depreciation rate calculation. He said that this issue is significant, because Mr. Spanos essentially capitalized costs the Company has no real obligation [\*167] to incur and then inflated those costs. Mr. Majoros complained that Mr. Spanos was less than forthcoming about how he utilized Mr. Wendorf's cost study. *Id.* at 17. He said that Mr. Wendorf's cost studies were estimates made in terms of 2002 dollars. He said that even though Mr. Spanos stated he relied on Mr. Wendorf's studies, the figures from Mr. Wendorf are not traceable to Mr. Spanos study. Instead, he said, Mr. Spanos applied net salvage ratios to plant balances which resulted in substantially greater amounts of dismantlement costs than estimated by Mr. Wendorf. Mr. Spanos' equivalent numbers exceed \$ 700,000,000, which means, Mr. Majoros contended, that Mr. Spanos inflated Mr. Wendorf's estimates. *Id.* at 18.

Mr. Majoros went on to discuss the Statement of Financial Accounting Standards ("SFAS") No. 143. He said that pursuant to this accounting standard, all companies, including PSI, must determine whether or not they have an actual legal obligation to dismantle and/or remove retired assets. Pub. Ex. No. 9, p. 25. These legal obligations are called "Asset Retirement Obligations" ("AROs"). If the Company does have an ARO, the net present value of the cost of removal is [\*168] capitalized and included in the cost of the asset and depreciated over the life of the asset. It is not included as a negative net salvage ratio in depreciation rate calculation, as proposed by Mr. Spanos, but rather, it is added directly to the cost of the assets. He stated that if a Company does not have an ARO, future costs of removal are not considered as a cost of the asset and, therefore, should not be included in the company's depreciation expense on its general financial statements. Mr. Majoros stated that under Generally Accepted Accounting Principles ("GAAP"), electric utilities are required to conduct a review to determine if they have any AROs. PSI, he said, conducted such a review and had quantifiable AROs of \$ 6,890,212. *Id.* at 27.

Mr. Majoros then went into a discussion of the life study methods. He stated that Mr. Spanos used two basic methods. The life span method and the retirement rate actuarial method. In addition to these methods Mr. Majoros also used the geometric mean turnover ("GMT") method. *Id.* at 50. Mr. Majoros testified that he did not disagree with Mr. Spanos' use of the life span method, but did disagree with his application of the method because [\*169] Mr. Spanos included negative future net salvage in his calculations.

Mr. Majoros also discussed the production life depreciation calculations performed by Mr. Spanos. He said these calculations were predicated on the life method. Based upon his own calculations and independent studies, Mr. Majoros accepted Mr. Spanos' terminal retirement years for steam and other production functions and found them to be reasonable. *Id.* at pp. 52-57. With regard to transmission, distribution and general functions, Mr. Majoros concluded that some of the accounts analyzed by Mr. Spanos utilized service lives that were too short. In particular, Mr. Majoros objected to the service lives used by Mr. Spanos for account 354, 356, 365, 366, 367 and 397. Pub. Ex. No. 9, p. 60. As to vintage amortization accounting Mr. Majoros only disagreed with the five years Mr. Spanos proposed for Account 391.1, office furniture and equipment -- IT systems. Mr. Majoros recommended a 10 year amortization for this account. *Id.* at 64.

Mr. Majoros then described an analysis to identify the amount of past collections of non-legal AROs included in PSI's accumulated depreciation account and two alternative versions for [\*170] a specific going forward allowance. As to the former, he stated that Mr. Spanos estimated the amounts to be \$ 281 million as of December 31, 2002. Mr. Majoros said that this amount represents money charged to ratepayers in the past for which PSI has no legal cost or obligation. *Id.* at 36-37. With regard to his proposed going forward allowance, he stated that non-legal AROs included in depreciation expense should be included in a specifically identifiable allowance and should be accounted for separately in depreciation expense and accumulated depreciation accounts. He described his first alternative as an

allowance calculated in much the same manner as the Company allowances for legal AROs. For this calculation, Mr. Majoros used Mr. Wendorf's 2002 net present value amount for production plants. For transmission, distribution and general plant, he used Mr. Spanos' future net salvage proposal and estimated remaining life to determine the net present value of these amounts. He stated that the annual allowance using this method is \$ 3.3 million.

Mr. Majoros' preference is to use his second alternative, a five year rolling net salvage allowance approach which has been used by other [\*171] administrative agencies such as the New Jersey Board of Public Utilities; the Pennsylvania Public Utility Commission; the Missouri Public Service Commission; and, on a trial basis by the Kentucky Public Service Commission. *Id.* at 45-50. Mr. Majoros characterized this as the Pennsylvania Public Utility Commission's normalized net salvage allowance approach. This approach is based on the average of the most recent five years worth of actual net salvage activity shown in PSI's depreciation study. *Id.* at 38. He said that the net salvage is treated just as any other normalized expense, except that it is charged to accumulated depreciation. He said that the normalized net salvage allowance amount under this proposal is \$ 7.1 million. Mr. Majoros concluded this portion of his testimony by stating that the Commission should reject PSI's net salvage amount of \$ 54.2 million and substitute his preferred normalized allowance of \$ 7.1 million.

The PSI-IG presented the testimony of James T. Selecky with regard to depreciation. Mr. Selecky stated that he supports excluding net salvage from the development of the calculation of book transmission, distribution and general depreciation rates. [\*172] In his opinion, the net salvage expense should be included in the revenue requirement as a cost to serve as an operating expense, and not a component of depreciation rates. PSI-IG Ex. No. 2, p. 4. Mr. Selecky stated that the annual net salvage component of depreciation expense that PSI is requesting is significantly greater than PSI's actual net salvage expense. In fact, he states, the level of expense as proposed by PSI is approximately six times greater than the historical level typically incurred by PSI on an annual basis. He said that the consequences of PSI's proposed treatment of net salvage are that it unnecessarily raises rates for today's ratepayers and produces inter-generational inequities by shifting cost burdens to today's ratepayers from future ratepayers.

Mr. Selecky stated that PSI's proposed depreciation expense for transmission, distribution and general plant contains an annual net salvage component of \$ 23,460,000. However, PSI's average actual annual net salvage expense over the last 10 years was a negative \$ 3,879,000 and over the last 5 years PSI's net salvage expenses averaged a negative \$ 3,737,000.

Mr. Selecky stated that the large difference between net salvage [\*173] expense proposed to be included in depreciation rates and PSI's actual net salvage expense in recent years is due in part to the fact that proposed net salvage percentages included in the development of depreciation rates include estimates of future inflation and may not capture the economies of scale that would occur if large retirement activity occurred during a single year. Also, net salvage ratios included in depreciation rates, he contended, may be developed from limited retirement experience that is not typical. *Id.* at 7. Mr. Selecky stated that under PSI's methodology, if an asset with a service life of 50 years is retired in 2000, PSI compares the cost to remove the asset in 2000 dollars with the installed cost of the asset which, in this case, was measured in 1950 dollars. As a result, the net salvage ratio is developed in costs stated in dollars from different time periods. While the cost of the asset and the cost to remove the asset are stated in nominal dollars, the net salvage ratio provides an estimate of future inflation. As the result, according to Mr. Selecky, PSI's net salvage percentages require today's ratepayers to pay estimated costs of future inflation based [\*174] on historic trends.

Mr. Selecky proposes that this Commission eliminate the net salvage ratio from the



development of depreciation rates and include a net salvage provision as an operating expense. He recommends that a 10 year average actual net salvage expense be included as an operating expense in PSI's total cost of service. *Id.* at 10. He states that two other commissions have adopted this approach -- the Pennsylvania Utility Commission and the Missouri Public Service Commission. He proposed a reduction of \$ 23,460,000 in depreciation expense and an increase of \$ 3,879,000 in operating expense.

Mr. Selecky also claimed that the use of an inflation factor applied to Mr. Wendorf's dismantling studies was inappropriate in that this would require today's customers to pay for inflation that may not occur. Mr. Selecky developed his own net salvage ratios for production plant. *Id.* at 18. In developing his proposed ratios, he excluded switchyard costs and contingency costs from the ratios. In his opinion, switchyard costs represent the costs associated with non-steam production investment and it would be inappropriate to recover these costs in depreciation rates developed for steam [\*175] plant. He removed Mr. Wendorf's contingency because he believes it does not represent a true cost, and, he maintained that as more plants are dismantled, one would expect technological improvements over 2002 technology. This resulted in a proposed reduction to the steam production depreciation expense of approximately \$ 28,038,000.

Mr. Selecky also opposed PSI's use of the equal life group ("ELG") procedure and recommended that the Commission order PSI to revert to the use of the Average Life Group ("ALG") procedure to develop depreciation rates. Mr. Selecky claimed that use of the ELG procedure results in increasing the depreciation rates in the early life of an asset and implies a precision for allocating consumption of assets that does not exist. PSI-IG Ex. No. 2, p. 28.

Laura L. Cvengros, Assistant Director of the Electricity Division, for the Commission, also presented testimony with respect to depreciation. Ms. Cvengros performed a "reality check" on how PSI's \$ 84 million depreciation adjustment was derived. IURC Staff Ex. No. 2, p. 3. She reviewed the depreciation study sponsored by Mr. Spanos and compared that depreciation study to PSI's current depreciation rates. PSI current [\*176] depreciation rates are based on the testimony and exhibits presented by the OUCC, which resulted of a settlement in a prior PSI rate case, Cause No. 39584 that carried the rates forward into PSI's last rate case, Cause No. 40003.

Ms. Cvengros testified that she compared various components of PSI's depreciation study with similar components of the OUCC's depreciation study in Cause No. 39584. Staff compared the net salvage ratios proposed by Mr. Spanos in this proceeding with those used by the OUCC and found them to be consistent except for five accounts. IURC Staff Ex. No. 2, p. 12. She also found that, generally, the average service lives used by Mr. Spanos in his study were longer than those used by the OUCC to develop PSI's current depreciation rates. Ms. Cvengros explained that the general lengthening of average service lives for most accounts would have the effect of reducing the depreciation expense for those accounts. Ms. Cvengros concluded that Staff does not believe that the increased depreciation expense in this Cause was caused by significant changes in methods/procedures from the depreciation study used to set PSI's current depreciation rates, and recommended that the [\*177] Commission approve PSI's proposed depreciation rates. *Id.* at 9 and 13.

Mr. Spanos testified in rebuttal to the testimony of Messrs. Majoros and Selecky. He first discussed why the ELG procedure should be preferred to the ALG procedure. He opined that the ELG procedure, contrary to Mr. Selecky's opinion, can be viewed as an accurate form of book depreciation. Pet. Ex. II, p. 2.

In Mr. Spanos' opinion, the ELG procedure correctly matches depreciation expense of the straight line allocation of service value over the period the assets are in service and avoids the back-end loading of the ALG procedure. Under the ALG procedure, he observed, the depreciation for each property group is based on the average service life of the account or

vintage. As a result of using an average, the cost of short term lives is not fully accrued by the time of their retirement and the service value of long lived items is more than fully accrued in order to make up for the under accruals of the short lived items. Mr. Spanos testified that the ELG method has been known to experts for many years but its widespread use was constrained by the large amount of computation required. Because the ALG procedure can [\*178] be readily performed, it became the choice of experts by default prior to the use of computers due to ease of understanding. *Id.* at 3. With the advent of modern computer equipment, however, this constraint has been removed and this procedure, which is more accurate, is available to all companies.

Mr. Spanos stated that his service life estimates were based on a number of factors, including judgment. *Id.* at 8. According to Mr. Spanos, Mr. Majoros should have incorporated other considerations and made better use of industry data. Mr. Spanos stated the retirement rate method is the most commonly used life analysis when age retirement data are available. It develops historical indications of the rate of retirements by age intervals. The Geometric Mean Method, included in Mr. Majoros analysis, was used many years ago according to Mr. Spanos, to analyze un-aged data before the development of the simulated plant record method. It is no longer used to analyze un-aged data and was never used when age retirement data was available.

Mr. Spanos then discussed Mr. Majoros' use of industry data. *Id.* at 9. Although Mr. Majoros presented several statistics, Mr. Spanos stated he used only [\*179] the maximum life or the upper limit as a measure of the reasonableness of his estimate. This use of the maximum recorded lives, in Mr. Spanos' opinion, is not appropriate. According to Mr. Spanos, the purpose of comparing the results of statistical analysis with other electric utilities' data is to ascertain whether the results fall within a range of reasonableness. Typically, when defining the range of reasonable service life estimates for an account, Mr. Spanos excludes several estimates of both the low and upper end of the range. In contrast, Mr. Majoros relied on the very longest service lives used in the industry to justify his estimates, Mr. Spanos observed. Mr. Spanos described in detail a number of examples where he believes Mr. Majoros inappropriately used industry data. *Id.* at 9-11. Due to these problems, Mr. Spanos concluded that all the bases used by Mr. Majoros are flawed and his recommendations as to survivor curve estimates must be rejected. *Id.* at 12.

In response to the recommendations of Mr. Majoros and Mr. Selecky with regard to net salvage for accounts other than production, Mr. Spanos indicated that these witnesses have proposed a radical change in the [\*180] basis for determining PSI's allowance for net salvage for transmission, distribution and general plant. He noted that Mr. Majoros also proposed this treatment for the production plant accounts. *Id.* at 13. Their proposal is that the net salvage be removed from the calculation of depreciation and be included as an operating expense. Mr. Spanos characterized this proposal as one of net salvage costs incurred in the past, related to retired plant that served customers in the past, to be collected from current customers in the same manner as current operation and maintenance expense is collected. *Id.* at p. 13.

Mr. Spanos was not aware of any authoritative text on the subject of depreciation that supports their proposal to expense net salvage costs. He stated that the two depreciation texts most often cited by depreciation experts as authoritative support the traditional approach that he used here. Addressing Mr. Majoros' statement that state commissions have adopted his approach, Mr. Spanos said that the Pennsylvania Commission does use the five-year net salvage amortization, because it was required to under a 1962 court order interpreting a Pennsylvania statute. Mr. Spanos agreed [\*181] that the Missouri Commission adopted the Majoros approach in a case. He noted, however, that Mr. Majoros failed to mention that this approach was not used in a later case by the Missouri Commission but, rather, the traditional approach used by Mr. Spanos in this matter was used. As to the two Kentucky cases cited by Mr. Majoros, Mr. Spanos stated that the two utilities were small

cooperatives that did not maintain detailed records of costs of removal and gross salvage by account. In other Kentucky cases where the utility maintains detailed records of net salvage, as PSI does, Mr. Spanos noted the traditional methodology had been used. He concluded, by stating that 47 state utility commissions use the traditional method of incorporating net salvage in determination of annual depreciation rates. *Id.* at 15.

Mr. Spanos stated why it is more appropriate and equitable to recognize net salvage costs during the life of the plant. He said the net salvage value cost of an item of plant is part of its service value and, therefore, is part of the item's cost of providing service. That cost, he said, should be collected from the customers that receive the service. Thus, an allocable portion [\*182] of the net salvage costs should be recovered each year from the customers receiving the value of the service rendered by the item of plant. *Id.* at 15-16. In his opinion, this approach is equitable in that the customers are responsible for the costs of plant that provides them with service. In contrast, Mr. Spanos said, expensing net salvage after the item has been removed from service recovers an entire element of an item's cost of service from customers who do not receive service from that item, or if a customer has received service from the Company for a number of years, that customer has received only a portion of the item's service value. These results are not equitable, he contended, and violate the principle that customers should pay the cost of plant that serves them.

Mr. Spanos also disagreed with the position of Mr. Selecky and Mr. Majoros that net salvage costs for accounts other than for production plant that may occur in the future should not be collected from customers until they occur. Mr. Spanos testified that the amount of net salvage that should be included in the annual cost of service, and collected from current customers, is a portion of the net salvage related [\*183] to the current plant in service as a result of allocating these costs to each year of service rendered by the plant. The amount should not be limited only to the current net salvage costs. Current net salvage costs are related to plant that previously rendered service. *Id.* at 18. Mr. Spanos stated that allocating net salvage costs during the life of the related plant is more appropriate and equitable and is in accord with sound ratemaking principles. In his opinion, delaying collection until such costs are incurred results in a charge to customers for plant from which they did not receive service, and as a result of the delay of recovery, also results in higher revenue requirements.

Mr. Spanos said that the current net salvage accruals are larger than current salvage costs because current cost experience is related to plant retirements that largely come from an older plant base that was constructed to serve fewer customers, while current net salvage accruals relate to plant presently in service that serves a much larger customer base. *Id.* at 23. In his opinion, it is appropriate for PSI to recover amounts for future net salvage costs that are greater than the amounts currently [\*184] expended for such costs because the amount that PSI spends for plant additions is far greater than the amount it proposes for recovery of original costs. For example, according to Mr. Spanos, in the year 2001 PSI total plant additions were over \$ 236,000,000. Adding the net salvage costs of \$ 6.5 million for that year to this amount results in a total expenditure of over \$ 240 million in 2001. This total expenditure is approximately \$ 60 million greater than the proposed level of depreciation expense that includes recovery of past original costs and future net salvage costs. *Id.* at 23. In Mr. Spanos' opinion, basic equity requires that customers pay for the service value, original cost less net salvage of the plant, from which they receive the service. The fact that this results in accruals for net salvage that are greater than the current experience is neither unfair nor unusual. It is reality, according to Mr. Spanos.

In response to Mr. Majoros' discussion of SFAS 143 and FERC Order 631, Mr. Spanos stated these accounting pronouncements do not control ratemaking. *Id.* at 24. He said that, in general, GAAP in recent years has moved away from the matching principle in favor [\*185] of an asset and liability based approach for purposes of improving potential investors' ability to ascertain a company's financial condition. Mr. Spanos said blind compliance would set standards for ratemaking purposes that would violate principles of customer equity by

expensing the cost of retiring plant, resulting in charges to today's customers for plant that served past customers. Mr. Spanos added that although utilities may not have a legal obligation to remove plant, they nevertheless do so on a regular basis and will continue to do so in the future.

Mr. Spanos also testified that it is not appropriate to develop net salvage percents for production plant based on the estimated costs of dismantling in current dollars as Mr. Selecky did. Pet. Ex. II, p. 28. He stated that the net salvage costs to be recovered from current customers are those costs that will be incurred when the plant currently providing service is retired. Mr. Spanos escalated the dismantling cost developed by Mr. Wendorf to the year of probable retirement as a factor to be considered in the estimation of net salvage for production plant account. Mr. Spanos stated that the use of current dollar amount to cover [\*186] future dismantling costs will result in under recovery and customer inequity. Mr. Spanos also considered the indication of net salvage developed from historical retirements, most if not all of which represent interim retirements, and compared these results to the escalated costs from Mr. Wendorf's dismantlement studies. The historical data, he said, also supports the net salvage percent that he has estimated for the accounts. He said that the net salvage percents that he developed result in an estimate of future net salvage costs that are less than the sum of the probable future net salvage costs related to both interim and final retirement. *Id.* at 29.

Mr. Spanos also stated, contrary to Mr. Selecky's position, that it is appropriate to expect that costs of dismantling will escalate at a rate of 3% per year. He noted the long term inflation rate as measured by the Consumer Price Index has averaged approximately 3%. He noted that the Handy Whitman Index for all steam production plant has increased at an average rate of 5.1% during the past 30 years. Therefore, in his opinion, it is more likely the dismantling costs will escalate at a rate greater than 3%.

Mr. Wendorf also presented [\*187] rebuttal testimony on behalf of PSI. He first discussed Mr. Selecky's exclusion of the contingency factor that Mr. Wendorf included in his demolition estimate. Mr. Wendorf stated that this contingency factor was intended to cover unknowns and that experience teaches that almost every complex project, such as demolition of a generation station, ends up with unknowns. Many unknowns do not become apparent until detailed engineering proceeds immediately prior to actual demolition activities and still others will not be identified until actual demolition activities commence. *Id.* at 2.

Mr. Wendorf noted that his estimates assumed that all underground piping, electric duct and foundations would remain in place, an unlikely event if the sites are reused. Mr. Wendorf looked at the resulting increased costs for one station, Cayuga, if these assumptions were changed. If below ground items have to be demolished and moved, PSI would have to backfill the voids and the debris would have to be disposed off-site. This simple change, according to Mr. Wendorf, results in a significant increase (over \$ 15 million) in the estimated cost to demolish the Cayuga station. This change alone is approximately [\*188] double the 25% contingency (\$ 8,139,000) included in the demolition estimates which Mr. Sleekly removed. *Id.* at 4.

In response to the position of Mr. Majoros, that his estimates assume returning the sites to a "Greenfield" condition, Mr. Wendorf stated that a key assumption in his demolition estimates was that PSI would not have to remove the contents at the ash ponds at the stations. He assumed that the ash ponds at all these stations could be pumped dry and covered with two feet of soil and seeded. He stated that, contrary to the position set forth by Mr. Majoros, the use of two feet of soil to cover several years of bottom and fly ash does not constitute a return to a Greenfield condition. Pet. Ex. JJ, p. 5. Mr. Wendorf investigated what it would cost if PSI were required to remove and dispose of all stored ash from the existing ash pond at Cayuga to an off site landfill designed to contain the material in an environmentally acceptable manner. He assumed that such a landfill could be required and constructed within

10 miles of the Cayuga site. Changing this assumption about ash removal according to Mr. Wendorf, would add more than \$ 100 million to the estimated cost of demolishing [\*189] the Cayuga site. *Id.* at 5. Mr. Wendorf sponsored an exhibit detailing his analysis and that exhibit demonstrates that the incremental costs of demolishing the Cayuga station would be at least \$ 155 million as compared with the original demolition cost estimate of \$ 37,544,000. *Id.* at 6. He believes that the demolition estimates that he has developed in this proceeding are conservatively low with the 25% contingency factor included.

In response to Mr. Majoros' conclusion that, as certain boilers have been retired in place, PSI will never dismantle these plants to Greenfield conditions, Mr. Wendorf indicated that the only retired in place boilers on the PSI system are the recently retired boilers at Noblesville and the Wabash River Unit 1. *Id.* at 7. The turbines associated with all three of these boilers are still in service as part of the Noblesville Repowering Project or the Wabash River Coal Gasification Repowering Project. This situation is entirely different from a completely retired plant, he observed. Removal of these boilers while the remainder of the plant continues in operation would be a very complicated and expensive matter, with no real benefit, since there [\*190] are interconnecting pipelines and electrical cables located in the area of this boiler which are still in use. Before demolition could begin on a single boiler it would be necessary to determine which of these pipelines and cables would have to be protected, terminated, capped or rerouted to allow continued operation of the remaining units. This process would require extensive engineering and field investigatory work. *Id.* at 8.

Mr. John Roebel was the Company's final rebuttal witness on the subject of depreciation. He responded to Mr. Majoros' assertion that PSI will not dismantle certain generating stations at the end of their useful lives. Pet. Ex. KK, p. 2. Mr. Roebel stated that, in his opinion, demolition will take place, because it is the reasonable thing to do. He stated that he believes that PSI will dismantle these stations in order to reuse the sites as future generating stations. According to Mr. Roebel, the Commission is well aware of the public concern that has accompanied some attempts to construct new generation in Indiana and elsewhere. In contrast, Mr. Roebel noted that there was virtually no local opposition to the recent Noblesville Repowering Project. These [\*191] sites were selected originally because they were good sites for generation stations with access to water and to fuel supplies. He noted that there are not many good generating sites that are not already being used today and that he is not aware of any open sites that could be used for a major generation station without significant expenditures for new transmission facilities alone.

Mr. Roebel then discussed PSI's experience with regard to dismantling generating units and re-using sites. He stated the Company had completely retired one major generation station, its Dresser Generating Station, located near Terre Haute. PSI, he said, had dismantled that station and is now using the site for a machine shop. *Id.* at 3. He also noted that PSI has constructed additional generation at existing sites. PSI's Cayuga CT Peaking Unit was built at the Company's Cayuga Station site, the Wabash River Coal Gasification Repowering Project was constructed at the Wabash River Station reusing the existing Unit 1 turbine and other facilities and most recently PSI has reused the Noblesville site and many existing facilities and infrastructures as part of the Noblesville Repowering Project.

(ii) Discussion [\*192] and Findings. In evaluating the merits of this issue we are faced with various proposals from expert witnesses in response to depreciation expenses proposed by PSI. In undertaking our review of this issue, the Commission recognizes our evaluation of depreciation expenses involves the examination of many variables. The U.S. Supreme Court identified the uncertainties associated with the use of depreciation expenses in *Lindheimer v. Illinois Bell Telephone Company*, 292 U.S. 151, 168-170, 54 S.Ct. 658, 665-666 (1934), in which it stated:

If the predictions of service life were entirely accurate and retirements were made when and as these predictions were precisely fulfilled, the depreciation

reserve would represent the consumption of capital, on a cost basis, according to the method which spreads that loss over the respective service periods. But if the amounts charged to operating expenses and credited to the account for depreciation reserve are excessive, to that extent subscribers for the telephone service are required to provide, in effect, capital contributions, not to make good losses incurred by the utility in the service rendered [\*193] and thus to keep its investment unimpaired, but to secure additional plant and equipment upon which the utility expects a return.

Confiscation being the issue, the company has the burden of making a convincing showing that the amounts it has charged to operating expenses for depreciation have not been excessive. That burden is not sustained by proof that its general accounting system has been correct. The calculations are mathematical, but the predictions underlying them are essentially matters of opinion. They proceed from studies of the behavior of large groups of items. These studies are beset with a host of perplexing problems. Their determination involves the examination of many variable elements and opportunities for excessive allowances, even under a correct system of accounting, [are] always present. The necessity of checking the results is not questioned. The predictions must meet the controlling test of experience.

*Id.*

Our determination of appropriate depreciation rates is important, as excessive depreciation rates produce excessive depreciation expense. Since depreciation expense flows dollar-for-dollar into the revenue requirement, excessive depreciation expense [\*194] results in an excessive revenue requirement that is ultimately passed on to ratepayers.

As alluded to by various witnesses in this proceeding, PSI's current depreciation rates are a result of a Settlement Agreement in Cause Nos. 39584 and 39584-S-2 (*Ind. Util. Reg. Comm'n*, February 17, 1995), the terms of which were subsequently incorporated into Cause No. 40003. While we have been presented with a wealth of testimony on this issue, we recognize that the determination of appropriate depreciation levels is far from an exact science, and decisions on this issue must be made on a case-by-case basis.

To assist us in our evaluation of the issues, we were presented with a traditional Depreciation Study ("Depreciation Study") prepared by Mr. Spanos. A second study, in response to the Depreciation Study, was prepared by Mr. Majoros. In response to PSI's testimony, Mr. Selecky and Mr. Majoros both proposed to remove some amount of net salvage from depreciation rates and proposed to treat such costs as expenses. The most contentious issue with regard to the determination of depreciation rates and expense in this proceeding was the proper treatment of dismantling costs. Mr. Spanos testified [\*195] that dismantling costs should be included in current depreciation rates. Mr. Majoros disagreed and indicated that he does not believe that PSI will dismantle its generation stations and return them to Greenfield conditions, as it has no legal obligation to do so.

In our consideration of this issue we note that PSI's estimates are not based on the cost of returning these generating station sites to Greenfield conditions. In addition, we do not find testimony, that indicated that three boilers located at operating generating stations were retired in place, controlling in our consideration as to whether these stations will be demolished at the end of their useful lives. The rebuttal testimony of Mr. Wendorf and Mr. Roebel make it clear that it is much more expensive and difficult to remove a single boiler and associated equipment while other units at a generating station are still in operation than to do so when the entire plant is demolished. This Commission is aware of the controversy

that can be generated when a public utility proposes to construct a generation facility on a new site. It appears reasonable for PSI to maintain its current generation sites for future use as generating [\*196] stations. Therefore, this Commission concludes dismantling costs should be included in fixing PSI's depreciation rates.

The next issue is the timing of the collection of such costs. The parties did not disagree that dismantling costs are a part of the cost of current facilities providing current service. They disagreed as to the timing of the collection of such costs and their amount. This Commission can either find that current customers should pay a share of dismantling costs, which will not be incurred for a number of years, or, in the alternative, conclude that these costs should be passed on to a future generation of customers. This Commission does not believe that the latter alternative constitutes sound regulatory policy, or is based on sound ratemaking principles. Current customers are receiving service from PSI's generation facilities. A part of the costs of those facilities is dismantlement upon retirement. Therefore, we do not believe it would be appropriate for the Company to backload the dismantlement costs for future ratepayers to pay when the facilities associated with these costs are providing service to current customers. Rather, we find it is appropriate that these [\*197] costs be shared by all customers that received service from PSI's generation facilities. Accordingly, this Commission finds that dismantlement costs are properly included in determining the depreciation rates approved in this cause.

The only challenge to the estimated costs of dismantling PSI's generating stations, presented by Mr. Wendorf, was Mr. Selecky's proposal to eliminate the 25% contingency. We believe that Mr. Wendorf's testimony on this issue provides an adequate explanation as to why such a contingency is needed. Mr. Wendorf also demonstrated that minor changes in conservative assumptions could more than use up the contingency. Therefore, based on the facts presented in this Cause, we find that Mr. Wendorf's approach is acceptable to the Commission.

The final issue regarding dismantlement costs is whether inflation should be factored into the dismantlement cost estimates to be utilized in determining PSI's depreciation rates. Mr. Selecky and Mr. Majoros objected to the use of inflation. Mr. Spanos utilized Mr. Wendorf's dismantlement costs which are stated in 2002 dollars, and factored inflation up to the year of the projected dismantlement as a factor in his consideration, [\*198] along with his analyses of historical, or interim retirements. We find Mr. Spanos' approach to be realistic and consistent with past experience. Inflation has been a fact of life in the American economy for many years. Not factoring inflation into dismantlement costs to be incurred in the future would understate those costs, with the result being that future customers would have to pay costs arising from facilities that are not serving them. This result flies in the face of matching rates with costs incurred for service, a sound ratemaking principle followed by this Commission. Moreover, current customers receive a benefit by factoring in inflation, as it may appropriately allow for a reduction in rate base because of the increased accumulated reserve for depreciation. Accordingly this Commission finds that accounting for inflation in determining the dismantlement estimates to be used as part of PSI's depreciation rates is reasonable.

Turning to the net salvage values for transmission, distribution and general plant, Mr. Selecky and Mr. Majoros urged this Commission to utilize historical average of actual net salvage expense incurred by PSI for determining the net salvage to be utilized [\*199] for these accounts and then expense these averages as a separate cost of service item. In effect, they are proposing that net salvage values be eliminated from the depreciation rates determination in this proceeding. In contrast, Mr. Spanos took the traditional approach and utilized estimated net salvage values for these accounts based on historical net salvage costs as a percent of the original cost of the retired assets that produced the gross salvage or required costs to remove. Pet. Ex. II, p. 20. Mr. Majoros recognized that Mr. Spanos' approach was not abnormal, but he and Mr. Selecky cited a number of state commissions

where an historical average approach had been adopted.

----- Footnotes -----

n9 Mr. Selecky proposed a 10-year average, while Mr. Majoros used a 5-year average. Mr. Majoros made the same proposal with regard to production plant.

----- End Footnotes-----

Based on our review of the decisions cited by Mr. Majoros and Mr. Selecky, we note that only one state commission, the Pennsylvania Public Service Commission, following the directive in [\*200] a decision by the Pennsylvania Supreme Court, has implemented the historical average approach. While the Missouri and Kentucky Public Service Commissions have utilized the historical approach to net salvage values in some cases or on a trial basis, subsequent decisions have adopted the approach advocated by Mr. Spanos.

We believe that there is a sound basis for the traditional approach on this issue that is utilized by a majority of states. Utilizing historical averages as an item to be expensed to current customers means that these customers will be paying for salvage costs at levels that may not be sufficient. That means that the next generation of customers will be paying for salvage costs related to facilities from which they may never have received service. The use of best estimates of future salvage costs addresses this inequity. Moreover, use of historical averages for dismantling costs does not take into account the current configuration of PSI's system with regard to its production, transmission, distribution and general facilities. Facilities in service 40-50 years ago did not take into account the significantly enhanced customer base that PSI now serves, nor the current [\*201] configuration of PSI's facilities that serve these customers. It seems appropriate to utilize best cost estimates for net salvage values taking into account specific facilities now serving PSI's customers in developing depreciation rates that today's customers should pay. Accordingly, we find that the use of historical averages for net salvage values with regard to transmission, distribution and general plant for the purpose of expensing them outside the context of the depreciation determination should be, and hereby is, rejected. n10

----- Footnotes -----

n10 With respect to another area of contention related to average service lives for a few accounts, Mr. Majoros proposed longer lives than those used by Mr. Spanos for six accounts. We find Mr. Spanos' testimony provides an adequate explanation on this issue and we decline to substitute the calculations of Mr. Majoros for only those few accounts.

----- End Footnotes-----

With respect to the use of the ELG or ALG methodologies to determine average service lives, we note that Mr. Selecky advocates the use of ALG [\*202] to determine average service lives as opposed to Mr. Spanos' ELG methodology. This Commission on numerous occasions has accepted the use of the ELG methodology. See, Indiana-American Water Co., Cause No. 40703, 1997 Ind. PUC LEXIS 429 (Ind. Util. Reg. Comm'n, December 11, 1997). Therefore, based on our review of the testimony we find that Mr. Spanos' use of the ELG methodology is acceptable.

Based on our review of the record on this issue, we find that the depreciation rates developed in Mr. Spanos' Depreciation Study and proposed by PSI for approval by this Commission are



reasonable and appropriate and should be approved and used to determine PSI's *pro forma* operating expenses in this case. In approving PSI's proposal in this Cause, we recognize the complexity of this issue, and the fact that it will be necessary for us to carefully review this issue on a case-by-case basis in future proceedings before the Commission.

(b) Accelerated Depreciation on NO[x] Equipment.

(i) Evidence. In its case-in-chief testimony, PSI requested authority to apply a 15-year depreciation rate to its NO[X] compliance projects for the purpose of providing assurance [\*203] of equipment cost recovery. Pet. Ex. C, p. 24. In particular, the Company would apply this accelerated depreciation rate to the same equipment approved by this Commission for use by PSI in Cause Nos. 41744, 41744-S1, 42061 and 42061-S1. Subsequently, PSI altered its request to seek authority to apply an 18-year depreciation rate to its NO[X] compliance equipment. Pet. Ex. OO, p. 4.

The only party to oppose this request was Kroger. Mr. Higgins testified that PSI's request would result in a depreciation rate of 6.67% instead of the 3.52% rate derived from the depreciation study sponsored by PSI witness Spanos, and the revenue requirement related to this difference was \$ 10.5 million. Mr. Higgins testified that he believed that this request should be denied as it would compound the cost burden to customers at a time when the Company was seeking a 15% rate increase. Kroger Ex. No. 1, p. 21.

(ii) Discussion and Findings. We find PSI's request to be in accordance with the law and reasonable. IC 8-1-2-6.7(b) permits PSI to seek Commission approval of a 10-year depreciation rate for equipment deemed to be clean coal technology. We believe PSI's proposal is reasonable, will ensure cost [\*204] recovery of Commission approved projects to which PSI is statutorily entitled, and should be approved. Therefore, we find that PSI should be authorized to utilize an 18-year life over which to depreciate its Commission-approved NO[X] equipment. We note that our decision here is entirely consistent with our November 25, 2003 Order in Cause No. 42411.

(2) Purchased Power. In opposing PSI's proposed Summer Reliability Tracker, the OUCC contended that PSI's 2003 level of purchased power expense should be included in base rates. In response, Mr. Esamann indicated that the inclusion of the OUCC's proposed level of purchased power expense in PSI's base rates would require the Commission to use an abnormally low level for the expense, given that the Company's 2003 purchased power costs were by far the lowest level of forward reliability purchased power costs experienced by PSI since prior to 1999 (less than \$ 2 million). Pet. Ex. DD, pp. 18-19. He said, this low level of purchased power expense is likely to be temporary, given the expected gradual increase in wholesale power prices and the approximately 100 MW of annual demand growth PSI is experiencing on its retail system. *Id at* [\*205] 19. Accordingly, Mr. Esamann said, if the Commission were to include a base amount in PSI's rates, he would recommend the use of an average of the last two years' forward reliability purchased power costs, which amounts to \$ 10.5 million. *Id.* That level, he said, is still lower than PSI's estimated annual purchased power costs over the next few years. *Id.*

Consistent with our discussion of the issue below, we find that PSI's purchased power costs are variable and therefore appropriate for tracking treatment. Accordingly, we decline to include an amount of purchased power costs in base rates. The details of our finding on this issue are set forth below.

(3) PowerShare(R) PowerShare(R) is a peak load managing program that provides PSI's commercial and industrial customers with two options, CallOption and QuoteOption. Under CallOption, the customer contractually commits to reduce its load under certain prescribed circumstances in exchange for a premium. In addition, at times of system peak when the customer is called on to reduce its load, and the customer complies, the customer receives

an energy credit. The QuoteOption program is similar, except that the customer is not **[\*206]** required to reduce its load when called upon. Pet. Ex. AA, pp. 11-12. Therefore, QuoteOption customers receive only the energy credits if they are called to reduce load and they comply. *Id.*

PSI proposed that the test period level of PowerShare(R) expense should be included in base rates, in an amount of approximately \$ 1 million. No party objected to the base level amount of PowerShare(R) expense. PSI also proposed that PowerShare(R) costs be tracked as part of the Summer Reliability Tracker, so that only actual PowerShare(R) costs are collected from ratepayers. While we discuss the entirety of the Summer Reliability Tracker below, we find that that PSI's base rate amount of \$ 1,023,000 million of test year expense is reasonable and should be approved as an appropriate level of PowerShare(R) expense.

#### (4) Service Company Allocations.

(a) Evidence. PSI witness Barry F. Blackwell, Director of Cost Accounting and External Reporting for Cinergy Services, Inc., (the "Service Company") provided testimony regarding the processes used to assign costs between PSI and its affiliate companies, pursuant to various service agreements which PSI has entered into with those affiliates. **[\*207]** Pet. Ex. L, p. 2. Mr. Blackwell testified that the Service Company updates the cost allocation ratios it uses in allocating costs to its client companies by performing a cost study at least annually, taking into consideration specific changes that are fixed, known and measurable. *Id.* at 10-12. Mr. Blackwell cited as an example of such a change the Financial Accounting Standards Board's ("FASB") Emerging Issues Task Force ("EITF") Issue 02-3, Accounting for Contracts Involved in Energy Trading and Risk Management Activities ("EITF 02-3"), which requires that all revenues and expenses on energy trading derivatives be presented on a net basis beginning January 1, 2003. *Id.* at 12-13.

Mr. Blackwell stated that this change will result in substantial reductions in reported operating revenues, purchased and exchanged power expenses and gas purchased expenses. *Id.* Mr. Blackwell explained that prior to this accounting change, these revenues and expenses were recorded on a gross basis, with no offset of energy trading revenues against energy trading costs. *Id.* In Mr. Blackwell's opinion the accounting changes mandated by EITF 02-3 comport with cost causation principles, because **[\*208]** costs will be allocated to Cinergy's trading operations in a manner more closely aligned with the services that they receive from the Service Company. *Id.* at 13-14.

OUCG witness Carver testified in opposition to PSI's adjustment related to changes in the allocation ratios, citing three issues with the allocation methods used by the Service Company: 1) use of net versus gross revenues in determining allocation factors; 2) the Service Company's derivation of the peak demand allocator; and 3) consideration of newly acquired and sold properties. Mr. Carver recommended that PSI back out \$ 3.045 million in *pro forma* adjustment to test year operating expenses related to costs allocated to PSI by the Service Company. Pub. Rev. Ex. No. 3, Sch. C-17.

With respect to Mr. Carver's first issue, the net versus gross revenue issue, Mr. Carver believes that PSI's reliance on EITF 02-3 in developing its proposed allocation factors inconsistently applies net versus gross revenue recognition in developing revenue-related allocation factors. Mr. Carver asserts that when net revenue is used to derive allocation factors for trading operations, the same approach should be used in deriving allocation **[\*209]** factors for non-trading operations. Mr. Carver argued that the approach of using net revenues for trading operations but gross revenues for regulated operations means that a disproportionate share of costs are allocated to regulated operations. Pub. Ex. No. 1, p. 96.

With respect to Mr. Carver's second issue, the derivation of the peak demand allocation

factor, Mr. Carver testified that PSI erred when it adjusted this allocation factor to add the capacity of the Madison and Henry County generating units to PSI's actual system peak demands. *Id.* at 97. Mr. Carver stated that this adjustment is contrary to the Utility Service Agreement, which states that the electric peak load ratio should reflect the domestic firm electric maximum system demands for the immediately preceding 12 calendar months. According to Mr. Carver, the Utility Service Agreement requires the allocation to be based on demand, not capacity or supply levels. *Id.* at 98.

Turning to Mr. Carver's third issue, the full year effect of properties newly acquired or sold during 2002 and 2003, Mr. Carver cited, as one example, a discontinued operation that had been removed from the development of allocation factors as [\*210] its operations were winding down in 2002 and was expected to have little or no activity in 2003. *Id.* at 99-100. In contrast, he cited a newly acquired property that began operations in 2002, but the allocation study only included three months of revenue for this property. *Id.* The effect of this inconsistency, according to Mr. Carver, is that more costs are allocated to regulated operations than appropriate. *Id.* Mr. Carver argued that these types of transactions should be fully and consistently recognized on a forward-looking basis. *Id.* Mr. Carver concluded that PSI should perform a new allocation study, with updated numbers consistent with the fixed, known and measurable provisions of the Prehearing Conference Order so that, in his view, more appropriate allocation factors could be developed. *Id.*

Testifying in rebuttal, Mr. Blackwell addressed the three issues raised by Mr. Carver. Pet. Ex. NN, p. 1. Mr. Blackwell criticized Mr. Carver's proposal to use revenues from non-trading operations net of fuel and purchased power costs to derive revenue-based allocators. *Id.* at 2-5. He noted that many of Cinergy's companies do not have fuel purchases and purchased power [\*211] costs. Thus, Mr. Blackwell pointed out, utilizing Mr. Carver's methodology of using revenues, net of fuel and purchased power costs, would result in just the sort of mixing of net and gross revenues that Mr. Carver claimed to be seeking to avoid. *Id.* That is, Mr. Carver is recommending that the Service Company use gross revenues for affiliated companies that do not have fuel and purchased power costs and net revenues for those that do. *Id.*

Mr. Blackwell observed that fuel and purchased power costs should be treated differently in non-trading operations than they are in trading operations, because fuel and purchased power are real costs of power furnished to end-use customers. *Id.* Mr. Blackwell explained that fuel and purchased power costs represent real costs of goods sold in a traditional sense when incurred in serving end-use customers, while on the other hand, financial trading transactions are simply financial transactions, with no physical goods flowing from one party to another. *Id.* at 3. Mr. Blackwell testified that EITF 02-3 recognized this distinction by requiring all physical trading activity be presented on a gross revenue basis and financial trading [\*212] activity to be presented on a net revenue basis. *Id.* at 2-5. Moreover, as explained by Mr. Blackwell, the same issue arises in the cost allocation process, where gross revenues from trading operations do not accurately convey the extent of services being provided to these trading operations. *Id.* Mr. Blackwell produced a chart (Pet. Ex. NN-1) illustrating a trend in which a decreasing level of costs are allocated to the Service Company's utility company affiliates, including PSI, during a time in which PSI's business, and presumably the amount of services it utilizes from the Service Company, has not changed to a significant degree. Pet. Ex. NN, p. 7.

Regarding Mr. Carver's issue with the derivation of the peak demand allocator, Mr. Blackwell conceded that the Service Company had deviated from the allocation methodology set forth in the Utility Service Agreement. Accordingly, Mr. Blackwell stated, the Service Company revised its system peak demand allocation ratios to conform to the requirements of the Utility Service Agreement. PSI adjusted its earlier *pro forma* to reflect this change. Pet. Ex. NN, p. 7; Pet. Ex. PP, p. 3.

With respect to Mr. Carver's third issue with [\*213] the Service Company's cost assignment practices, that of the consideration given to newly acquired and/or sold properties, Mr. Blackwell disagreed with Mr. Carver. *Id.* at 7. Mr. Blackwell explained that, in accordance with the Utility Service Agreement, the Service Company performs an annual cost allocation study, based on historical data gathered during the third quarter. *Id.* at 7 - 8. He said that when the Service Company knows of companies that are winding down their operations and will no longer be taking services from the Service Company, it excludes from its calculations of the allocation factors the data associated with these companies. *Id.* Mr. Blackwell testified that when an acquisition of a company occurs outside the annual study timeline, the Service Company determines the effect of the acquisition and updates the appropriate allocation factors where such effect is expected to be material. *Id.* He testified that the Service Company reviewed all revenue/sales based allocation factors, picking up twelve months of data for various entities sold/purchased/discontinued in 2002 and 2003, as requested by Mr. Carver, and determined that the amount of costs allocated [\*214] to PSI based on these allocation factors would have been merely \$ 90,000 less, which in Mr. Blackwell's opinion is not material in PSI's case. *Id.* at 9 -10.

(b) Discussion and Findings. Other than the three issues identified by the OUCC, there were no issues raised with respect to the assignment of costs between PSI and its affiliates. Regarding the first issue raised by OUCC, the derivation of revenue-based cost allocation factors on net revenue versus gross revenue basis, this Commission finds that the methodology proposed by PSI is reasonable. The evidence supports PSI's proposition that there is a sound basis for distinguishing between revenues generated from trading operations and revenues generated from other types of operations. The FASB has required that financial trading transactions should be accounted for on a net revenue basis, whereas physical trading transactions should continue to be accounted for on a gross revenue basis. Although Mr. Carver argues that consistency requires that net costs be used for both, PSI's testimony demonstrated that Mr. Carver's approach, while resolving one set of inconsistencies, introduces another set of inconsistencies. This Commission [\*215] is aware of the possible concern of the financial community regarding measuring financial trading operations based on gross revenues, and agrees that deriving allocation factors based on these gross revenues can distort the apparent extent of trading operations and the amount of services they may take from the Service Company. Ultimately, whether or not an allocation methodology allocates more costs to utility affiliates, as opposed to non-utility affiliates, is not the issue. The determination that must be made is whether the costs incurred by the Service Company are allocated properly to those affiliates that cause the costs to be incurred.

With respect to Mr. Carver's second issue, the derivation of the peak demand allocation factor, Mr. Blackwell conceded that Mr. Carver correctly determined that PSI erred when it adjusted this allocation factor to add the capacity of PSI's new generating units (Madison and Henry County) to PSI's actual system peak demands, in a manner contrary to the Utility Service Agreement. Mr. Blackwell indicated that he revised the system peak demand allocation ratios to conform to the requirements of the Utility Service Agreement. Therefore, as Mr. Blackwell [\*216] corrected this error there is no pending dispute between the parties on this issue.

With respect to Mr. Carver's conclusion that a complete updated cost allocation study, based on the acquisition or dissolution of properties is needed, we find that while Mr. Carver raises legitimate concerns on certain aspects of this issue, based on the totality of the evidence presented in this Cause we question the overall cost/benefit of doing such a study. Based on our review of the evidence presented, it is apparent that PSI reviewed all revenue/sales based allocation factors, picking up twelve months of data for various entities sold/purchased/discontinued in 2002 and 2003, and determined that the amount of costs allocated to PSI would have been merely \$ 90,000 less. There is no indication in the record that a complete updated study would yield a materially different result than that used by PSI here. Furthermore, at the Evidentiary Hearing in this Cause, Mr. Howe observed that in order

to include all changes in test year operating expenses related to changes in allocation factors which were fixed, known, and measurable by September 30, 2003 (12 months after the test period), as allowed by [\*217] the Prehearing Conference Order, PSI could not begin the required cost allocation study until October 1, 2003, when the latest data through September 30, 2003 would have become available. Since such a study takes several months to complete, it clearly could not have been completed by the date of PSI's rebuttal prefiling, or even the date of the evidentiary hearing. Tr. at Y30 - Y31.

In any event, the issue before this Commission is whether the cost allocation methodology utilized by the Service Company is representative of future costs to be properly allocated to PSI, when the rates determined in this proceeding will be effective. Other than the three issues raised by OUCC, there were no issues raised with regard to the assignment of costs between PSI and its affiliate companies. We find that the costs assigned to PSI represented in this proceeding are just and reasonable and should be fully recoverable by PSI.

(5) Sale of Accounts Receivable/Forfeited Discounts/Uncollectible Expense.

(a) Evidence. In February 2002, Cinergy replaced an existing accounts receivable sales agreement with a newly structured receivables sales facility that has a maximum funding capacity of \$ 400 [\*218] million. Under this Agreement, PSI, along with Cinergy's other utility operating companies, sells its accounts receivable to an affiliate, Cinergy Receivables Company, LLC ("Cinergy Receivables"). The receivables purchased by Cinergy Receivable are then used as collateral for Cinergy Receivables to secure non-recourse loans from third party lenders. The purpose of these loans is to enable Cinergy Receivables to purchase the accounts receivable. PSI sells its accounts receivables in order to receive upfront cash, rather than waiting until the accounts receivables are collected. This cash helps the Company preserve its various bank lines of credit to meet other short-term financing needs. Pet. Ex. QQ, p. 8.

Summarizing the Company's own adjustment in computing *pro forma* operating income under current rates, Mr. Farmer said that the Company eliminated all test period expenses related to the sale of accounts receivable other than uncollectible accounts expense totaling \$ 5.7 million. *Id.* at 13. Uncollectible accounts expense was not eliminated, he said, because the Company recognized that a portion of *pro forma* revenues included in this case would not be realized, because [\*219] they would be uncollectible. PSI developed a factor, based on a four-year average relationship of uncollectible accounts expense to revenues that was applied to *pro forma* test period revenues. The effect of PSI's adjustment was to adjust test period uncollectible accounts expense for changes in revenue levels in addition to the elimination of all costs not directly related to non-payment by customers.

OUCC witness Carver sponsored OUCC Adjustment C-5, which increased PSI's test period revenues by \$ 5,419,000, the test year's level of forfeited discount revenues, which PSI had proposed to exclude. Pub. Ex. No. 1, p. 17. Forfeited discounts and late payment fees are merely different names for the same revenue (*i.e.*, customer charges due to late bill payment). Mr. Carver stated that it was his view that the ratepayers should be no worse off as a result of PSI selling its accounts receivable than would be the case if the account receivable sale had never occurred. *Id.* at 21. Mr. Carver testified that if the effect of the sale is a good deal for the regulatory participants, it would be reasonable to expect the arrangements to positively improve the utility's operating income [\*220] and cash flow, and ratepayers should reasonably expect to participate in these benefits. However, in Mr. Carver's view, the net impact of the Company's arrangement to finance its receivables with an affiliate was detrimental to the ratepayers.

Mr. Carver conceded that it is certainly possible that the receivable sales agreement could accelerate PSI's cash realization to the point that this annual cost could be reasonable. However, the only way, he said, to determine the benefit of cash flow acceleration is through

a lead-lag study, which PSI has not done. *Id.* at 24-25. Instead, he said, PSI's rate base calculation assumes that "zero" is a reasonable approximation of PSI's cash working capital requirement that would result from a detailed lead/lag study. In Mr. Carver's opinion, such an assumption is inappropriate because a properly conducted lead/lag study could result in a negative cash working capital requirement. Mr. Carver indicated that a zero cash working capital assumption is inappropriate where ratepayers are asked to bear the additional costs of the "zero" cash working capital requirement assumption, but receive no benefit from the receivable sales agreement.

Mr. Carver [\*221] calculated that Cinergy Receivables realized net income of about \$ 4.4 million in 2002, before income taxes. He stated that OUCC Schedule A-1 recognizes both forfeited discount and uncollectibles in the development of the revenue conversion factor, while the Company recognized only the uncollectibles. He added that if the Commission concludes that the forfeited discount should be removed from test year revenues and excluded from the revenue conversion factor calculation, then the Commission should also revise PSI's tariff to remove all provisions for charging late payment fees to its customers.

Mr. Farmer testified in rebuttal to Mr. Carver's adjustment. He stated it would not be proper to credit the cost of service with forfeited discount revenues, because under the Cinergy Accounts Receivable Purchase and Sales Agreement, PSI does not retain the right to keep revenues received from customers due to late payments. Rather, he observed, PSI has transferred that right to the purchaser of the receivables. However, he pointed out, PSI's customers *have* received significant benefits from the sale of accounts receivable in the form of cost savings. Pet. Ex. QQ, p. 7. Mr. Farmer explained [\*222] that by selling accounts receivable the Company is able to accelerate the recovery/realization of billed revenues by converting receivables (a non-earning asset) immediately into cash. He stated that if PSI did not sell these receivables, it would incur costs to finance the lag between the time when revenues are billed and payment is received from customers. Accordingly, without the accounts receivable sales agreement, PSI would incur a permanent financing requirement that would likely be met by issuing commercial paper, borrowing against credit lines, or reflecting increased equity and/or debt borrowing in PSI's capital structure. By selling the accounts receivable, PSI is able to eliminate this payment lag. PSI and its customers will benefit to the extent that the fee charged by the purchaser of the receivables is less than the cost that would have been incurred if the Company were to finance the receivable itself. *Id.* at p. 8-10.

Mr. Farmer gave examples of ways in which PSI customers have benefited from such accounts receivable sales. *Id.* One example was the Company's use of the proceeds from its initial sales of account receivables to retire/redeem preferred stock and [\*223] first mortgage bonds, as part of the financial restructuring that took place in the late 1980's. In addition, the Company used some of the cash to finance capital investments. However, Mr. Farmer pointed out that the primary benefit of selling accounts receivable is to utilize the cash received from such sales to meet ongoing working capital needs. If a utility has working capital needs due to the lag in the cash realization of billed revenues relative to the payment of operating costs incurred by the Company, that capital need is generally recognized in the setting of rates by including a cash working capital allowance in the rate base. However, because of its accounts receivable sales, Mr. Farmer stated, the Company has not requested, and is not requesting, that a cash working capital allowance be reflected in the rates approved in this case. *Id.* at 8-10.

Mr. Farmer noted that in order for Mr. Carver's contention that customers have not benefited from the sale of accounts receivable to be accurate, the Company's cash working capital needs must be negative. This statement, according to Mr. Farmer, is incorrect because PSI's accounts receivable balance (an indicator of potential [\*224] cash working capital needs) is approximately \$ 175 million. At the hearing on PSI's rebuttal testimony, Mr. Farmer was questioned about the level of profit earned by Cinergy Receivables as a result of its sale of

accounts receivable agreement with PSI. Mr. Farmer indicated that approximately 40% of the \$ 4.4 million (*i.e.*, \$ 1.76 million) of profits in 2002 was attributable to the purchase of PSI's accounts receivable Tr. at Y123-Y124. The remainder of the \$ 4.4 million is attributable to the purchase of accounts receivable from CG&E.

Mr. Farmer pointed out that Mr. Carver agrees that PSI, under its arrangement with Cinergy Receivables, has transferred, and, therefore, does not own the rights to forfeited revenues. At the same time, Mr. Carver observed, PSI also no longer incurs costs associated with late payment by its customers. Mr. Farmer stated that if one were to accept Mr. Carver's adjustment, the cost of service used to set rates in this proceeding would be credited with revenues that PSI does not retain. Mr. Farmer disagreed with Mr. Carver's position that if the Commission accepts PSI's adjustment, it should revise PSI's tariff to remove all provisions for charging late [\*225] payments to its customers. Pet. Ex. QQ, p. 15. Mr. Farmer stated that there is a cost when a customer makes a payment late that is not changed, regardless of which party is bearing that cost. In this case, PSI has passed the risk of late payment to the purchaser of its accounts receivable, and it is appropriate that the purchaser receive the late payment revenues.

(b) Discussion and Findings. The effect of Mr. Carver's adjustment is to credit PSI's revenues with \$ 5.4 million that is not in fact retained by the Company. Based on our review of the record it appears that PSI will not realize its account receivable revenues, because they have been sold to an affiliated entity. Mr. Carver does not dispute the terms and conditions under which the account receivables are being sold to Cinergy Receivables. Nor does Mr. Carver disagree that if the deal is a good one for PSI, then customers will share in the benefits. Mr. Farmer testified that historically PSI customers *have* benefited from the Company's sale of account receivables, as PSI has used the revenues from previous sales to refinance preferred stock and long-term debt and finance construction investments.

In the current proceeding, [\*226] Mr. Farmer made it clear that selling the account receivables has enabled the Company not to request working capital as a component of its rate request, even though PSI's account receivables total \$ 175 million. This level of receivables is a strong indication that PSI would not have a negative working capital allowance as suggested by Mr. Carver, even if we recognized a negative cash working capital requirement, which we do not. We find that there is a cash working capital benefit to PSI and customers that results from PSI's sale of accounts receivable, albeit one that is not quantified. Accordingly, we do not accept Mr. Carver's recommendation that PSI be credited with \$ 5.4 million in revenues. At most, the record reflects that a \$ 1.76 million credit to revenues might be justified to reflect the level of annual profit earned by Cinergy Receivables by virtue of its agreement with PSI. However, even that amount of credit fails to recognize that PSI does not retain those revenues, and for this reason we will decline to make any adjustment to PSI's proposed *pro forma* revenues. We also decline to revise PSI's tariff to remove all late payment charges, as there is a cost associated [\*227] with the late payment of bills, and this cost should be recovered from the late payees to address these costs.

#### (6) Production O&M Expenses.

(a) Evidence. OUCC witness Brosch proposed two adjustments with regard to PSI's production O&M expenses. OUCC Adjustment C-7 reduced production, non-fuel O&M expenses related to PSI's Madison, Henry County, Edwardsport and Noblesville production facilities. Mr. Brosch claimed that the costs included by PSI for the Madison and Henry County stations are based upon budget values that are not fixed, known and measurable and in his opinion, overstate the expenses related to actual cost levels experienced at those stations. He stated that his Adjustment C-7 reflects the adjustments that are needed to restate the Madison and Henry County related O&M increases, based upon actual 2002 expense levels, in lieu of the Company's budgeted values.

OUCC Adjustment C-8 was made, according to Mr. Brosch, to correct and restate amounts within PSI's adjustment for NO[X] expenses sponsored by Mr. Farmer. Pub. Ex. No. 2, p. 90. According to Mr. Brosch, the Company's proposed adjustment is predicated entirely upon budgeted costs for ammonia and contractors' [\*228] services anticipated to be incurred due to the addition of the SCR equipment at Gibson Units 2, 3 and 4. The OUCC's Adjustment C-8, he said, substitutes actual SCR O&M cost information for the estimates utilized by the Company. Mr. Brosch stated that the largest differences between the Company's adjustments and OUCC's Adjustment C-8 relates to the difference in ammonia costs. Mr. Brosch concluded that an allowance for ammonia of \$ 141,000 for each of the Gibson SCR units is appropriate.

Mr. Farmer presented rebuttal testimony in response to the OUCC's Adjustments C-7 and C-8. Mr. Farmer noted that, as a practical matter, a utility must estimate annual costs of new projects which have not been in-service during all 12 months of the test year. Pet. Ex. QQ, pp. 16-18. With regard to Adjustment C-7, Mr. Farmer stated that Mr. Brosch had made a mathematical error and had double counted a \$ 380,000 reduction. After correcting for this error, Mr. Farmer determined that the difference between the O&M expenses related to this issue as presented by PSI were only 17% greater than the actual 2002 expenses, recommended by Mr. Brosch. Pet. Ex. QQ, pp. 16-18. In order to test the reasonableness of [\*229] PSI's estimates for purposes of reflecting an ongoing level of production O&M, Mr. Farmer compared PSI's estimates to the actual, non-labor O&M incurred for the 12 months ended August 31, 2003 at the Madison and Henry County facilities. This comparison showed a difference of only 9%. Given this small difference, Mr. Farmer concluded that the Company's *pro forma* cost level was reasonably representative of an ongoing cost level. In Revised Schedule C-7, Mr. Brosch corrected the double counting error, but still proposed lower O&M costs for the Madison and Henry County Stations.

With respect to the OUCC's Adjustment C-8, Mr. Farmer confirmed that the NO[X] O&M costs included in the case are primarily driven by costs incurred to operate the Gibson SCRs. The SCRs were operated in 2002 and are being operated in 2003 in order to generate early reduction NO[X] credits. *Id.* at 18-20. He noted that Gibson Units 2 and 3 SCRs were declared commercial in July, 2002 and that the Gibson Unit 4 SCR was declared commercial in July, 2003. He stated the in-service dates are significant to the issue of determining annual O&M costs, because in both 2002 and 2003 the SCRs were declared commercial [\*230] two months into the NO[X] compliance season of May-September. Accordingly, because the SCRs were in service during only a portion of the NO[X] compliance season and not the normal five months, the 2002 data used by Mr. Brosch to make his adjustment is not representative of normal ongoing cost levels.

Mr. Farmer testified that SCR operating expenses are primarily driven by the costs of ammonia and that Mr. Brosch's ammonia costs are predicated on information provided by PSI in response to OUCC Discovery Request 23-565. At the time the responses were provided, the latest available month was May, 2003, and the Company's response set forth an *average* price paid in 2002 up to that time of \$ 170.09 per ton. However, that same data response stated that the price paid in May was \$ 322.70 per ton, an increase of 90% when compared to the average 2002 price. Mr. Brosch did not take into account, Mr. Farmer pointed out, the higher prices for ammonia in 2003, compared with 2002, which were set forth in the data response.

To test the reasonableness of Mr. Brosch's ammonia costs and PSI's projected ammonia costs utilized in its adjustment, Mr. Farmer looked at current information based on actual [\*231] deliveries and costs of the ammonia used at the Gibson Station. The Company's invoiced cost of ammonia purchased for 2003 was \$ 1,107,659, excluding the cost of one tanker load, which remained outstanding at that time. Pet. Ex. QQ, p. 20. Given the fact that the Gibson Unit 4 SCR ran for only a part of the season, Mr. Farmer concluded that the Company's \$ 1,141,000 initial estimate of annual ammonia expense for a normal five-month compliance



period at today's prices is reasonable and more representative of ongoing cost levels. In contrast, Mr. Farmer noted that Mr. Brosch's allowance for annual ammonia expense of \$ 423,000 would grossly understate the costs being incurred by PSI in operating its Gibson Units. In Revised Schedule C-8, Mr. Brosch revised his *pro forma* adjustment to accept PSI's proposed ammonia costs. However, Mr. Brosch maintained his lower O&M Material, and Contractor Labor amounts.

(b) Discussion and Findings. We find that PSI's estimates of the subject costs are reasonable. In making OUCC Adjustment C-7, regarding PSI's production non-fuel O&M expenses, Mr. Brosch utilized actual 2002 data in an effort to demonstrate that PSI's adjustment was overstated. [\*232] Mr. Farmer utilized more recent data in an effort to show that Mr. Brosch's adjustment was understated. The difference between the actual twelve months ended August 31, 2003, and PSI's original *pro forma* adjustment amount was only 9%. Given the apparent variability in non-labor O&M costs, as evidenced by the fact that the twelve months ended August 31, 2003 for the Henry County Plant was \$ 158,000 less than the actual 2002 costs, this Commission finds that PSI's estimate represents a reasonable approximation of an ongoing level of production, non-fuel O&M expenses and it should be approved.

The lack of a full test year of operating data also was present in determining the ongoing level of production O&M expenses related to the operation of the Gibson SCR units. Mr. Farmer explained that the SCRs were not declared commercial until July 2002 and July 2003, and the normal NO[X] compliance five-month season is May 1 through October 1. Thus, actual O&M expense for 2002 data used by Mr. Brosch was understated. Mr. Farmer, again utilizing more recent data than Mr. Brosch, testified that it could cost PSI \$ 1,316,700 for the cost of ammonia, alone, to operate these SCR units using actual [\*233] 2003 ammonia prices. PSI had proposed a total annual production O&M expense for NO[X] equipment of \$ 1,333,000. With Mr. Brosch's acceptance of PSI's proposed ammonia expense, the difference between PSI's proposed adjustment and the OUCC's proposed adjustment is only \$ 170,000. Because PSI used more recent data, we find that Mr. Farmer's estimate of production O&M costs for operating the Company's SCR facilities is not unreasonable.

#### (7) Software Amortization Costs.

(a) Evidence. OUCC witness Carver sponsored OUCC Adjustment C-12, which reduced PSI's amortization expense by \$ 1,257,489. Mr. Carver explained that this adjustment recognized the August, 2003 termination of certain software investment amortizations. Pub. Ex. No. 1, p. 33. He stated that in general the Company records its software investment as Intangible Plant and then amortizes the investment over its anticipated useful life, normally five or ten years. Mr. Carver noted that PSI's July 31, 2003 update filing removed amortizations that expired by May 31, 2003. Mr. Carver opined that his adjustment to remove all amortizations that will expire by September 30, 2003, was in accord with the Prehearing Conference Order, [\*234] which allowed for fixed, known and measurable adjustments through the twelve months following the end of the test year.

On rebuttal Mr. Farmer pointed out that he believed that Mr. Carver was applying inconsistent standards in making his adjustments to Intangible Plant and Tangible Plant. For purposes of depreciation expense, Mr. Farmer noted, Mr. Carver had utilized plant balances as of May 31, 2003, which Mr. Farmer observed was consistent with his reading of the Prehearing Conference Order. Pet. Ex. QQ, pp. 29-31. Mr. Farmer testified that, at a minimum, intangible and tangible plant should be treated alike. If PSI's depreciable plant were updated to August 31, 2003, PSI's investment in depreciable plant, excluding plant subject to amortization, would increase by \$ 25,675,000 and amortizable plant would decrease by \$ 6,598,000. He also stated that if the depreciable plant were so updated to September 30, 2003, as Mr. Carver updated plant subject to amortization, the increase in PSI's depreciation expense may be even higher, due to additional depreciable plant

investment. *Id.* at 31-32. Mr. Farmer stated that the cut-off date should be the same for items as interrelated as depreciation [\*235] and amortization expense associated with PSI's rate base.

(b) Discussion and Findings. Based on our review of the testimony it appears that Mr. Carver applied inconsistent standards to plant subject to depreciation and plant subject to amortization. For the former, he used plant balances as of May 31, 2003. For the latter, he used plant balances at September 30, 2003. This resulted in the update of an expense that was decreasing, without a corresponding update to an almost identical expense that was increasing. We find that adjustments to test year results of the same basic cost items should be done in a consistent manner. Therefore, in this case we agree with Mr. Farmer that it makes sense to use the general rate base cut-off date of May 31, 2003 which was agreed to by all parties, and to also update depreciation and amortization expense which constitute a *return of* that same rate base amount.

#### (8) Public Safety Advertising.

(a) Evidence. PSI proposed an adjustment to test year expenses in the amount of \$ 619,000 related to the Company's public safety advertising program. Pet. Ex. Y-18. In support of that adjustment, PSI witness Leigh J. Pefley testified that, beginning [\*236] in 2003, PSI significantly stepped up its public safety advertising. Pet. Ex. J, p. 10. She stated that through periodic radio advertising, PSI intends to build public awareness of where power lines are located and the need to stay clear of them. She said that the initial phase of the campaign consisted of a nine-week schedule, beginning in March, of radio advertisements in the major markets of Indianapolis, Terre Haute and Lafayette as well as over 27 non-major markets. The second phase of the project will consist of ten weeks of radio advertising during the months of June through November. She stated that PSI plans to continue its public safety awareness advertising on an annual basis. Ms. Pefley was of the opinion that it was important to convey to PSI's customers how to be safe around electricity and that the Company's program accomplished that goal.

OUCG witness Carver stated that while the OUCG encourages public utilities to conduct public safety awareness campaigns, in his opinion, there were too many uncertainties surrounding the annually recurring magnitude of PSI's campaign, implemented in 2003, to fully justify the adjustment. Pub. Ex. No. 1 p. 64. He testified that PSI [\*237] did not provide any studies or quantitative analyses to support the decision to implement the new safety advertising program. *Id.* at p. 64. Instead, the Company appears to have decided to increase its public safety advertising based on recent incidents involving public contact with electrical facilities, where the victims may not have been aware of the existence of electrical facilities or the dangers posed by electricity-however, specific information regarding incidents of this nature had not been provided by PSI. *Id.*, at 64-67. Mr. Carver added that PSI also had expended less than \$ 10,000 in public safety advertising during the six-year period ending with calendar year 2002. He stated that PSI's affiliates similarly expended little on public safety advertising, even though significant levels of advertising expense appear to have been included in PSI's last Indiana retail rate case. *Id.* at 68-71. Given this history, Mr. Carver was concerned that, absent assurance otherwise, PSI's safety advertising expenditures could again be reduced following this rate case. *Id.*, at 72-73. Mr. Carver proposed that if PSI is allowed to recover some level of safety advertising expense [\*238] in retail rates, the Company's adjustment should either be reduced by 50%, or PSI should be required to make an annual filing with the Commission, with copies to the OUCG, explaining any reduction in public safety advertising expense greater than 10% of the allowed amount.

Mr. Esamann submitted rebuttal testimony in response to Mr. Carver's testimony. He described the Company's 2003 campaign and said that by the end of August, 2003, PSI had incurred actual expenditures of \$ 408,000. Pet. Ex. DD, pp. 40-41. Mr. Esamann also gave assurance that PSI is committed to a multi-year public safety campaign. He said that PSI has

already undertaken steps to develop a media schedule for 2004, with the creation of at least two additional media spots for 2004. Mr. Esamann stated that these costs were prudently incurred and should be fully reflected in the ratemaking process. He also said that PSI would have no objection to filing an annual report as suggested by Mr. Carver. *Id.* at 42.

(b) Discussion and Findings. Based on the evidence presented on this issue, we find that PSI should be allowed to recover some level of public safety advertising expense and that it should not be necessary [**\*239**] for PSI to report to the Commission regarding the ongoing level of these expenditures. Through its testimony, PSI demonstrated the importance of undertaking an ongoing public safety advertising campaign and we believe that PSI should, and will, utilize the full amount allocated by the Commission for this purpose.

Mr. Carver does not contest the level of the \$ 619,000 expense or the actual expenditures made by PSI in 2003, but believes that the Company did not fully demonstrate the need for the recurring level of such costs. While Mr. Esamann's rebuttal testimony provides some assurance that PSI plans to continue its public safety advertising program in the future, our review of the historic level of these expenditures indicates that even if the amount requested by PSI is reduced as Mr. Carver proposed, it would still represent a dramatic increase in expenditures for this purpose. Therefore, we agree with the OUCC that a 50% reduction in the amount proposed by PSI is warranted and find that PSI should be allowed to recover \$ 310,000 of program costs. We also find that the Company should not be required to submit annual reports regarding its expenditures on public safety advertising [**\*240**] campaigns.

(9) Salaries, Wages, Benefits, and Incentive Compensation.

(a) Evidence. PSI proposed a *pro forma* adjustment which reflected an annualized level of salaries, wages, and benefits at the May 31, 2003 cut-off date. In the end, there was no challenge to PSI's proposed adjustments. Tr. at P50. We find that PSI's proposed salaries, wages and benefits should be approved. In addition, PSI also seeks recovery of \$ 12,883,000 in incentive pay expense. Pet. Ex. PP-8, Sch. C-3.17, p. 2. Mr. **Verhagen** testified in support of PSI's level of incentive. He stated that PSI began using incentive pay in 1987 and described the Company's major incentive pay programs: (1) the Cinergy Corp. Annual Incentive Plan ("AIP"); (2) the Energy Merchant Business Unit Annual Incentive Plan ("EMBU AIP"); (3) the Cinergy Corp. Non-Union Employee Incentive Plan ("NEIP"); (4) the Cinergy Corp. Union Employee Incentive Plan ("UEIP"); and (5) the Cinergy Corp. 1996 Long-Term Incentive Compensation Plan ("LTIP"). Pet. Ex. R, p. 10.

According to Mr. **Verhagen**, the AIP is a short-term incentive plan that allows employees to receive cash payments as certain performance goals are attained during the preceding [**\*241**] calendar year. The AIP is available to selected exempt employees of PSI and Cinergy Services. The purpose of the AIP is to attract, retain and motivate employees, enhance teamwork and high levels of achievement and to facilitate the accomplishment of specific corporate business units and individual goals. Employees are selected to participate in the AIP. Mr. **Verhagen** stated that the compensation committee of the Cinergy Corp. Board of Directors monitors on an ongoing basis the AIP performance goals and the level of compensation paid through the AIP. Performance goals are the objective that the relevant business unit and individual employees must attain in order for the employees to receive payment under the AIP. Mr. **Verhagen** stated that for the Regulated Business Unit ("RBU") employees participating in the AIP, the individual goals and the employee's business unit goals were weighted equally. *Id.* at 11-12 In 2002, the business unit goals of the RBU were based on the following factors: (1) electric SAIDI; (2) electric CAIDI; (3) gas CAIDI; (4) lost time accident rate; (5) number of traffic accidents; (6) customer satisfaction score results; (7) O&M expense [**\*242**] levels; and (8) capital expenditure level. *Id.*

The EMBU AIP, according to Mr. **Verhagen**, is another short-term incentive plan that provides cash payments to employees if certain performance goals are met. Like the AIP, the

EMBU AIP is available to selected employees, but these employees do not participate in the AIP. The performance goals for the EMBU AIP consist of a corporate earnings component and EMBU earnings component. Performance goals are related to the business segment of the EMBU to which the employees are assigned individual performance goals. Mr. **Verhagen** noted that PSI's rates reflect labor expense from Cinergy Services and Cinergy Power Generation Services employees who allocate time to PSI and who participate in the EMBU AIP because they work at PSI's generating stations, provide generation support and provide back office support. The EMBU AIP goals for the generation business segment are based on the actual performance of Cinergy's generation fleet and the individual generating station where the respective employees work. *Id.* at 12-14.

The NEIP is available to exempt and non-exempt employees of PSI and Cinergy Services who do not participate in another incentive [\*243] plan. The NEIP is a short-term incentive plan, according to Mr. **Verhagen**, that allows employees to receive cash payments if Cinergy Corp. attains certain corporate performance goals during the calendar year. Mr. **Verhagen** testified the purpose of the NEIP is to attract, retain and motivate employees, enhance teamwork and achieve high levels of corporate goals. This plan, like the others, is monitored by the compensation committee. The NEIP uses the same performance measures as the AIP's corporate performance measure. *Id.* at 14-15.

Mr. **Verhagen** testified that the UEIP is available to union employees of PSI, Cinergy Services and CPGS who do not participate in another incentive plan. Like the other plans described, the UEIP permits union employees to receive cash payments if Cinergy Corp. attains certain performance goals or if their business unit attains certain performance goals during the preceding calendar year. *Id.* at 15-16.

The purpose of the LTIP is to assist in attracting, retaining and motivating executives by keeping Cinergy's compensation package competitive and to align a portion of the executive compensation with corporate interests by encouraging and enabling executives [\*244] to acquire Cinergy stock. Mr. **Verhagen** stated that under the LTIP certain employees may be granted an incentive and non-qualified stock options, stock appreciation rights, restrictive stock, dividends equivalent to opportunity to earn performance based shares and certain other stock-based awards. *Id.* at 17-18.

Mr. **Verhagen** testified that this Commission has previously considered PSI's incentive compensation plans. He said that PSI's current AIP and LTIP are similar to the AIP and performance share plans previously reviewed in Cause No. 40003. In addition, PSI's AIP and performance share plans were considered in Cause Nos. 37414-S2 and 38809 (1989) and Cause Nos. 39584 and 39584-S2 (1994). He stated that in each case the proceedings resulted in PSI's rates reflecting incentive compensation costs. *Id.* at 19. Mr. **Verhagen** stated that incentive compensation is a necessary component of any company's compensation and benefit package in order to keep total compensation competitive. He pointed out that many utility companies and non-utility companies offer these types of incentive compensation plans. PSI must offer such plans in order to remain competitive and be able to attract and [\*245] retain a high caliber workforce. In addition, PSI's incentive compensation plans pay out reasonable levels of incentive compensation. For these reasons, Mr. **Verhagen** believed that it is appropriate for PSI to reflect these costs in its rates. *Id.* at 20.

Mr. **Verhagen** also discussed the allocation of the costs of the various compensation plans to PSI. He said that PSI recognizes that this Commission has required shareholders to bear a portion of the incentive compensation costs. He also recognizes that Cinergy's shareholders, as well as its customers, benefit from the achievement of the goals used in these incentive compensation plans. Mr. **Verhagen** stated that the costs of the corporate goals under the AIP and EMBU AIP, were allocated 50% to the shareholders, 50% to the customers. The individual goals and the RBU goals under the AIP were allocated 100% to the customers. The

EMBU AIP earnings goals were allocated 50% to the shareholders and 50% to the customers. Like the AIP, the EMBU business segment goals and the individual goals were allocated 100% to the customers. For the LTIP, Mr. **Verhagen** stated that the total shareholder return was allocated on a 50%/50% basis. Mr. **Verhagen** [\*246] allocated 100% of NEIP and UEIP costs to PSI's customers. *Id.* at 21-22.

The OUCC did not propose any adjustment to PSI's proposed level of incentive compensation expense to be included in PSI's rates. Mr. Carver presented detailed testimony discussing our past treatment of incentive compensation in Indiana rate cases. Pub. Ex. 1, pp. 77-80. His testimony also highlighted the significant escalation in PSI's incentive compensation costs in relation to the amount PSI has proposed to include in cost of service. *Id.* at 80-82. Mr. Carver further testified that it was unnecessary for the Commission to create unique shareholder incentive mechanisms in order to focus individual employees on achievements that enhance corporate financial objectives. Any additional shareholder incentives would not directly influence the day-to-day activities of individual employees who, on average, have about 9.8% of their compensation "at risk" through the incentive plans discussed by Mr. **Verhagen**. *Id.* at 82-83.

CAC presented the direct testimony of Dr. Michael Sheehan, who testified that he had five problems with PSI's executive incentive program. First, he said, the levels appeared to be excessive. [\*247] Second, the underlying premise that high levels of incentive pay produce high levels of corporate performance has not been substantiated. Third, he said, not only do incentives appear not to work, in fact they have a tendency to produce bad behavior on the part of a significant number of executives. Fourth, he said, even if the incentives proposed by PSI might work in theory, they are usually tied to goals that have flaws or lead to misdirection. Finally, he maintained that building incentives into rates means that ratepayers are charged for incentive payments even when the incentives are subsequently not justified by performance or are not paid to employees of the utility.

Dr. Sheehan noted that under the allocation of the incentive programs proposed by Mr. **Verhagen**, 75% of the costs of these programs are being allocated to PSI's ratepayers which in his opinion is not appropriate, at least as the programs are applied to executives. CAC Ex. C, p. 64. First, he said the incentive programs are primarily directed to the goals of maximizing the financial performance of the holding company, Cinergy, which, in his opinion, is not an appropriate goal and embodies an intrinsic conflict of [\*248] interest for PSI employees. He said that this Commission should not allow any cost of recovery at all for the costs associated with Cinergy's financial performance. *Id.* at 64.

In support of his argument that the costs of executive incentive plans should not be allocated to PSI, Dr. Sheehan cited three articles, from researchers at the Wharton School of Business, Indiana University, and Harvard University, respectively. *Id.* at 66-68. Dr. Sheehan claimed that these studies tended to show that substantial incentives have motivated counter-productive behavior. He said that the provision of substantial incentives to Cinergy executives on loan to PSI to maximize the returns to PSI, could, in his opinion, lead to predatory behavior against PSI. *Id.* at 69. He said that if the Commission approves the allocation of the costs to PSI, it should only be done in conjunction with the creation of a tracker or true-up mechanism. Otherwise, in cases where the goals are not met and the anticipated ratepayer benefits are not forthcoming, and thus the costs are not offset, the ratepayers will still have to fund the full cost of the incentive programs and Cinergy will "pocket the money." Dr. [\*249] Sheehan conceded during cross-examination that he had not read the Wharton study prior to preparing his testimony, and that these studies did not support his opinions in several key respects. For example, he indicated that the Harvard study was based on the "rent extraction" theory, which is a minority theory in the field of incentive compensation. In addition, the Indiana University study did not differentiate whether the stock options it studied were paid as part of a base compensation package or incentive pay to motivate a desired behavior.

In response, Mr. **Verhagen** pointed out that Dr. Sheehan performed no analysis of the programs involved in this case. On the other hand, Towers Perrin Company ("Towers") had analyzed Cinergy's executive compensation programs and concluded that: (1) Cinergy's total annual executive compensation is competitive with the proxy peer group at the 50th percentile; and (2) the long-term incentives paid by Cinergy in 2002 were only 66% of the level of long-term incentives paid by the proxy peer group at the 50th percentile and 33% of the long-term incentives paid by the proxy peer group at the 75th percentile. In Mr. **Verhagen's** opinion, these studies show [\*250] that Cinergy's compensation programs result in reasonable levels of compensation when compared to its proxy peer group. Pet. Ex. MM, p. 2.

Mr. **Verhagen** pointed out that Dr. Sheehan presented no evidence to support his conclusion that the structure of PSI's incentive compensation program is flawed because it motivates executives to accomplish goals contrary to PSI's best interests. Mr. **Verhagen** said that PSI's interest and Cinergy's interests are interwoven and inseparable. He noted that the AIP for the RBU has performance goals based on electric service reliability, safety and customer satisfaction and that these goals are obviously in the best interest of PSI customers. *Id.* at 3-4.

Mr. **Verhagen** stated that Dr. Sheehan erred in contending that performance goals based on the corporate performance and total shareholder return are contrary to the interests of PSI's customers. Over the long term, he said, Cinergy Corp. could not favor shareholders interest over the interest of PSI customers. Doing so would ultimately cause PSI's service level to deteriorate, which would produce widespread customer dissatisfaction. This would ultimately reduce Cinergy Corp. net income and total shareholder [\*251] return. *Id.* Mr. **Verhagen** also responded to Dr. Sheehan's statement that the portion of the incentive expense allocated to PSI is not appropriate.

Mr. **Verhagen** stated that PSI's *pro forma* adjustment strikes a reasonable balance as the costs of AIP performance goals related to corporate performance and the total cost of the LTIP are allocated 50% to shareholders and 50% to customers. He said such an allocation is reasonable given that the performance goals provide inexplicably intertwined benefits to shareholders and customers and these incentive programs result in total compensation levels that are reasonable and necessary to attract talented employees.

(b) Discussion and Findings. It is commonly accepted that incentive compensation plans may be necessary in order for utilities to attract and retain highly qualified individuals. Dr. Sheehan does not dispute this fact. Instead, he generally objects to PSI's *pro forma* executive compensation adjustment on two grounds: (1) there is no showing that executive compensation plans enhance employee performance; and (2) the percent of the expense allocated to PSI is not appropriate.

Dr. Sheehan cites three business journal articles [\*252] in support of his conclusion that there is not a link between incentive compensation and corporate performance. The first article surveyed several studies on the relationship between corporate performance and the levels of equity ownership by a firm's management and concluded that the studies were mixed as to whether increased equity ownership produced improved firm performance. The second article was admittedly a minority view and was predicated on the "rent extraction theory" in executive compensation. The final article cited by Dr. Sheehan is also a minority view, which leads us to the conclusion that the majority view is that there is a direct link between executive compensation and improved corporate performance.

As to Dr. Sheehan's objections regarding the level of costs assigned to the PSI shareholders, we have previously approved the recovery of incentive compensation costs through rates where: (1) the incentive compensation plans are not pure profit-sharing plans, but rather

incorporate operational as well as financial performance goals; (2) the incentive compensation plans do not result in excessive pay levels beyond what is reasonably necessary to attract a talented workforce; [\*253] and (3) shareholders are allocated part of the cost of the incentive compensation programs. PSI's incentive compensation plans incorporates operational goals as well as pure profit sharing goals. The Towers study demonstrates that these incentive compensation plans are not excessive and are reasonable to attract and retain the employees required to manage and operate PSI. Accordingly, we find that PSI's *pro forma* adjustment for employee incentive compensation is appropriate and should be approved.

(10) Voluntary Early Retirement Program Expense.

(a) Evidence. PSI proposed an adjustment to its test year Voluntary Early Retirement Program ("VERP") expense. It proposed to eliminate the actual 2002 VERP expense of \$ 19,100,000 and replace it with a representative level of annual VERP expense of \$ 5,389,000. Pet. Ex. Y-6, Sch. C-3.9. Mr. Howe sponsored this adjustment on the basis that all related employee expense levels in this case reflect the reduced number of employees resulting from PSI's VERP. It is only appropriate, he said, to reflect the corresponding costs of those employee reduction programs over the years for which rates approved in this case will be in effect, [\*254] especially when such costs are less than the corresponding cost savings (benefits) proposed to be reflected in PSI's rates. Pet. Ex. Y, pp. 6-7.

Mr. **Verhagen** testified that from 1995 through 2001, PSI offered five different VERPs to reduce employees. Pet. Ex. R, pp. 38-39. In 2002, he said, PSI offered three separate VERPs which essentially offered enhanced retirement benefits to those employees who accepted early retirement. *Id.* at 39. Mr. **Verhagen** stated that of the 425 employees eligible to participate in the Company's 2002 VERPs, 302 employees accepted the Company's offer.

OUCG witness Carver proposed to eliminate PSI's VERP adjustment, thereby eliminating from rates any VERP expenses. Pub. Ex. No., 3, Adj. C-13. Mr. Carver did not dispute the wisdom of, or need for, VERPs. Pub. Ex. No. 1, at 40. Nor did he question the recurring nature of these expenses. Tr. at P62-P63. Rather, the basis for his disallowance was his opinion that because the reduced expenses have been experienced since 2002, but will not be reflected in rates until April, 2004, PSI's shareholders have already received some of the benefits of the VERPs. *Id.* at 41. Mr. Carver claimed that the Company was [\*255] seeking a deferral and amortization of the actual 2002 VERP expenses, and that it was not appropriate to recover from customers the costs of the VERPs on a prospective basis when PSI does not propose to flow through to customers the related savings on a retroactive basis. Mr. Carver estimated these retroactive savings to be \$ 16.9 million. As an alternative to complete disallowance, Mr. Carver proposed that PSI be allowed to amortize over four years the difference between the 2002-03 expense of \$ 21.554 million and the pre-2004 savings estimate of \$ 16.9 million.

In response, Mr. Howe pointed out that PSI's salaries and wage expense in this case eliminated all of the former employees who elected to take the 2002 VERP, even if those people had not yet left the Company. Pet. Ex. PP, pp. 5-6. He clarified that PSI was not seeking a deferral and amortization of the actual 2002 VERP expenses, but rather, PSI was seeking to have a representative level of VERP expenses built into future rates. At the hearing on PSI's rebuttal case, Mr. Howe indicated that he has checked the reasonableness of his proposed annual VERP amount. He indicated that PSI has conducted six VERP offerings in the last [\*256] five years, with an average annual cost of approximately \$ 5.6 million. He also noted, that since PSI filed its case-in-chief testimony, the Company has instituted another VERP program in 2003 at a cost of about \$ 4 million. Mr. Howe indicated that this evidence supports PSI's proposed annual VERP expense of approximately \$ 5.4 million. Tr. at Y34 - Y35.

(b) Discussion and Findings. In order to frame the issue for our consideration, PSI proposed to eliminate the actual 2002 VERP expense of \$ 19,100,000 and replace it with a representative level of annual VERP expense of \$ 5,389,000. Pet. Ex. Y-6, Sch. C-3.9. The OUCC's proposed adjustment, taken in conjunction with PSI's adjustment, would serve to eliminate VERP expenses from rates. Pub. Ex. No., 3, Adj. C-13. In order to undertake our review of this issue, we accept PSI's VERP adjustment as the appropriate starting point for our consideration and resolution of this issue.

Based on our review of the evidence presented on this issue, PSI appears to have premised its *pro forma* adjustment on a methodology that would effectively amortize the cost of its 2002 VERP over a four-year period. While we recognize that costs rise and fall [\*257] between rate cases, the *pro forma* adjustment developed by PSI, which projects future costs (but not savings) from programs that may or may not occur, fails to fully address many issues, including: the anticipated level of any future workforce reduction programs; the costs associated with the programs; and, the anticipated level of overall savings associated with the implementation of future VERPs.

In evaluating PSI's request for a *pro forma* adjustment for VERP expenses, we recognize that implicit in undertaking VERPs is the expectation that there will be short term costs and possible long term savings associated with the programs. Accordingly, in undertaking our review of this issue we must consider the anticipated future level of such programs in conjunction with any cost savings that may occur as a result of the programs. Based on the evidence presented, we cannot determine, with any degree of certainty the actual level of costs and savings associated with the possible implementation of future VERPs. Therefore, we accept the OUCC's adjustment and find that VERP expenses should not be included in rates.

#### (11) Property Taxes.

(a) Evidence. PSI's *pro forma* operating [\*258] expenses included an adjustment of \$ 151,000 to test period property taxes. Pet. Ex. X-23, as revised by the August 31, 2003 cut-off date update filing. PSI witness Farmer sponsored this adjustment and included the tax law changes noted in the testimony of PSI witness Charles J. Winger.

Mr. Winger explained that the 2002 Indiana General Assembly legislated changes in the manner that required Indiana property taxes to be re-calculated for the actual 2002-pay 2003 tax year. Pet. Ex. Q, p. 7; Pet. Ex. X, p. 29. Mr. Winger testified that property tax is a function of two basic factors: (1) the assessed value of real and personal property; and (2) the property tax rate. Pet. Ex. Q, p. 11. PSI estimated the assessed value of its real and personal property to be \$ 1,301,708,000, which represented actual plant balances as of September 30, 2002, plus *pro forma* adjustments for plant additions, retirements and estimated changes in material, supplies and fuel inventories, as determined by Mr. Farmer. Mr. Winger estimated the tax rate to be 2.49%. He started with the actual 2001-pay 2002 average tax rate for PSI of 2.64% and adjusted it downward by 5.7%. This downward adjustment was determined [\*259] by comparing the average Indiana statewide net tax rate for the 1994-pay 1995 to the same rate for the 1995-pay 1996, the last time that Indiana experienced a statewide reassessment of real property.

Mr. Farmer took into account the information provided by Mr. Winger and accounted for the *pro forma* plant additions and retirements listed on Schedule B-2, the adjustment to the coal stock inventory from Schedule B-4 and the adjustment to the material and supplies inventory from Schedule B-6. He also estimated a payment in lieu of taxes applicable to the Madison Generating Station, in the amount of \$ 952,000, and he eliminated 50% of the Child Care Center property taxes. These changes resulted in a *pro forma* total property tax expense of \$ 31,421,000 and an adjustment to test year operating expense of \$ 151,000. Pet. Ex. X-23, updated October 6, 2003.



OUCG witness Carver proposed the elimination of Mr. Farmer's adjustment to test year property taxes. Pub. Ex. No. 3, Adj. C-19. Mr. Carver did not necessarily disagree with PSI's calculations. Rather, he said, the basis for his disallowance is the delay that has been experienced statewide in the finalizing of assessed values, tax [\*260] rates and tax bills. Pub. Ex. No. 1, p. 104. Mr. Carver's adjustment was a "placeholder" until more complete property tax data becomes available in August and September, 2003, he said. Mr. Carver proposed that the property tax annualization be updated as an exception to the Prehearing Conference Order. Pub. Ex. No. 1, pp. 107-108. He proposed that: (1) PSI update its calculations for actual tax bills; (2) update Schedule WPC-3.38c to reflect final and provisional tax bills; (3) if any provisional tax bill exceeds 50% of the previous tax bill, reduce such amount to reflect the lesser of 50% of the prior tax bill or the 2001 total tax bill adjusted to reflect the composite net increment/decrement for all other counties with final tax bills; and (4) identify all counties that have failed to provide final or provisional tax bills and the annualization for these counties should be based on the 2001 tax bill adjusted in the manner called for in item (3).

Mr. Farmer opposed Mr. Carver's proposal and noted that the 2001 tax liability is primarily based upon *the* assessed value of property at December 31, 2000. Pet. Ex. QQ, pp. 34-37. The problem with Mr. Carver's proposal is that these [\*261] assessed values will not be matched or synchronized with the value of plant included in this case and therefore will likely not be representative of an ongoing level. Mr. Farmer further observed that changing the property tax valuation method to fair value will not have a significant impact on PSI property assessments, because over 90% of PSI's assessed value is made up of property referred to as "state board distributable" property. The assessed value of such property is predicated on the net tax basis of the property (net book value) as recorded on the Company's books. In Mr. Farmer's view, it would be inappropriate to use the net book values as of December 31, 2000, as proposed by Mr. Carver, given that the test period in this case is based on a 2002 test period pro formed into 2003. Mr. Farmer opined that the December 31, 2000 property evaluation and assessments are stale and do not provide the proper matching of plant costs included in the rate base in this case. *Id.* Mr. Farmer also testified that Mr. Carver's proposal to use the lesser of 2001 pay 2002 tax or the 2001 tax adjusted for some net increment/decrement is also flawed because the basic presumption behind Mr. Carver's [\*262] proposal is that the 2002 pay 2003 tax bills in all counties will change from the prior year by the same percentage relationship.

As an alternative to Mr. Carver's proposal, Mr. Farmer proposed that the Company's proposed retail jurisdictional portion of property tax expense (\$ 30,100,000) should be included in PSI's base rates. *Id.* at 38-39. If the jurisdictional portion of any future annual property tax expense, using allocators approved in this case, is less than \$ 30,100,000, PSI will return to customers the amount by which the base level exceeds the jurisdictional portion of property tax actually billed and charged to expense. PSI will return any excess amount to customers through one of PSI's tracking mechanisms that allocate costs based on demand allocators, since property tax is allocated based on demand. (*i.e.*, CWIP tracker, Clean Coal Operating Cost tracker, or Summer Reliability Tracker). This credit mechanism would continue until the first year that PSI's actual property tax expense exceeds the amount included in base rates, at which time the crediting would end for that and all succeeding years.

(b) Discussion and Findings. This Commission is certainly cognizant [\*263] of the uncertainty facing millions of property owners, including public utilities, created by the statewide reassessment mandated by the Indiana courts and the General Assembly. We appreciate the creativity of the parties in attempting to deal with these uncertainties. After considering all of the evidence, we are persuaded that Mr. Farmer's rebuttal proposal should be adopted. Importantly, this ensures that PSI's customers will pay no more than PSI's actual property tax expense for a given year. Another advantage of this proposal is the

administrative ease by which it can be implemented and reviewed by this Commission and any party of interest. Given that PSI's actual 2001-pay 2002 tax is within \$ 151,000 of PSI's proposed property tax level, and that PSI has added significant taxable property since 2001, we find it reasonable for PSI to include its proposed property tax expense in base rates and to implement its proposed reconciliation and crediting mechanism, utilizing the CWIP tracker, Standard Contract Rider No. 62.

(12) Trading Expense.

(a) Evidence. PSI proposed an adjustment to test period expenses related to certain trading expenses. Mr. Farmer testified as to a representative [\*264] level of trading expense based on actual test period amounts. Pet. Ex. QQ, pp. 39-40. He stated that PSI's July 31, 2003 update removed \$ 5,124,000 in trading expenses for trading floor rent, building expense and other trading related costs that were charged to test period expense. A portion of this *pro forma* adjustment (approximately \$ 3.9 million) was removed from test period expenses, not because it was not representative or properly allocated to PSI, but because of the existence of an explicit off-system sales profit sharing mechanism included in PSI's proposed Summer Reliability Tracker. PSI's rationale for excluding this portion of the trading expenses was that there were likely incremental O&M expenses embedded in its test period expenses associated with maximizing off-system sales profits. Because incremental O&M expenses associated with maximizing off-system profits are not separately identified or accounted for on PSI's books and records, these trading expenses are intended to serve as a proxy for the potentially embedded incremental O&M costs. PSI reasoned that, if the explicit off-system profits incentive sharing mechanism in its proposed Summer Reliability Tracker [\*265] is approved and implemented, it would be appropriate to remove these "proxy" incremental O&M expenses. Conversely, PSI stated that if the proposed Summer Reliability Tracker is not approved, it would be appropriate to include these trading expenses in PSI's revenue requirements.

Mr. Farmer explained that these expenses represent personnel and systems costs that are properly allocated to PSI based upon PSI's use of trading personnel for both off-system purchases and sales. These expenses consist of costs related to power trading functions; rent and building expense; salaries, benefits and expenses for confirmation and billing functions; generation and supply scheduling; costs of transmission scheduling and congestion management; Information Technology support; trading expenses in the Midwest; and general management of trading activities. Mr. Farmer testified that these expenses result in a total cost of \$ 3,953,000. Mr. Farmer indicated that the remainder of the expenses eliminated by PSI in its July 31, 2003 update (\$ 1,171,000) did not support PSI's off-system sales activities and therefore should be excluded from PSI's revenue requirements with or without approval of the Summer [\*266] Reliability Tracker. Pet. Ex. QQ, p. 40.

The OUCC, while opposing the Summer Reliability Tracker and the explicit incentive sharing mechanism for off-system profits, made no corresponding adjustment for PSI's elimination of the related trading expenses. Mr. Brosch surmised that the trading cost exclusion remained appropriate even if PSI off-system sales are not tracked because the implementation of the JGDA results in PSI being more insulated from trading results in that all new off-system sales of PSI energy occur through intercompany transfers to CG&E.

(b) Discussion and Findings. Consistent with our determination that test-period off-system sales profits of \$ 18.7 million should be included in base rates, and that an amount for trading expenses should be reflected in a corresponding reduction of the amount included in base rates, we find that PSI's *pro forma* expenses shall include \$ 3,953,000 for trading expenses.

(13) Deferred Costs.

(a) Deferred Dynegy Buyout Costs.

(i) Evidence. In 1999, PSI and the OUCC entered into a Settlement Agreement pertaining to a buyout of PSI's Gasification Services Agreement with Dynegy Power Corp. -- an agreement whereby Dynegy [\*267] provided PSI with synthetic gas for use at PSI's Wabash River Coal Gasification Repowering Project ("WRCGRP"). This Commission, in an order dated September 9, 1999 in Cause No. 41468, approved the PSI/OUCC Settlement Agreement. Pursuant to this settlement agreement, PSI was authorized to recover the costs of the contract buyout fee, "Costs to Achieve" (additional costs to implement the buyout transaction, specifically, the costs involved in converting the WRCGRP to use both natural gas and syngas), and carrying costs on the unamortized balance of the buyout fee and the costs to achieve, over an 18-year period (the "Dynegy Buy-out Amortization"). Pet. Ex. X, pp. 22-23; Settlement Agreement, Cause No. 39312, pp. 3-4 (PSI Motion for Administrative Notice Filed May 30, 2003).

In this case, PSI proposed an upward adjustment of \$ 928,000 to the annual Dynegy Buy-out Amortization. Pet. Ex. X-14, Sch. C-3.25. Mr. Farmer explained that this adjustment reflects the transfer of certain plant installed in the WRCGRP conversion process from the Dynegy Buy-out Amortization amount to PSI's rate base, and the "true-up" of the costs to achieve to the actual costs incurred by PSI in connection with [\*268] the buyout and conversion. Pet. Ex. X. p. 22.

OUCC witness Brosch, in OUCC Adjustment C-9, proposed a \$ 2,651,000 reduction in PSI's total Dynegy Buy-out Amortization expense, citing a number of perceived problems with PSI's calculations underlying the unamortized amount. First, Mr. Brosch objected to the capitalization of labor costs within the deferred costs to achieve, theorizing that such capitalization could lead to a double recovery of labor costs that were reflected in PSI's rates in Cause No. 40003. Pub. Ex. No. 2, p. 79. Accordingly, Mr. Brosch removed \$ 981,608 in capitalized labor costs that were incurred to convert the facility to a dual fuel plant. Pub. Ex. No. 2, pp. 81-82. Second, Mr. Brosch objected to PSI's calculation of the Buy-out Amortization amount because he believed the Amortization amount should be calculated to reflect tax savings created by the deductibility of the one-time buy-out cost of \$ 246.7 million. *Id.* Mr. Brosch stated that PSI is calculating carrying costs on the entire buy-out amount of \$ 246.7 million, even though its actual cash outlay was \$ 146.7 million, by his calculations, after taking into consideration his estimate of the associated [\*269] tax benefits. According to Mr. Brosch, customers have received no benefit from the income tax deferrals, because there has been no rate case to account for changes in capital structure and capital costs since Cause No. 40003. *Id.* at 84. Mr. Brosch thus calculated carrying charges on the buy-out amount *after* deducting his estimated tax benefits. *Id.* at 84-85.

In response, Mr. Farmer indicated that there is no double recovery, real or potential, of labor costs. Pet. Ex. QQ, pp. 22-24. He pointed out that labor costs associated with construction projects are capitalized and are not treated as an ongoing expense for ratemaking purposes - a point that Mr. Brosch generally agreed with on cross-examination. Pet. Ex. QQ, p. 22; Tr. at Q25-Q28. Mr. Farmer explained that Mr. Brosch's labor adjustment assumes that the labor force involved in the conversion came from the labor pool, the costs of which were expensed in the last rate case as non-construction, as opposed to the pool of employees the costs of which were capitalized. Mr. Farmer pointed out that Mr. Brosch has provided no support for this assumption. In fact, as Mr. Farmer explained, in PSI's last rate case, 22% of the [\*270] Company's labor costs were capitalized. Mr. Farmer also pointed out that capitalized labor costs are ultimately recovered from customers over time in the form of depreciation expense. Hence, he said, there is no double recovery of labor costs because the labor costs incurred during the conversion are likewise recovered over time through the Buy-out Amortization, not as an ongoing level of expense. Pet. Ex. QQ, pp. 22-24.

As to Mr. Brosch's proposal to reflect tax benefits as a reduction in the amount to be

recovered through the Buy-out Amortization, Mr. Farmer explained that the entire basis for Mr. Brosch's adjustment (*i.e.*, that customers have not benefited from the income tax deferrals because the transaction occurred between rate cases) is incorrect. Customers have, in fact, received benefits. Pet. Ex. QQ, p. 26. Mr. Farmer cites three changes in PSI's rates related to the recovery of carrying charges on qualified pollution control property that utilized PSI's updated cost of capital -- including the tax benefits cited by Mr. Brosch. Mr. Farmer testified that each updated cost of capital included zero cost deferred income taxes as recorded on the Company's books, including [\*271] the Dynegy deferred income taxes related to the Dynegy buyout. Mr. Farmer calculated this benefit as producing \$ 1,102,000 in annual savings to customers. Pet. Ex. QQ, p. 27. Mr. Farmer pointed out that if Mr. Brosch's adjustment were accepted, customers would receive benefits from Dynegy deferred taxes twice: once through the reduction in the amortization of the Dynegy regulatory asset, and a second time through calculation of CWIP revenues. *Id.* In addition, Mr. Farmer pointed out that Mr. Brosch only considered the cash flow implications of the Dynegy deferred income taxes up until the assumed order date in this proceeding, without looking beyond the cash flow implications after the order in this proceeding. For example, Mr. Farmer explained that, the cash flow benefit of the Dynegy tax deduction decreases over time as the deferred taxes payback.

With regard to Mr. Brosch's elimination of depreciation expense when calculating interest and the regulatory asset amortization, Mr. Farmer observed that the Settlement Agreement in Cause No. 41468 clearly states that PSI is entitled to recover "costs to achieve" in addition to recovery of carrying charges on the unrecovered amounts. [\*272] Pet. Ex. QQ, pp. 28-29. Thus, according to Mr. Farmer, PSI is entitled to recover a return on, as well as a return of, PSI's actual costs to achieve.

(ii) Discussion and Findings. The outcome of this dispute is determined by our approval of the provisions of the Settlement Agreement and basic utility ratemaking principles. The Settlement Agreement provides that PSI shall be entitled to recover, over an 18-year period, the Indiana retail jurisdictional portion of the Buy-Out Fee, including estimated costs to achieve. The Settlement Agreement further provides that PSI shall also be entitled to recover carrying costs on the unamortized balance of such amount. In short, this provision provides that PSI is entitled to a return of (*e.g.*, labor and depreciation expense), and a return on (*e.g.*, carrying costs), its investment associated with the Dynegy buy-out.

The Settlement Agreement expresses the intent that PSI be allowed to recover all of the costs associated with converting the WRCGRP to natural gas. To the extent that labor costs were incurred as part of the conversion project, Mr. Farmer demonstrated that such costs were capitalized and were properly recorded as costs [\*273] to achieve. Pursuant to the Settlement Agreement, PSI is entitled to recover these labor costs through amortization. The same conclusion for depreciation (PSI's capital investment) is inescapable under the Settlement Agreement. In fact, Mr. Brosch agreed on cross-examination that both labor and depreciation (capital investment) costs were incurred by PSI in connection with the conversion of the WRCGRP to natural gas use. Significantly, while Mr. Brosch proposed to exclude both labor and depreciation costs from the amortization calculations, he confirmed that depreciation costs were a part of PSI's initial 1999 estimate of costs to achieve.

In sum, we decline the invitation to reopen the Settlement Agreement entered into between PSI and the OUCC, and find that PSI's adjustment for the Dynegy Buy-out Amortization is reasonable and should be accepted.

(b) Merger Costs.

(i) Evidence. In this case, PSI proposed a *pro forma* adjustment of \$ 7,419,000 for unrecovered merger transaction costs and costs to achieve merger benefits incurred through October 31, 1996. This *pro forma* adjustment was designed to allow PSI to recover its total

unrecovered merger-related costs of \$ 46,206,000 [\*274] over a four-year period. Mr. Howe sponsored the annual amortization amount of \$ 11,559,000. Pet. Ex. Y-12, Sch. C-3.16.

PSI witness Steffen explained that this Commission, in Cause No. 40003, determined that PSI's deferred merger transaction costs were reasonable, and authorized PSI to recover the merger transaction costs deferred through January, 1995 (\$ 23.7 million) over a 10-year period (\$ 2.4 million per year), beginning October 1, 1994. Pet. Ex. C, p. 25. He testified that as of the applicable cut-off date, PSI's unrecovered deferred merger transaction costs will approximate \$ 2.6 million. PSI proposes to amortize the projected unamortized balance of merger transition costs over four years.

Mr. Steffen further testified that this Commission in Cause No. 40003 authorized PSI to recover in rates its costs to achieve merger savings incurred up to August 31, 1995 (\$ 17.7 million), amortized over a 10-year period, and to defer, for subsequent recovery, its costs to achieve merger savings incurred after August 31, 1995 until October 31, 1996. Pet. Ex. C, p. 26. Mr. Steffen stated that the Company's incurred costs to achieve merger savings consisted primarily of the costs of voluntary [\*275] workforce reductions programs, relocation, information systems consolidation and re-engineering efforts associated with the consolidation of operations. *Id.* He also testified that the recovery of such costs was reasonable and consistent with the Settlement Agreement and Orders in Cause No. 40003, because they were required to complete the merger and realize the related merger benefits reflected in PSI's proposed revenue requirement. *Id.* at 27.

OUCG witness Brosch proposed to significantly reduce PSI's proposed adjustment, so as to lengthen the recovery period from four additional years (PSI's proposal) to ten additional years -- without carrying costs. Pub. Ex. No. 3, Adj. C-10. Mr. Brosch rationalized this additional 6-year recovery period on the basis that PSI retained the labor savings realized from 1997 through 2003 for its shareholders and now proposes to charge customers, over a 4-year period, the costs that generated such savings. Pub. Ex. No. 2, p. 97.

In rebuttal testimony, Mr. Howe disputed Mr. Brosch's proposal that PSI recover its merger savings costs over ten years, without carrying charges. Pet. Ex. PP, pp. 7-8. He noted that the Settlement Agreement and the [\*276] related Commission Order in Cause No. 40003 approved a total amortization period of ten years, and that PSI's adjustment even increases the recovery period by one year. By comparison, he pointed out, Mr. Brosch's adjustment increases the recovery period to a total of 16 years.

(ii) Discussion and Findings. Pursuant to several settlement agreements and orders, we have previously recognized that PSI is entitled to recover merger transaction costs, and costs to achieve merger savings incurred up until October 31, 1996, over a 10-year period. Mr. Brosch does not dispute the reasonableness of these deferred merger savings costs, nor does he dispute the entitlement of PSI to recover these costs. Instead, Mr. Brosch argues that since the related merger savings were not reflected in the Company's rates during the deferral period, the amortization period agreed to by the OUCG in Cause No. 40003 should be extended by six additional years. As we have previously authorized PSI's recovery of these incurred costs over a 10-year period we find that the Company's proposed adjustment reflects a consistent application of the previously-approved settlement agreements and orders. Accordingly, we approve [\*277] PSI's proposed *pro forma* adjustment on this issue.

(c) Amortization of Midwest ISO-Related Deferred Costs.

(i) Evidence. PSI proposed recovery, via a four year amortization, of the deferred MISO administrative costs, consistent with this Commission's December 1, 2002, Order in Cause Nos. 42257 and 42266, which authorized the deferral of certain costs incurred as a result of taking transmission service for retail customers under the Midwest ISO open access

transmission tariff ("OATT"). In entering that order, we approved a Settlement Agreement among PSI, Vectren Energy Delivery of Indiana, Inc., Indianapolis Power & Light Company and the OUCG that allowed PSI and the other utilities to defer ongoing Midwest ISO Administrative Adder Costs (*i.e.*, costs incurred under Midwest ISO Schedules 10 and 10-B), for subsequent recovery in a base rate case from Indiana retail customers, over a four-year amortization period. Pet. Ex. Z, pp. 29-30.

OUCG witness Mr. Carver originally opposed the recovery for the reason that the "MISO cost deferral and amortization recovery request does not appear to represent either the net cost incurred by the Company or ongoing expense levels." Pub. [\*278] Ex. No. 1, pp. 51-53. Mr. Carver testified that, the Company experienced a rather notable increase in 2002 transmission revenues in comparison to 2001 and that this increase over 2001 appears to have been maintained during 2003. *Id.*, at 56. Mr. Carver concluded that because PSI had the benefit of these increased revenues, it should be denied recovery of the deferred costs.

On rebuttal, PSI witness Kent K. Freeman pointed out that the assumption upon which Mr. Carver based his position, namely that "PSI has realized a significant increase in transmission revenues," was unfounded. In comparing later periods to 2001, Mr. Carver had failed to include all transmission revenues which are included in two different account numbers, -- accounts 447850 and 456850. Pet. Ex. RR, p. 2. Mr. Freeman observed that, if the overlooked revenue from account 447850 had been included for the calendar years 2001 and 2002 and year-to-date August, 2003, Mr. Carver would have seen that there was *not* a significant increase in transmission revenues in 2002 over 2001. *Id.* at 3. Indeed, including revenues from both accounts for all three periods showed that PSI transmission revenues had *decreased* [\*279] in both 2002 and year-to-date 2003. *Id.*

Additionally, Mr. Freeman observed that Mr. Carver, failed to take into account the substantial benefits that the Midwest ISO has provided to PSI's customers, as discussed in the testimony of PSI witness Ronald R. Jackups, Pet. Ex. M, pp. 23-26, and as observed by this Commission in its final order entered in Cause Nos. 42027 and 42032 (*Ind. Util. Reg. Comm'n*, December 17, 2001), approving the transfer to the Midwest ISO of functional control of operation of PSI's transmission facilities. These benefits, he said, include, among other things, the substantial benefits of increased market competition and elimination of pancaked transmission rates within the Midwest ISO. *Id.*

In reaction to Mr. Freeman's testimony, Mr. Carver presented a Revised Pub. Ex. No. 3, which, in effect, accepted PSI's amortization of deferred MISO costs. Mr. Carver admitted that his adjustment to Schedule C-14 was intended to allow PSI recovery of the full amount of its proposed MISO amortization. Tr. at P70. On direct examination at the hearing, Mr. Freeman indicated that it was his understanding that Mr. Carver had intended to accept PSI's proposal, but that [\*280] in order to do so, Mr. Carver needed to make one minor adjustment to his schedule. Mr. Carver had made an adjustment to the *pro forma* level to eliminate the portion related to PSI's wholesale customers. However, when the deferred balance was updated through August 31, 2003, PSI had removed the wholesale portion from the account, correcting the error. Thus, Mr. Carver's adjustment was no longer necessary.

(ii) Discussion and Findings. It appears based on the foregoing, that there is no current dispute over the appropriateness of including the four-year amortization of deferred MISO expenses. We therefore accept PSI's adjustment in this case to recover over four years its deferred Midwest ISO-related administrative costs.

(d) Post-In Service (Deferred) Depreciation and AFUDC.

(i) Evidence. Mr. Carver sponsored OUCG Adjustments B-1 and C-18. Adjustment B-1 adjusts PSI's Schedule B-3, which includes in PSI's rate base an estimate, subject to true-up, of the August 31, 2003 book balance related to the post-in-service capitalization of carrying costs

and depreciation expense. Adjustment C-18 adjusts the Company's Schedule C-3.37, which reflects the Company's *pro forma* [\*281] amortization of deferred depreciation and AFUDC/carrying cost continuation on estimated deferral balances as of August 31, 2003.

(ii) Discussion and Findings. The sole basis for these adjustments was Mr. Carver's utilization of Mr. Majoros' depreciation rates instead of the depreciation rates sponsored by Mr. Spanos. Public's Ex. No. 1, p. 103. Given our findings above with respect to PSI's depreciation in this order it is not appropriate to make further adjustments.

(14) Interest Synchronization. Mr. Carver sponsored OUCC Adjustment C-20, which synchronized the interest deduction for income tax purposes with the OUCC's weighted cost of debt and rate base recommendations. As Mr. Carver made clear, however, the only reason for this adjustment is that the OUCC utilized a different rate base and cost of capital than PSI. Pub. Ex. No. 1, p. 111. He indicated that if the Commission ultimately adopts a rate base and cost of capital different than that proposed by the OUCC or PSI, interest synchronization should be recalculated, using the Commission's findings. Thus, there is really no issue here. The Commission's revenue requirement ultimately approved here will include interest [\*282] synchronization that is consistent with the rate base and cost of capital approved herein.

E. Conclusion. On the basis of the foregoing, we find that PSI's *pro forma* jurisdictional electric net operating income under present rates, adjusted to a level which fairly represents its current operations, is \$ 196,564,000, summarized as follows:

Operating Revenues	\$ 1,284,140,000
Operating Expenses and Taxes:	
Fuel Expense	378,286,000
Purchased & Exchanged Power Expense	(5,228,000)
Other Operation and Maintenance Expense	386,214,000
Operating Revenue Deduction	(28,917,000)
Depreciation and Amortization Expense	218,316,000
Taxes Other than Income Taxes	58,415,000
Federal and State Income Taxes	80,491,000
Total Operating Expenses and Taxes	\$ 1,087,576,000
Net Operating Income	196,564,000

When applied to the fair value rate base determined for Petitioner in Finding No. 4C above, this operating income produces a return of only 4.05%, which is outside the range established in Finding No. 5C. In addition, the return on Petitioner's original cost depreciated rate base would be 5.37%, which is below the Commission's determination of 7.30%. Accordingly, on the basis [\*283] of the evidence and the foregoing determinations, we find that the electric operating income to Petitioner, under its present rates for the electric utility service rendered and to be rendered by it, is not sufficient to provide Petitioner a fair return upon the fair value of its electric properties used and useful for the convenience of the public. Therefore, Petitioner's current rates are unjust and unreasonable.

**7. Rate Level to be Authorized** We find that a net operating income of \$ 267,500,000 is hereby found to be a fair return upon the fair value of Petitioner's electric property used and useful and reasonably necessary for the convenience of the public. This provides a fair rate of return of approximately 5.51% which is within the range of reasonableness established in Finding No. 5C. In order to provide such utility operating income, an increase in Petitioner's gross annual retail electric operating revenues to \$ 1,406,596,000 is required. The increase in revenues will give rise to increased tax expense and as a result, total operating expenses

will be \$ 1,139,096,000. On that basis, we find that Petitioner's *pro forma* operating results will be:

Operating Revenues	\$ 1,406,596,000
Operating Expenses and Taxes:	
Operation and Maintenance Expenses	731,041,000
Depreciation and Amortization Expenses	218,942,000
Taxes Other than Income Taxes	60,129,000
Federal and State Income Taxes	128,984,000
Total Operating Expenses and Taxes	\$ 1,139,096,000
Net Operating Income	\$ 267,500,000

**[\*284]**

Our findings as to the appropriate level of *pro forma* operating results are based on the evidence of record and giving appropriate weight to the need for Petitioner to maintain and support its credit, to attract capital necessary to discharge its public duties and to earn a return commensurate with that earned by enterprises of corresponding risk. We find that rates estimated to produce these results are just and fair and should allow Petitioner the opportunity to earn a reasonable return on its property dedicated to providing electric utility service to the public. Accordingly, on the basis of all of the evidence and the foregoing determinations, we find that the retail electric rates authorized herein for the electric utility service rendered, and to be rendered, should provide a fair return on the fair value rate base of its electric properties used and useful for the convenience of the public, and therefore are just and reasonable.

## **8. Revenue Allocation.**

### **A. Jurisdictional Separation and Retail Cost of Service Studies.**

(1) Evidence. PSI submitted the results of its jurisdictional separation and retail cost of service studies, prepared by Kent K. Freeman, **[\*285]** PSI's Manager, Rates Services. In performing these studies, Mr. Freeman utilized the average of the 12 monthly coincident peak demands on its system ("12-CP") methodology to allocate production and transmission demand-related plant costs and expenses. Mr. Freeman testified that use of the 12-CP methodology allocates production demand related costs to each customer class on the basis of its contribution to the average of the 12 coincident monthly peaks during the test year. Pet. Ex. Z, pp. 3,5,19,22 and 23. This is the same methodology that PSI has utilized, and this Commission has accepted, on numerous occasions since 1971. According to Mr. Freeman, the 12-CP method is also consistent with the FERC's allocation guidelines in PSI's case.

In performing his separation study, Mr. Freeman said that he first segregated PSI's customers into three categories: (1) one customer who purchases high pressure steam from PSI's Cayuga Generating Station; (2) wholesale customers who purchase firm power from PSI and resell it to ultimate consumers or to their members for resale (e.g., WVPA and IMPA); and (3) retail electric customers who purchase firm power from PSI as ultimate consumers. *Id* **[\*286]** . at 6. Thereafter he allocated costs among PSI's retail customers, utilizing the 12-CP method to allocate production demand related costs. Pet. Ex. Z-7 summarizes the resulting jurisdictional separation based on Mr. Freeman's studies. Pet. Ex. Z-13 summarizes the results of PSI's retail cost service study, after reflecting a proposed 33% subsidy/excess reduction. *Id.* at 28.

Nicholas Phillips testified for the PSI-IG and proposed an alternative cost of service study methodology. His methodology was based on the average of the coincident peaks in the four summer months ("4-CP"), which he contended, because PSI has been a summer peaking



system in recent years, "more accurately reflect PSI's electric system and cost structure." PSI-IG Ex. No.1, p. 10. He contended that the 12-CP method is appropriate only for a system with a flat load pattern in which each of the monthly coincident peaks is relatively equal. PSI-IG Ex. No.1, p. 10.

OUCG witness Michael Brosch, supported Petitioner's use of the 12-CP method to allocate production demand related costs. He discussed the "peak and average" method to allocate such costs, which includes an energy weighting in the development of the production [\*287] demand allocator, but accepted the use the 12-CP methodology, as a "compromise between usage of fewer peak hours and utilization of an energy weighted methodology such as Peak and Average." Pub. Ex. No. 2, pp. 100-106.

In response to Mr. Phillips' proposition to utilize the 4-CP method to allocate production demand related costs, Mr. Freeman indicated that this Commission has recognized that a utility's ability to utilize valley period months to perform scheduled maintenance is a reason to use the 12-CP approach. Pet. Ex. RR, p. 12. In that regard, this Commission has stated, "the 12-CP method is often utilized to reflect the full range of operating realities throughout the year including system demand, scheduled maintenance, and reserve requirements." *Indiana Michigan Power Company*, Cause No. 39314, (*Ind. Util. Reg. Comm'n*, October 15, 1997, at 171). Mr. Freeman defended his continued use of the 12-CP methodology and was critical of Mr. Phillips for having analyzed only system demand, without taking into account these other considerations. Pet. Ex. RR, p. 12. Mr. Freeman noted that the 4-CP methodology is used by PSI where it is appropriate -- in the tracking of purchased [\*288] power costs incurred for the summer months only. Pet. Ex. RR, p. 13.

Mr. Freeman testified that the utilization of a cost allocation methodology has a major impact on the total cost of service assigned to the retail jurisdiction and then among retail customer classes. Pet. Ex. RR, p. 12. It similarly has a significant impact on rate groups and, thus, even if one were to agree with Mr. Phillips that PSI's loads have changed, he did not believe that such a fact would automatically lead to a reallocation of all past investments in production facilities. He observed that a majority of PSI's production facilities were in service during the last PSI retail rate case test period and the 12-CP methodology was utilized in the retail cost of service study underlying the rates approved in that case. He thought it inappropriate now to in effect "reallocate" those facilities in this case." Pet. Ex. RR, pp. 12-13.

(2) Discussion and Findings. We find that PSI's use of the 12-CP methodology to allocate production demand related plant and operating costs is reasonable, based on the testimony of Messrs. Freeman and Brosch. While qualified experts may differ on which methodology is the best fit, [\*289] based on the evidence presented in this Cause, we cannot conclude that PSI's choice of the 12-CP is unreasonable. We agree with Mr. Freeman that a change in cost allocation methodology can have significant impacts on customer classes and, thus, such a change should not be lightly undertaken, especially where, as here, so much of PSI's plant was in service at the time of its last rate case and costs were assigned using the 12-CP methodology in that case. We find that the results of PSI's jurisdictional separation and retail cost of service studies should be accepted and utilized to allocate operating revenues among customer classes and to design PSI's retail electric rates.

#### B. Reduction in Subsidy/Excess Revenues.

(1) Evidence. PSI proposed a 33% reduction in the current levels of subsidy/excess revenues between rate groups as its movement towards fully reflecting its cost of service. Mr. Freeman explained that a review of the Company's four major rate groups shows a narrow band of current levels of subsidy/excess revenues. Further, Mr. Freeman testified that the Company's current retail cost of service study shows that the Company's current rates are substantially within the [\*290] reasonable bounds of cost-based rates. Pet. Ex. Z, p. 29, and Pet Ex. RR,

pp. 8-10.

Mr. Brosch recommended that PSI's rate class RS be "assigned no more than the overall percentage increase in total retail revenues ultimately ordered by the Commission." Pub. Ex. No. 2, pp. 108-109. Mr. Freeman concluded that Mr. Brosch's approach would decrease revenues from Rate RS by approximately \$ 6.5 million if the Company's rate request were approved in this case, which then would have to be allocated to other customer groups. *Id.* Mr. Freeman pointed out that such a shifting of cost responsibilities would negate the Company's proposed 33% reduction in inter-class subsidies, and move RS away from producing a return at virtually the system average rate of return, to a rate below the system average, as shown on Pet. Ex. RR-2, p. 2, and Pet. Ex. RR, p. 10.

(2) Discussion and Findings. We do not accept Mr. Brosch's invitation to ignore existing subsidies disclosed by Mr. Freeman's cost of service study in this case. We find that the 33% reduction in those subsidies is appropriate and should be ordered. This will be a significant step in achieving equity among rate classes, and it is consistent [\*291] with past orders of this Commission on this subject. The rates as approved herein shall produce substantially the revenue shown in the columns under Column L in Pet. Ex. Z-13, filed as part of PSI's October 15, 2003 workpapers.

## 9. Rate Design.

A Cost and Revenue Adjustment Mechanisms. The Petitioner proposed three mechanisms to track costs and revenues that it contends are substantial, variable and largely outside of its control. They include a Summer Reliability Tracker (proposed new Standard Contract Rider 70); a NO[X] Emission Allowance rate adjustment mechanism (initially proposed new Standard Contract Rider 69); and, a Midwest ISO-Related rate adjustment mechanism (proposed new Standard Contract Rider 68). PSI also proposed minor changes to its existing fuel adjustment ("Rider 60") and SO[2] emission allowance (Rider 63) tracking mechanisms, which were unopposed. We approve each of these cost and revenue tracking mechanisms as discussed below.

### (1) Petitioner's Proposed Summer Reliability Tracker.

(a) Background. Mr. Esamann explained that, since 1999, PSI has had to make substantial forward reliability power purchases for the summer months to maintain adequate [\*292] reserves to meet anticipated customer peak load requirements. Pet. Ex. B, p. 41. Because of these substantial purchased power needs, in 1999 PSI petitioned this Commission for approval of a purchased power cost tracking mechanism. This Commission initially approved PSI's purchased power tracking mechanism (PSI Standard Contract Rider 67) on a limited basis in Cause No. 41448. *Id.* at 42. In our April 2001 Order in Cause No. 41448-S1, this Commission approved the extension of that mechanism through 2002. In March 2002, in Cause No. 42200, PSI petitioned this Commission and requested the indefinite extension of its purchased power tracker. Alternatively, PSI requested that this Commission extend PSI's purchased power tracker for a 2-year period in Cause No. 42200, and ultimately resolve the design of PSI's tracker in this rate case. *Id.* at 43-44. In our June 2003 Order in Cause No. 42200, we approved the extension of PSI's purchased power tracker through 2004, and determined that the ultimate resolution of the future use of the tracker would be made in this rate case.

PSI implemented its PowerShare(R) program in 2000, in the wake of the Midwest capacity shortage and the resulting [\*293] 1998 and 1999 wholesale power market price spikes. *Id.* at 44. PowerShare(R) CallOption creates demand reductions through customer commitments to reduce load during times of system peak. Customers are compensated for this commitment to reduce demand in two ways: (1) an option premium payment, which gives PSI the right to call for load reductions within certain parameters, and (2) an energy

payment based on actual load reductions. The payments are provided in the form of customer bill credits. *Id.* Mr. Esamann said that although no contractual load reduction commitments are provided under PSI's QuoteOption, the latter is also capable of reducing demand, through appropriate pricing signals to its customers. *Id.* at 45. Under the QuoteOption, customers are compensated by means of energy credits when they choose to reduce load in response to these price signals. *Id.*

With respect to off-system sales, Mr. Esamann testified that in Cause No. 40003, \$ 6 million of off-system sales profits were built into PSI's base rates. Accordingly, in each year since 1996, PSI retail customers have received the benefit of this annual \$ 6 million credit through rates.

(b) Petitioner's Proposal [**\*294**] . PSI's proposed Summer Reliability Tracker consists of the three components discussed immediately above -- purchased power costs, PowerShare(R) costs, and off-system sales profits. With regard to the purchased power component, PSI proposed that the tracker apply to PSI's actual purchased power costs (demand components only) for forward reliability purchases (e.g., monthly or weekly forward purchases) made for the summer months of June through September in order to maintain an adequate PSI reserve margin (15% to 17%). These forward reliability purchased power costs would be eligible for recovery via the tracker, subject to PSI's demonstration to the Commission that its purchase decisions were reasonable at the time made. The energy components of such purchase costs would be eligible for recovery via PSI's fuel adjustment charge tracker. Pet. Ex. B, at p. 46. Under PSI's proposal, no level of purchased power costs would be reflected in PSI's base rates. Pet. Ex. CC, pp. 1-9.

With regard to the PowerShare(R) component of the Summer Reliability Tracker, PSI proposed that the tracker allow recovery of PSI's actual June through September PowerShare (R) CallOption and QuoteOption costs [**\*295**] above (or below) the \$ 1,023,000 test period level to be included in base rates. Mr. Bailey testified that the test year contains \$ 1,023,000 of expenditures in the form of bill credits related to PSI's PowerShare(R) CallOption program, and that even with PSI's proposed transition of this program to more traditional DSM pricing, PSI believes that program expenditures will be at or above this level. Pet. Ex. AA, p. 14; Pet. Ex. CC, pp. 1-9.

With regard to the off-system sales profits component of the Summer Reliability Tracker, PSI initially proposed to flow back to customers 100% of PSI's actual June through September off-system sales profits, plus 25% of actual PSI off-system sales profits earned in the non-summer months (October through May). In response to other parties' concerns, in rebuttal PSI modified this sharing proposal to a 50%/50% sharing of off-system sales profits achieved on a year-round basis. In the early years of the tracker's existence, PSI believes that this feature could result in the net impact of the tracker being a credit, rather than a charge, to customers. Pet. Ex. B, p. 47. Pet. Ex. CC, pp. 1-9.

Similar to the process that has been utilized for its current [**\*296**] purchased power tracking mechanism (PSI Standard Contract Rider 67), PSI proposed on an annual basis, in the spring, to present to the Commission its June through September forward purchased power and PowerShare(R) arrangements. After the close of that summer period, PSI would present the Commission with its actual June through September purchased power, PowerShare(R), CallOption and QuoteOption costs, as well as its annual off-system sales profits. After the Commission has completed its review, the net impact (credit or charge) of these June through September costs, along with 50% of PSI's annual off-system sales profits, would be passed through to retail customers via the Summer Reliability Tracker. *Id.* Pet. Ex. CC. p. 8.

Under PSI's proposal, the Summer Reliability Tracker credit or charge will be allocated to all firm retail customers based on their contribution to the summer peak demand, and the credit

or charge would be refunded or collected over a 12-month period. Non-firm or interruptible customer loads would not be allocated any of the costs or credits related to the Tracker. The credit or charge would be reconciled to actual at the end of the 12-month cycle to ensure [\*297] that only the approved credit or charge was ultimately refunded or collected through the Tracker. Pet. Ex. CC, pp. 3-4; Pet. Ex. CC-1.

In connection with its Summer Reliability Tracker proposal, PSI requested corresponding accounting relief, specifically, authority to defer for subsequent recovery or credit, its June through September purchased power and PowerShare(R) costs, and its off-system sales profits. Pet. Ex. CC, p. 9.

(c) Rationale for PSI's Proposal. Mr. Esamann indicated that he believes that a continuation of a purchased power tracking mechanism, such as that incorporated into PSI's proposed Summer Reliability Tracker, is desirable. The continuing volatility of the wholesale power market; PSI's increasing need for purchased power to maintain an adequate reserve margin; the positive credit quality implications of such a mechanism; and, sound regulatory policy reasons support having such a tracker in place. Pet. Ex. B, at 49. Mr. Esamann testified that the wholesale power market continues to present the potential for high prices, volatility and price spikes. As recently as March 2003, he related, wholesale market prices spiked to \$ 135 per MWH. *Id.* at. 50. He pointed [\*298] out that almost 130,000 MWs of power plant projects have been cancelled since the beginning of 2000, with the majority of those cancellations occurring in the Eastern Interconnect region. As projects are cancelled and demand grows, demand will catch up or overtake supply, leading to increasing prices, he predicted. *Id.* at 51. Mr. Esamann concluded that he cannot envision a Midwest wholesale power market that, for many years into the future, does not have some price spikes. *Id.* at 52. According to Mr. Esamann, the question is not whether there will be price spikes, but how frequently and how high they will be. For this reason, PSI believes that it is far more appropriate to address its purchased power costs via a tracker mechanism, rather than attempt to build a representative level into base rates.

Mr. Esamann next turned to the issue of PSI's continuing need for purchased power. He emphasized that PSI customers' demand for electricity continues to grow. Mr. Esamann testified that, even during this period of economic downturn, the PSI system experienced a new peak record demand in the Summer of 2002, after experiencing a 3.6% increase in peak in 2001. *Id.* He explained [\*299] that even with the addition of the Noblesville Repowering Project (representing approximately 200 additional MWs) and the Madison and Henry County Generating Stations (approximately 663 MWs combined), PSI's projected planning reserve margins for 2003 and beyond, without forward reliability purchases, are well below PSI's 15% minimum reserve margin. PSI's projected reserve margins range from just below 11% in 2003, down to 8.3% in 2006, and 11.4% in 2010 -- a deficit of several hundred megawatts in almost every year for the next eight years. *Id.* at 53. Thus, he said, PSI will need to continue to purchase several hundred megawatts of forward power to satisfy its reserve margin needs for the next several summers. By 2006, he said, PSI's purchased power needs will rise to almost 450 MWs. *Id.*

Mr. Esamann also addressed the positive credit quality implications associated with the purchased power tracking component of the Summer Reliability Tracker. He observed that Commission approval of PSI's continued use of a purchased power tracking mechanism will give investors and credit rating agencies assurance that PSI will have an opportunity to recover the majority of its purchased power [\*300] costs incurred to provide reliable service to customers, and this assurance should assist PSI in attracting necessary capital at reasonable costs. *Id.* at 55. Maintenance of credit quality is important both for utilities and their customers, he observed. *Id.* at 56. Reduced credit quality results in higher debt costs that, in turn, will result in higher rates charged to customers in the future. *Id.*

Mr. Fetter underscored the credit quality implications associated with tracking and recovery

of purchased power costs. According to Mr. Fetter, the financial community relies on the presence of fuel and purchased power adjustment mechanisms to protect investors from the variability of fuel and purchased power costs that can have a substantial impact on the credit profile of a utility, even when prudently managed. These mechanisms mitigate a portion of the risk and uncertainty related to the day-to-day management of a regulated utility's operations. Conversely, the absence of such protection is factored into a utility's credit profile as a negative element. Pet. Ex. H, pp. 25-26.

Mr. Fetter noted that Standard & Poor's stated in November 2002 its opinion concerning the importance **[\*301]** of electric utilities having the opportunity to recover fuel and purchased power expenses:

When assessing the importance of productive regulation to the credit strength of an electric utility, something to consider is the means by which the utility can expect to recover variable expenses, particularly fuel and purchased-power expenses, which have highly erratic unit costs. Recent, and in some cases, extreme volatility in the U.S. wholesale electricity markets, as well as in the natural gas markets, underscores this importance. It is no coincidence that utilities with stronger fuel and power cost recovery mechanisms typically enjoy loftier credit ratings.

Pet. Ex. H, at pp. 26-27.

Mr. Esamann offered a number of regulatory policy rationales in favor of the use of purchased power tracking mechanisms. For example, a utility should have a reasonable opportunity to recover the prudently incurred costs associated with meeting its obligation to provide adequate and reliable service to its customers. Moreover, a basic principle of ratemaking is that reasonable costs of providing utility service should be reflected in the prices charged for that service. In Mr. Esamann's opinion, consistent **[\*302]** with these principles, tracking mechanisms are appropriate regulatory tools for reflecting costs that are volatile, substantial, and largely outside of the utility's control. Mr. Esamann noted that another way to encourage cost-effective supply decisions is to set up regulatory mechanisms that encourage the utility to plan in advance and to hedge against spot market price volatility and availability risk. PSI believes strongly that encouraging advance planning and hedging strategies will align customer and shareholder interests in achieving reliable and cost-effective electric utility service.

As to the PowerShare(R) component of the Summer Reliability Tracker, Mr. Esamann noted that PSI's PowerShare(R) program impacts are analogous to purchased power and, as such, should be treated the same as purchased power for ratemaking purposes. In PSI's experience, PowerShare(R) costs tend to be highly variable from year to year, and thus lend themselves to tracking treatment. Having a tracker, and assurance of cost recovery for prudent PowerShare(R) costs, will also provide PSI with an incentive to maximize the use of the PowerShare(R) program. Pet. Ex. B, at p. 57.

With regard to the off-system **[\*303]** sales profit component of the Summer Reliability Tracker, Mr. Esamann testified as to why he believes that tracking, rather than base rate treatment of such revenues is appropriate, and why an explicit incentive sharing mechanism should be included. Because off-system sales profit can be variable, unpredictable, and largely outside of the utility's control, Mr. Esamann explained that it makes sense to use a tracking mechanism for such credits to customers, rather than building an ongoing level into

rates. Pet. Ex. B, pp. 57-58. He noted that off-system sales profits will vary widely from year to year, depending upon a number of factors such as wholesale market conditions, the performance of PSI's generating system, and PSI native load customer demand and energy requirements.

As for the 50/50 incentive sharing proposal, Mr. Esamann testified that allowing PSI the opportunity to earn and retain a portion of off-system sale profits will encourage PSI to maximize off-system sales opportunities. In Mr. Esamann's view, such a sharing aligns customer and shareholder interests in maximizing off-system profits for the benefit of all stakeholders. Mr. Fetter shared this view, emphasizing that **[\*304]** such activities, which are outside the sphere of PSI's traditional regulated operations, deserve to be encouraged with the benefits being shared by both customers and shareholders. Pet. Ex. B, pp. 61-62. Mr. Esamann testified that PSI takes on potential costs and risks whenever it transacts business in the wholesale market and without the opportunity to retain a portion of off-system sales profits, a rational utility would work to ensure that its native load customer demands are met, but would not necessarily take on the potential incremental costs and risks necessary to maximize the use of its generation in the off-system sales market. Pet. Ex. B, pp. 58-61.

Finally, Mr. Esamann testified that off-system sales represent one area where a utility can work to actually earn a return that approximates the net operating income authorized by the Commission in the utility's rate order. Allowing PSI to retain a portion of off-system sales profits achieved will give PSI a more realistic opportunity to earn its authorized return, while still remaining subject to the fuel adjustment charge statute's earnings test. Pet. Ex. B, pp. 60-61. Mr. Esamann concluded that PSI's proposed Summer Reliability **[\*305]** Tracker is designed with symmetry and balance, with appropriate consideration to risk and reward. Customers will pay for PSI's costs of forward reliability purchases and PowerShare(R) costs for the summer months (subject to PSI's demonstrating the reasonableness of its forward purchases), while throughout the year customers will receive the benefits of off-system sales profits generated from PSI generation. Pet. Ex. B, p. 59.

(d) Positions of OUCC, Intervenor, and Testimonial Staff. The OUCC opposed the totality of PSI's proposed Summer Reliability Tracker, while other Intervenor, opposed certain aspects of the proposal. The OUCC took the position that tracking treatment was neither necessary nor desirable for PSI's purchased power costs, for PSI's PowerShare(R) costs, or for PSI's off-system profits. Rather, the OUCC proposed that a test period base level of such costs and revenues be built into PSI's base rates in this case, with no tracking mechanisms for fluctuations between those base levels and actual levels experienced by PSI in the future. Additionally, the OUCC opposed the Summer Reliability Tracker's explicit sharing mechanism for off-system sales profits. Pub. Ex. **[\*306]** No. 2, p. 28.

OUCC witness Brosch testified that tracking treatment is not necessary for several reasons. First, he argued that tracking is no longer necessary because PSI has recently added capacity to its system, thus reducing its purchased power needs, and because wholesale market prices have moderated since PSI's purchased power tracker was first approved in 2000. He also argued that revenues from load growth should be sufficient to compensate PSI for any increased purchased power expense it experiences going forward. Pub. Ex. No. 2, pp. 32-33. OUCC witness Endris added his view that "a request to track a cost [of purchased power] that represents only 1% of the test year fuel expense is insubstantial and undeserving of tracker treatment." Pub. Ex. No. 6, p. 8. Instead of tracking treatment, the OUCC argued for base rate treatment of PSI's purchased power costs, based on PSI's actual Summer 2003 purchased power costs (approximately \$ 2 million). As for PSI's PowerShare(R) costs, OUCC witness Endris took the position that "The CallOption program expense is similarly negligible compared to total fuel expenses. . . ." Pub. Ex. 6, p. 8.

OUCC witnesses Brosch and Endris also testified **[\*307]** on the off-system sales component

of PSI's proposed Summer Reliability Tracker. Mr. Brosch opposed tracking off-system profits and recommended building in a base level instead. He offered his opinion that the test period level of off-system profits achieved by PSI of approximately \$ 18.7 million appeared to be representative of an ongoing level of such profits and even possibly conservative since the test period level did not include the availability of new generation added by PSI (Madison, Henry County, and Noblesville Repowering). Pub. Ex. No. 2, pp. 4143. In further support of the OUCC's position that PSI's off-system sales should be addressed through base rates rather than through a tracking mechanism, Mr. Endris testified that in his opinion PSI native load customers likely would not receive as much benefit through the Company's proposed off-system sales profit sharing mechanism as they would get through continued traditional ratemaking treatment that includes actual test year results in setting rates. Pub. Ex. No. 6, p. 5.

With respect to PSI's proposed sharing of off-system sales profits, Mr. Brosch testified that PSI needs no special incentive to make off-system sales. In [\*308] his view, the better answer would be an approach where there is no tracking, whereby the Company would have the opportunity to retain for shareholders 100% of any incremental profits earned on such sales between rate cases. Public's Ex. No. 2, p. 43. Mr. Brosch also noted that, since the 2002 implementation of the Joint Generation Dispatch Agreement, PSI's off-system sales have generally been limited to system energy transfers of surplus hourly energy to CG&E, which in Mr. Brosch's view insulates PSI from market and profitability risks. Finally, Mr. Brosch stated his opinion that there is simply no shareholder entitlement to additional returns, since shareholders are not "at risk "for plant production costs. Pub. Ex. No. 2, p. 44.

Mr. Endris also testified that PSI does not need any further incentives to maximize profits from off-system sales. Pub. Ex. No. 6, pp. 16-19. PSI has engaged in off-system sales activity in every year subsequent to the Commission's order in Cause No. 40003, without any special treatment tracking off-system sales. One can only conclude based upon actual results that the current traditional method, with 100 percent retention of all changes in profits, provides [\*309] adequate incentive to PSI to engage in reasonable off-system sales effort. Pub. Ex. No. 6, p. 23. Mr. Endris also claimed that the dollars, volumes, and types of sales to be included in the proposed sharing mechanism are difficult to reconcile with actual historical results. *Id.* at 9. This kind of confusion, he maintained, should lead the Commission to reject PSI's proposal and instead determine that test period off-system sales profits of \$ 18.7 million, or some other reasonable *pro forma* projection, should be reflected as a credit to revenue requirements. "*Id.* at 16.

Mr. Endris was also concerned that the transaction documentation and analysis involved in determining off-system sales profits is voluminous, complex and contentious and will lead to frequent and difficult litigation. Pub. Ex. No. 6, p. 26. He believed the required audits would be costly and resource-intensive, which costs, he suspected, would be borne by the ratepayers, either as a drain on the very profits to be shared or as an expense hitting the FAC earnings test. *Id.* at 26-27. He concluded, as Mr. Brosch did, that PSI should "receive traditional ratemaking treatment of appropriate off-system sales [\*310] profits as a reduction to revenue requirements and let PSI retain 100% of profits thereafter." Pub. Ex. No. 6, p. 32. Such treatment, he contended, would provide PSI "its desired incentive to maximize the use of the PSI generating resources to achieve off-system sales margins while not subjecting ratepayers to this insufficiently-supported sharing mechanism." *Id.*

The OUCC's alternative was to propose that a base amount of expected purchased power costs and off-system sales profits, such as the \$ 2 million of Summer 2003 purchased power costs and the \$ 18.7 million of test period off-system sales profits, be included in base rates, and that PSI shareholders and customers share in costs and profits above or below this amount, with 90% going to PSI's customers and 10% to its shareholders, on an annual basis. This alternative approach, the OUCC claimed, would properly credit customers for the burden of capacity costs included in base rates, as well as incentivize PSI to economically maximize

the pursuit of both purchased power and off-system sales profits. Pub. Ex. No. 1, p. 37; Pub. Ex. No. 2, p. 61.

Intervenor PSI-IG was supportive of the continuation of PSI's purchased power tracker, [\*311] but opposed tracking PowerShare(R) costs above or below the level included in base rates. PSI-IG Ex. No. 1, p. 25. As for the off-system profits component of the Summer Reliability Tracker, Mr. Phillips took the position that customers should be credited with the profits from off-system sales in PSI's base rates, because PSI is allowed to earn a return on all of its generating stations. *Id.* Mr. Phillips also testified that eliminating any off-set for off-system sales from base rates shifts all of the risk to the customers and provides PSI with no incentive to make such sales. He said that to the extent PSI earns more from off-system sales than the amount included in its base rates, the profits should be shared with its customers through a tracking mechanism separate from the Summer Reliability Tracker. Mr. Phillips recommended that this Commission approve only the minimum recovery of purchased power costs in the tracking mechanism without the PowerShare(R) credits or other provisions PSI has requested. *Id.* at 26.

Intervenor Kroger took issue only with the off-system profits component of the Summer Reliability Tracker, and specifically the incentive sharing mechanism. Kroger [\*312] witness Kevin C. Higgins testified that, assets that are being used to make these profits possible are being fully funded by ratepayers -- and ratepayers should receive a significant share of any benefit. The Company's share should be limited to the amount needed to provide it with adequate incentive to make profitable off-system sales transactions. He proposed that the \$ 18.7 million in profits from off-system sales during the test period be credited against base rates for the rate-effective period and on either side of this \$ 18.7 million there should be a reasonably-sized deadband. Mr. Higgins proposed that as long as the annual amount of off-system sales profit remained within the deadband, no further rate adjustments would be made. In the event that profits from off-system sales fall below or rise above the deadband, he recommended that some sharing of incremental benefits or decremental shortfall take place, implemented through a tariff rider. Mr. Higgins proposed a 50/50 sharing of incremental benefits or decremental shortfall outside the deadband and a deadband of + or - \$ 3 million. This approach, Mr. Higgins claimed, fully aligns the interests of shareholders and ratepayers, [\*313] and provides the Company with ample incentive to make profitable off-system sales. Kroger Ex. No. 1, pp. 6-8.

Intervenor CAC opposed certain aspects of the Summer Reliability Tracker. CAC witness Bruce E. Biewald contended that the proposed tracker will reduce or eliminate the incentive for the Company to manage costs and risks associated with the tracked costs. Mr. Biewald also predicted a net cost to customers from the proposed Summer Reliability Tracker beginning in 2004, and he claimed that the system for accounting and tracking of transactions is complex and prone to abuse. More specifically, Mr. Biewald recommended that this Commission disallow the Summer Reliability Tracker's off-system sales profit sharing mechanism and require the Company to credit all such profits to customers. Mr. Biewald recommended that this Commission approve a modified version of the Summer Reliability Tracker that allows customers to retain 100 percent of off-system sales profits in all months of the year. Modifying the tracker in this manner, he claimed, would greatly increase the probability that customers would indeed receive a net credit from the tracker. CAC Ex. B, pp. 4-5, and 20.

Testifying [\*314] on behalf of the Commission's Testimonial Staff, Dr. Borum and Ms. Cvengros indicated that they were generally supportive of PSI's proposed Summer Reliability Tracker. Ms. Cvengros observed that, while somewhat unwieldy as packaged together as a single tracker, the components of the Summer Reliability Tracker are all well-defined elements. IURC Staff Ex. No. 2, p. 28. Both Dr. Borum and Ms. Cvengros agreed that tracking treatment for PSI's summer purchased power costs was appropriate, so long as the tracker procedures called for upfront Commission scrutiny and approval of PSI's purchased



power decisions, and as long as the tracker included a mitigation credit feature, whereby customers can be credited with profits derived from off-system sales made from the purchased power capacity. The Testimonial Staff believes that PSI's proposed Summer Reliability Tracker contains these essential elements and is an acceptable purchased power tracking mechanism. IURC Staff Ex. No. 2, p. 31.

On the subject of purchased power cost tracking, Dr. Borum characterized the costs to be tracked as largely outside of the control of management. In Dr. Borum's view, purchased power is a primary example of such **[\*315]** uncontrollable costs. Dr. Borum opined that the use of trackers "reduces regulatory lag, and thus limits the utility's incentive to keep costs low." However, he observed, continuation of a pre-approval process for forward power purchases is necessary to meet PSI's summer reliability requirements and continuation of the pre-approval regulatory process connected with the Summer Reliability Tracker will reduce financial uncertainty and risks for PSI, in return for an up-front review and input by interested groups in the resource planning and acquisition processes implemented by PSI. Staff, he said, believes that treating forward purchases similar to the regulatory treatment of building additional generation capacity will promote a resource portfolio planning process in which forward purchases are appropriately considered. Additionally, Staff witness Cvengros noted that, while PSI's purchased power needs in the near term may be relatively small when compared to previous years, PSI's growing customer load will require increasing quantities of purchased power at about the time an order would be expected in this Cause. As a consequence, denying PSI's proposed Summer Reliability Tracker on **[\*316]** the grounds that PSI does not currently have to make substantial purchases would probably require the Company to file another petition for a purchased power tracker shortly after an order is issued in this Cause. IURC Staff Ex. No. 3, pp. 5, 13, 17, IURC Staff Ex. No. 2, p. 28.

With regard to the PowerShare(R) component of PSI's Summer Reliability Tracker, Ms. Cvengros opined that the PowerShare(R) costs above or below the amount to be included in PSI's base rates are not likely to be excessive and PSI would not suffer a financial hardship were they to be excluded from the Tracker. On the other hand, she explained that Staff views the PowerShare(R) program as being analogous to a purchased power option contract, whereby the Company pays an upfront demand premium in exchange for the right to have access to power when needed at specified prices. The only difference is that PowerShare(R) provides curtailable power, instead of deliverable power -- but both have the same effect in maintaining an adequate reserve margin during peak periods. In sum, Staff believes the PowerShare(R) program costs are legitimate expenses that should be recovered by the Company, and the Summer Reliability Tracker **[\*317]** provides an acceptable, but not the only, method of recovering such costs. IURC Staff Ex. No. 2, pp. 28 and 29.

With regard to the off-system profits component of the Summer Reliability Tracker, Staff witness Cvengros explained that Staff views the off-system sales profit sharing component as an expansion of the mitigation credit that has been employed in connection with PSI's existing purchased power tracker. In Ms. Cvengros' view, PSI's sharing proposal explicitly addresses a sharing of off-system sales profits, in contrast to the implicit sharing that occurs today with a base level of off-system profits included in rates. Staff believes that an explicit sharing mechanism provides a better incentive to the utility to make economically efficient off-system sales, as well as easier review and monitoring of the shared profits. IURC Staff Ex. No. 2, p. 28.

While not opposed to PSI's proposed off-system sales sharing mechanism, Ms. Cvengros did offer some alternatives for the Commission's consideration. For example, if the Commission believes that the proposed 50%/50% sharing of off-system profits is inadequate, Ms. Cvengros noted that an adjustment of the shared portion of profits between **[\*318]** 50%/50% and 80%/20% to customers' favor would be reasonable, and should not cause a financial hardship on the Company. Alternatively, Ms. Cvengros noted that the Commission could include a base amount of off-system sales in PSI's rates, with or without some sharing

of profits above that base amount. Based on PSI's estimate of its test period off-system profits without an explicit sharing mechanism, Ms. Cvengros recommended \$ 13 million as an appropriate base amount of off-system profits to be included in rates should the Commission prefer that approach. IURC Staff Ex. No. 2, p. 31, Attachment K.

In response to other parties' criticisms concerning the complexity of identifying off-system sales profits for purposes of sharing, Ms. Cvengros agreed that the process is complex, but noted that the process for determining off-system profits is the same process necessary for determining fuel costs for the FAC. Dr. Borum concurred on this point, explaining that the JGDA dictates how off-system sales costs and revenues must be allocated between PSI and its affiliate, CG&E. IURC Staff Ex. No. 1, pp. 26-33; IURC Staff Ex. No. 2, p. 27.

(e) PSI Rebuttal. Mr. Esamann testified that PSI continues **[\*319]** to believe that cost tracking mechanisms are appropriate for costs that are substantial, variable or volatile, and largely outside of the control of management. Just as important, he said, PSI continues to believe that cost tracking mechanisms benefit both customers and the company in numerous ways -- by allowing the utility to recover its prudently-incurred costs of providing service, no more and no less; by helping to level the playing field between competing options (capital versus expense options), thus encouraging the most economic choices; by eliminating artificial disincentives to pursuing the most economic choices (again, capital versus expense options, or forward versus spot market choices); by encouraging advance planning and hedging as opposed to reliance on volatile spot markets, thus aligning customer and company interests in reliability and price certainty; and by allowing the utility to defer the need for repeated general rate cases. Pet. Ex. DD, p. 17.

He maintained that PSI's purchased power and PowerShare(R) costs are collectively significant, variable, and largely outside of its control -- similar to fuel costs. Tracking treatment, he said, assures that the utility **[\*320]** will recover these costs of providing service on a timely basis, no more and no less, while base rate treatment, alone, of these cost items would inevitably result in an over or under recovery. Pet. Ex. DD, pp. 17-18.

He emphasized that tracking treatment goes a long way toward leveling the playing field between capital and expense options -- maintaining that a utility can mitigate its purchased power and peak load management risks by building additional "iron-in-the-ground" capacity, and if the reserve margin is large enough, the utility can virtually eliminate the need for any reliance on purchased power or peak load management programs. But, he said, a total long-term reliance on on-system generation may not be the most economic option for the utility's customers. A purchased power and PowerShare(R) tracking mechanism gives the utility the flexibility to rely on the power market when appropriate and encourages the utility to make the most economic choice, by allowing the utility an opportunity to recover its out-of-pocket purchased power and peak load management costs. Pet. Ex. DD, pp. 17-18.

Mr. Esamann criticized the OUCC's proposed level of purchased power expense to be reflected **[\*321]** in PSI's base rates as an alternative to PSI's proposal. He observed that the Company's 2003 purchased power costs were by far the lowest level of forward reliability purchased power costs experienced by PSI since prior to 1999 (less than \$ 2 million). *Id.*, at 18-19. Moreover, he said, this low level of purchased power expense is likely to be temporary, given the expected gradual increase in wholesale power prices and the approximately 100 MWs of annual demand growth PSI is experiencing on its retail system. *Id.* at 19. Accordingly, he said, if this Commission were to include a base amount in PSI's rates, he would recommend that this Commission use an average of the last two years' forward reliability purchased power costs, which amounts to \$ 10.5 million. That level, he noted, is still lower than PSI's estimated annual purchased power costs over the next few years. *Id.*

To the OUCC's argument that tracking treatment is not necessary for off-system sales profits and, instead, off-system sales profits of \$ 18 million should be included in base rates, Mr.

Esamann pointed to the variability associated with off-system sales profits -- a variability that is in large part outside [\*322] of PSI's control and dependent, instead, on market prices, weather and customer demands. He added that the test period level of \$ 18 million in off-system sales profits experienced by PSI was by far the highest level of off-system sales profits earned by PSI from 1996 through the test period. However, he said, if the Commission decides to include a level of off-system sales profits in base rates, PSI believes that a reasonable level of trading expenses should also be included in PSI's base rates. In its case-in-chief PSI excluded certain of its trading expenses from its rate increase request, essentially in exchange for an explicit off-system sales sharing mechanism. Pet. Ex. DD, pp. 19-20.

With respect to the OUCC's contention that PSI needs no special incentive to make off-system sales, Mr. Esamann testified that PSI continues to believe that incentivizing it to maximize off-system sales profits through a sharing mechanism makes sense for both customers and the Company. In Mr. Esamann's view, an incentive sharing mechanism will increase the overall size of the "pie" (the off-system sales profits), with benefits created for both customers and the Company. Pet. Ex. DD, pp. 20-21. [\*323] Mr. Esamann observed that although it is easy to say that a utility should always seek to maximize off-system sales profits for the benefit of native load customers, it is important to keep in mind that there are costs and risks associated with maximizing such sales profits. If the utility has no upside opportunity, there will naturally be a disincentive for the utility to incur those incremental costs and risks. Pet. Ex. DD, p. 21.

He emphasized that there are incremental costs and risks associated with having and keeping the Company's generation available for off-system sales opportunities, even when it is not anticipated to be needed for native load customers' demand requirements. There are, he said, different levels of costs that are incurred to serve anticipated native load customer demands, versus serving anticipated native load customer demands plus anticipated off-system sales opportunities. Such costs include costs associated with committing, ramping up, and dispatching the units -- and different levels of these costs will be incurred to serve anticipated native load customer demands, versus serving anticipated native load customer demands plus anticipated off-system sales [\*324] opportunities. There are also costs associated with maintaining and repairing the utility's power production facilities that may not need to be incurred for native load customers purposes. If PSI concluded that sufficient off-system sales opportunities were available, and if PSI were incented to get that unit back on-line and running in order to capitalize on wholesale market opportunities, PSI would likely incur such extraordinary O&M costs, he said. Pet. Ex. DD, pp. 21-22.

Mr. Esamann went on to explain why there is likely to be a difference in the level of off-system sales achieved with and without an incentive sharing mechanism, observing that if PSI lacked a meaningful incentive opportunity in this area, PSI would likely commit its system differently than it does today. It would of course continue economic dispatch, but would commit its units to meet anticipated native load requirements, rather than to meet native load requirements plus wholesale market opportunities. In any given hour, he said, PSI may have surplus energy available to sell into the wholesale market, depending on actual native load demands versus the level of demand anticipated the day-before. Nevertheless, he [\*325] estimated that this difference in unit commitment would result in a decrease in off-system sales profits on the order of magnitude of \$ 4 million annually. Pet. Ex. DD, p. 23.

Moreover, Mr. Esamann emphasized that there are other benefits to native load customers associated with having PSI's generating units committed to meet native load demands plus wholesale market opportunities. If native load demands should exceed expectations, or if PSI experiences a generating unit outage, the "market-committed" generation can instantaneously be used to meet native load customer demands, because that generation is already ramped up and running and native load customers have "first call" on PSI generation. Under the alternative, "native load only" commitment scenario, however, native load

customer demands would need to be partially met through potentially higher cost hourly market purchases until such time as incremental PSI generation could be ramped up and committed. Pet. Ex. DD, pp. 22-24.

(f) Commission Discussion and Findings. Pursuant to IC 8-1-2-42(a), this Commission has the legal authority to approve tracking mechanisms for fluctuating costs. As a general rule, IC 8-1-2-42(a) states **[\*326]** that: "A public, municipally owned, or cooperatively owned utility may not file a request for a general increase in its basic rates and charges within fifteen (15) months after the filing date of its most recent request for a general increase in its basic rates and charges . . ." *Id.* However, this section goes on to indicate that: The phrase 'general increase in basic rates and charges' does not include changes in rates related solely to the cost of fuel or to the cost of purchased gas or purchased electricity or adjustments in accordance with tracking provisions approved by the commission." Ind. Code § 8-1-2-42(a). The proposition that the Commission has the authority to approve the tracking of certain costs has also been affirmed by the courts. *See, City of Evansville v. SIGECO*, 339 N.E.2d 562, 593 (Ind. Ct. App. 1975); *L.S. Ayres v. Indianapolis Power & Light Co.*, 351 N.E.2d 814, 838-39 (Ind. Ct. App. 1976).

Against this legal and regulatory backdrop, we will now consider the evidence regarding tracking treatment of PSI's purchased power and PowerShare(R) costs. The evidence in this case establishes that the wholesale **[\*327]** market continues to exhibit the potential for volatility, that it is reasonable to consider PSI's purchased power and PowerShare(R) costs collectively given their analogous functions, and that PSI's collective purchased power and PowerShare(R) costs are potentially significant. Moreover, the evidence indicates that even with the addition of incremental generating capacity in 2003, PSI continues to have a need for purchased power in order to maintain an adequate reserve margin, and that PSI's retail load continues to grow. While PSI's Summer 2003 purchased power costs were relatively low, the evidence suggests that PSI's purchased power needs and costs are likely to increase over time given PSI's load growth and expected wholesale market price increases and volatility.

Importantly, as we concluded in both our April 2001 Order in Cause No. 41448-S1 and our June 2003 Order in Cause No. 42200, a number of regulatory policy rationales support the continued use of purchased power tracking mechanisms. A utility should have a reasonable opportunity to recover prudently incurred costs associated with meeting its obligation to provide adequate and reliable service to its customers. Additionally, **[\*328]** credit quality is of importance to both utilities and their customers, and there is a recognized connection between the periodic review and adjustment of rates and positive credit quality. Last, but not least, a purchased power tracking mechanism is consistent with our goal of leveling the playing field among resource options and thereby encouraging pursuit of the most cost-effective options. We concluded in 2001 and 2003, and we conclude today, that continuation of a purchased power tracker mechanism for PSI will align the mutual interests of PSI's customers and shareholders in reliable and cost-effective electric utility service.

Notably, these same regulatory policy rationales support approval of tracking treatment for PSI's PowerShare(R) costs, albeit to varying degrees. We believe that approval of the PowerShare(R) component of the Summer Reliability Tracker will allow the recovery of prudently incurred costs associated with providing reliable electric service, and will provide PSI with an incentive to maximize the usefulness of its PowerShare(R) program. In sum, the law, the evidence, and regulatory policy all support approval of a tracking mechanism for PSI's purchased power **[\*329]** and PowerShare(R) costs. Accordingly, we hereby approve the purchased power and PowerShare(R) components of PSI's proposed Summer Reliability Tracker. We also approve PSI's corresponding accounting request for authority to defer for subsequent recovery via the Tracker, its June through September purchased power and PowerShare(R) costs.

With respect to the off-system sales profit component of the Summer Reliability Tracker, the

Commission recognizes that a number of options were presented to us for consideration by the various parties. In undertaking our review of this issue, the Commission recognizes that fair and reasonable asset optimization programs, that present corresponding benefits to ratepayers, should be encouraged. While the utilization of ratepayer funded resources in the pursuit of off-system sales profits should result in a corresponding reward to ratepayers for the risk being borne, the Commission is cognizant that PSI should have an appropriate incentive to optimize its generation assets. The Commission believes that balancing the interests of PSI and its ratepayers is appropriate and, if done properly, will provide a benefit that might not otherwise be possible.

In **[\*330]** the present case, PSI achieved \$ 18.7 million of such profits during the test period and a significantly larger amount during calendar year 2002. Yet, Mr. Esamann testified that PSI projects losses in the area of off-system profits for both 2003 and 2004. We agree with PSI that off-system sales revenues are potentially significant, volatile or variable, and largely outside the control of the utility and may therefore be tracked. In reaching this conclusion we find that tracking off-system sales profits does not appear to be overly complicated and administratively burdensome. As Ms. Cvengros and Dr. Borum both pointed out, the same information that will be necessary to track off-system sales profits is already captured and analyzed in connection with PSI's fuel adjustment charge proceedings.

While we are granting approval to track off system sales profits, we do not believe that the 50%/50% sharing proposal put forth by PSI presents the optimum approach to addressing this issue. In presenting several options for our consideration, we note that Ms. Cvengros indicated that the Commission could include a base amount of off-system sales in PSI's rates, with or without some sharing **[\*331]** of profits above that base amount. This approach was also recommended by the OUCC, Kroger, and PSI-IG. We are persuaded by the recommendation that we include a level of off-system sales profits in base rates and find that this should be done in conjunction with the use of a 50/50 sharing mechanism.

In adopting this approach, we are cognizant of PSI's concern that the amount included should reflect a reasonable level of trading expenses which were not included in the explicit sharing proposal advocated by PSI in this Cause. While we are persuaded by the OUCC's proposal that we include \$ 18.7 million in rates for this purpose, this amount does not reflect trading expenses. Therefore, consistent with our earlier findings, we find that \$ 18.7 million of test-period off-system sales profits, minus \$ 3,953,000 for trading expenses, for a net value of \$ 14.747 million, should be included in base rates to reflect the test-period. We further find that off-system sales profits should be tracked from this amount and shared 50/50 between PSI and ratepayers. We also find that tracking should be above and below the net amount in base rates; PSI may not apply a net annual off-system sales profit **[\*332]** of less than zero to the tracker; and, all off-system sales net income should be included as jurisdictional income for purposes of the FAC earnings test. In addition, PSI's corresponding request for accounting relief is also approved.

(2) NO[x] Emission Allowance Tracker.

(a) PSI's Testimony. PSI witness Farmer testified that Petitioner's proposed NO[X] emission allowance rider provides a rate mechanism for the recovery of charges to operating expense resulting from PSI's use of NO[X] emission allowances ("EA") in order to comply with the federal and state NO[X] SIP Call requirements. He explained that beginning in May 2004, PSI will be required to substantially reduce the amount of NO[X] emitted from its power plants. Emission allowances will be consumed for each ton of NO[X] emitted into the atmosphere during the months of May through September. Even though PSI will receive various allocations of zero cost NO[X] emission allowances from the Indiana Department of Environmental Management ("IDEM"), PSI's future NO[X] SIP Call compliance strategy includes the possibility of purchasing or selling NO[X] emission allowances in order to minimize the cost of compliance to retail **[\*333]** customers. PSI's proposed Standard

Contract Rider No. 69 would allow for cost recovery of NO[X] emission allowances as such allowances are consumed. Pet. Ex. CC, p. 10.

Mr. Farmer explained that the concepts incorporated within the Company's proposed NO[X] Emission Allowance Adjustment are similar to the concepts embodied within its SO[2] Emission Allowance Adjustment, approved by the Commission in Cause Nos. 39584 and 39584-S2. Both riders, he said, are "zero based" riders, meaning that there are no costs being recovered in base rates. Both riders provide for the recovery of costs of emission allowances consumed due to the operation of the Company's own generating units used to serve native load customers, as well as the cost of emission allowances included in the cost of power purchased or transferred for economy, reliability, or operating purposes, to the extent such costs are specifically identified or can be reasonably estimated. Costs under both riders are allocated to retail customers based on kilowatt-hour sales. According to Mr. Farmer, both riders provide for the recovery or crediting of net gains and losses from the sale of emission allowances that have been allocated to [\*334] the Company by the environmental agencies or emission allowances purchased by the Company on behalf of native load customers. Pet. Ex. CC, p. 11.

PSI initially proposed that Standard Contract Rider No. 69 provide for the sharing of net gains and losses associated with NO[X] EA sales at a ratio of 80% to customers and 20% to the Company. However, in response to concerns raised by other parties, in rebuttal PSI modified its NO[X] emission allowance cost tracking proposal in two ways: First, PSI changed its initial proposal to provide customers with 100% of net emission allowance sales proceeds; and second, PSI proposed to incorporate the NO[X] emission allowance tracking features into PSI's existing SO[2] emission allowance rate adjustment mechanism (Standard Contract Rider No. 63). Pet. Ex. CC, pp. 10-22; Pet. Ex. QQ, p. 42.

(b) OUCC's, Intervenor's, and Testimonial Staff's Testimony. The OUCC's only objections to the proposed NO[X] emission allowance tracker involved the 80%/20% sharing feature, and the use of a mechanism separate and apart from PSI's existing SO[2] mechanism. As mentioned above, PSI addressed both of these concerns in its rebuttal testimony.

Intervenor PSI-IG [\*335] took the position that PSI should propose this tracker, if appropriate, if and when the costs are of significant magnitude to warrant another adjustment to customers' bills. Alternatively, PSI-IG was of the opinion that the NO[X] emission allowance tracker should be treated the same as PSI's SO[2] allowance cost tracker (i.e., 100% of net sales proceeds should be credited to customers). PSI-IG Ex. No. 1, p. 27.

Testimonial Staff generally supported approval of rate adjustment mechanisms for the recovery of SO[2] and NO[X] emission allowance costs incurred providing service to jurisdictional retail customers. Dr. Borum testified that Staff has no objection to the costs of NO[X] emission allowances being passed to ratepayers through a tracker similar to the one being proposed by PSI for SO[2] allowances, but had concerns regarding the proposed 80/20 sharing between the Company and ratepayers of gains or losses from selling NO[X] emission allowances. Staff recommended that the NO[X] tracker be consistent with the SO[2] tracker, with all gains or losses from sales of the emission allowances going to ratepayers, rather than an 80/20 split. IURC Staff Ex. No. 3, p. 26.

(c) Commission [\*336] Discussion and Findings. With PSI's rebuttal modifications to its NO[X] emission allowance tracking proposal, there appears to be very little dispute among the parties on this topic. We conclude that it is reasonable to authorize PSI to track and recover NO[X] emission allowance costs incurred in connection with providing retail electric service, and to authorize PSI to credit customers with 100% of net proceeds associated with any sales of jurisdictional NO[X] emission allowances. Accordingly, we approve PSI's NO[X] emission allowance proposal as modified in its rebuttal testimony.

### (3) Midwest ISO-Related Cost and Revenue Adjustment Mechanism.

(a) PSI's Testimony. PSI also requested approval of a new Midwest ISO Management Cost And Revenue Adjustment Standard Contract Rider ("Midwest ISO Rider") to track, for recovery or credit, changes in the amount of PSI's Midwest ISO Management Costs and Revenues included in base rates as a result of this proceeding. PSI is proposing to track (i) costs billed to PSI by the Midwest ISO under Schedule 10 (ISO Cost Recovery Adder), or a successor provision (including Schedule 10-FERC), of the Midwest OATT, or any successor Tariff for the [\*337] Midwest ISO; (ii) costs billed to PSI by the Midwest ISO under Schedule 16 (Financial Transmission Rights Administrative Service Cost Recovery Adder), or a successor provision, of the Midwest OATT, or any successor Tariff for the Midwest ISO; (iii) costs billed to PSI by the Midwest ISO under Schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder), or a successor provision, of the Midwest ISO OATT, or any successor Tariff for the Midwest ISO; (iv) costs billed to PSI by the Midwest ISO for standard market design or other government mandated transmission costs PSI is required to pay on behalf of its Indiana retail electric customers; and (v) certain Midwest ISO transmission revenues assigned to PSI by the Midwest ISO. Pet. Ex. Z, pp. 30-31; and Pet. Ex. RR, pp. 13-14.

PSI proposed to include in its base retail rates \$ 5.554 million for Schedule 10 costs. As there are no current charges billed under Schedules 16 and 17, such Schedule 10 costs are the only costs that PSI proposed to include in base retail rates. PSI also proposed to include in the fixing of base rates Midwest ISO transmission revenues of \$ 10.905 million as a revenue credit, thus reducing base [\*338] retail rates. The net of these two items resulted in a reduction in PSI's proposed base rates of \$ 5.351 million. Pet. Ex. Z, p. 31.

Mr. Freeman said that under the Midwest ISO Rider, the total of these cost categories would be added together and the transmission revenues subtracted to determine the net amount for each quarter. The difference between this net amount and \$ 1.337 million (one quarter of \$ 5.351 million) would be recovered or credited, whichever is applicable, to the customers through the Midwest ISO Rider. Mr. Freeman said that the annual retail electric jurisdictional costs to be incurred by PSI under Midwest ISO Schedules 16 and 17 are estimated to be approximately \$ 2.1 million. Consistent with PSI's Fuel Cost Charge Standard Contract Rider and PSI's Emission Allowance Charge Standard Contract Rider, PSI proposed to adjust the Midwest ISO Rider on a quarterly basis. To the extent that any costs to be recovered under the Midwest ISO Rider are not billed by the Midwest ISO to PSI pursuant to Midwest ISO Schedules 10, 16 or 17, PSI will demonstrate in its quarterly filing the amount and reasonableness of such costs. Pet. Ex. Z, pp. 31-33.

PSI witness Ronald R. Jackups [\*339] emphasized that the proposed Rider addresses costs and revenues that are variable, substantial, and outside the control of PSI, but which result from PSI taking transmission service under the Midwest ISO OATT to serve PSI's retail electric customers. More specifically, Mr. Jackups explained that the costs and revenues covered by the proposed Rider are: (1) the result of the decisions of the FERC; (2) variable in amount from year to year; (3) variable as to timing; (4) substantial in individual and aggregate amounts; and (5) outside the control of PSI (i.e., dependent upon the actions of the FERC, the Midwest ISO, customers and loads, etc.). Further, as federally set and imposed charges at retail, necessary in order to provide retail service, Mr. Jackups testified that the costs to be incurred are just, reasonable and necessary. Pet. Ex. M, pp. 46-48.

(b) OUCC, Intervenor's, and Testimonial Staff's Testimony. The OUCC opposed PSI's proposed Midwest ISO Rider because such costs failed to meet the five (5) rate tracking criteria recommended by OUCC -- including its view that PSI's Midwest ISO's costs are relatively stable and insignificant in the context of PSI's overall O&M expenses [\*340] (only 0.678%, before tax). Although Mr. Carver's testimony specifically addressed the \$ 5.761 million of MISO Schedule 10 costs, the MISO charges are still immaterial even after

considering the additional \$ 2.1 million estimated by PSI witness Freeman (Pet. Ex. Z, pp. 31-33) attributable to MISO Schedules 16 and 17. In lieu of PSI's proposed Midwest ISO rider, OUCG would alternatively recommend the continuation of the deferral mechanism previously authorized by the Commission -- to the extent PSI does not separately recover any increased administrative costs through increased transmission revenues, MISO related efficiencies or through retail base rates. Pub. Ex. No. 1, pp. 57-59.

Intervenor PSI-IG opposed the tracking of Midwest ISO-related costs above or below the amount to be included in base rates, and opposed PSI's proposed Midwest ISO Rider as premature and probably inappropriate. PSI-IG witness Phillips said that PSI can request approval of this mechanism, if appropriate, when all matters regarding the MISO, costs, operations, rules and regulations are known. PSI-IG Ex. No. 1, p. 26.

Testimonial Staff endorsed PSI's proposed tracking of Midwest ISO related costs and revenues, [\*341] including costs that are (1) the result of decisions by the FERC; (2) variable in amount from year to year; (3) variable as to timing; (4) substantial in individual and aggregate amounts; and (5) outside the control of PSI. Dr. Borum testified that, Staff agrees that these MISO-related revenues and MISO-related costs are appropriately recovered through a tracker, in that "PSI's proposal is balanced . . . designed to flow through to ratepayers MISO-related transmission revenues received by PSI . . ." Dr. Borum noted that PSI has very little control over these costs or revenues since they are incurred through MISO tariffs and schedules approved by the FERC. Staff Ex. No. 3, pp. 23-24.

(c) PSI Rebuttal Testimony. In rebuttal, PSI witness Freeman testified that the Midwest ISO Rider: (1) is not limited to just PSI's Schedule 10 costs; (2) covers costs that PSI is currently incurring and revenues that PSI is currently receiving; and (3) covers costs and revenues that have shown a significant variance (for example, an eight-month variance of over \$ 10 million in transmission revenues). Pet. Ex. RR, pp. 5-7.

(d) Commission Discussion and Findings. We find reasonable PSI's proposal [\*342] to track Midwest ISO related costs and revenues, including costs that are: (1) the result of decisions by the FERC; (2) variable in amount from year to year; (3) variable as to timing; (4) substantial in individual and aggregate amounts; and (5) outside the control of PSI. PSI's proposal is balanced and designed to flow through to customers Midwest ISO-related transmission revenues received by PSI. Therefore, we find that PSI's proposal to track Midwest ISO related costs should be approved.

(4) Modifications to PSI's Existing SO[2] Emission Allowance Tracker. Separate and apart from its rebuttal proposal to incorporate NO[X] emission allowances into its existing SO[2] emission allowance tracker (Rider 63), PSI also proposed a minor modification of its current Rider 63 SO[2] Emission Allowance Adjustment (originally approved in IURC Cause No. 40003). The purpose of this minor modification is to conform to the manner in which costs applicable to native load customers are captured today. Mr. Farmer explained that this proposed conforming modification does not involve any substantive changes. The primary reason for the modification, he said, is the fact that the Company has various [\*343] processes in place that are used to specifically identify emission allowance costs applicable to native load customers. Pet. Ex. CC, pp. 12-13.

No party objected to PSI's proposed modification to its SO[2] emission allowance tracking provisions, and as mentioned above, IURC Testimonial Staff supported continuation of SO[2] tracker. Accordingly, we accept PSI's proposed modifications and approve PSI's proposed modified Standard Contract Rider No. 63.

(5) Modifications to PSI's Existing Fuel Adjustment Charge Mechanism. PSI also proposed minor modifications to its existing fuel adjustment charge mechanism, Standard Contract Rider No. 60. Mr. Farmer explained that, since PSI's last retail rate case, there have been



several significant proceedings relating to the fuel adjustment charge, such as this Commission's generic FAC case, Cause No. 41363, and cases interpreting the generic FAC case, such as SIGECO's and NIPSCO's FAC45 cases, and PSI's FAC56 case. PSI simply proposed to update Rider 60 to reflect current practices. Pet. Ex. CC, pp. 13-14. No party objected to these minor proposed changes to PSI's Rider 60. We find such changes to be appropriate in light of our various FAC orders [\*344] issued since PSI's last rate case, and we hereby approve PSI's proposed modifications to its Standard Contract Rider 60.

#### B. Real Time Pricing ("RTP").

(1) PSI Proposal. PSI proposed to terminate its RTP program (Standard Contract Rider No. 21), which consists of a two-part rate -- an access charge for the customer's historic load ("CBL"), which is billed at standard tariff rates, and an energy charge for the customer's incremental or decremental energy usage that is billed at a real time price. Currently, 57 PSI customers participate in RTP, with an expected peak load reduction of about 15 MWs. Pet. Ex. AA, p. 15.

PSI witness Jeffrey R. Bailey testified that PSI began its RTP Program in 1996. Its primary objectives were to elicit load responses by customers in response to changes in price. To that end, it was reasoned that customers would reduce load during high priced periods and thereby produce demand savings to PSI. Similarly, customers could shift load to, or grow their load during, lower priced periods, creating demand savings or incremental revenue growth. *Id.* at 16. The Company's analysis, after more than seven years of experience, however, revealed that, on average, [\*345] RTP customers were receiving a nearly 40% discount from tariffed rates for the RTP portion of their bills (*i.e.*, load above the CBL). For some customers the discount was even higher. Absent any modification of the RTP Program, this subsidy by PSI's other industrial and commercial customers would continue, Mr. Bailey observed. *Id.* As a result, he said, PSI has concluded that it and its other industrial and commercial customers were not receiving a proportionate amount of value from these RTP customers relative to other demand response programs. PSI's conclusion was to eliminate its RTP Program, effective with a final order in this Cause. *Id.*

Mr. Bailey testified that while the Company's analysis confirmed that *some* customers do respond to high prices, about two-thirds of the customers on the RTP program were only minimally responsive or not responsive at all. *Id.* at 17. Over the last couple of years, he said, market prices have been very low. Because the RTP commodity price is the lesser of the market price or PSI's marginal generation costs, PSI's low generation costs, combined with low market prices, has meant that customers have generally received low price signals [\*346] and have not had an incentive to shift their load to lower priced, off peak periods. *Id.* So, he observed, while customers are receiving a big discount from tariff rates, PSI is not receiving the proportionate value created when customers shift load to off-peak periods. In essence, he said, the program is not cost-effective. *Id.*

Mr. Bailey said that PSI had investigated various potential ways to modify the program, including putting "fixed adders" on the commodity portion of the price and demand charges on the T&D portion of the price to improve cost recovery from the RTP customers, but that ultimately the Company determined that these actions were drastic enough to impact RTP customers nearly as much as termination of the program, altogether. Even after such changes, he observed the Company could not be certain the pricing mechanism would function satisfactorily. *Id.*

He added that the credits for load reductions under PowerShare(R) were far less than the discounts generated under RTP. *Id.* The Company concluded that a more appropriate valuation (*i.e.* credit or discount commensurate with value created) would be achieved through PowerShare(R), either through its CallOption [\*347] or QuoteOption components. *Id.* Additionally, he said, PowerShare(R) has other features that make it preferable to the RTP

program, including greater certainty in the amount of peak load reduction (customers contract to reduce a certain amount under CallOption). *Id.* In contrast, the Company under RTP must rely on the customer to reduce load voluntarily in response to price signals, with no upfront estimate of the load reduction the customer may be able to produce. *Id.*

As for the impact of termination of the program on customers, Mr. Bailey testified that, on average, customers will experience bill increases of about 8% before the increase requested in this cause. *Id.* at pp. 8-9. He added that a small number of customers will see bill increases exceeding 20% before the rate increase requested. *Id.* Recognizing that this is a potential hardship for customers, the Company proposed to phase-out the RTP program over a two-year period. *Id.*, p. 20-21. The Company calculated the benefits received by customers under the RTP program relative to its base tariff and proposed to offer these benefits as credits on each RTP customer's electric bill during the phase out period. [\*348] The initial credits, he said, would be based on 67% of the savings from the base tariff -- as defined during the test period -- at the time new tariffs are approved (Phase I), and would be reduced to 33% at the end of the first year (Phase II). At the conclusion of the second year, the credits would cease (Phase III). Pet Ex. BB, p. 9.

PSI proposes that its Rate LLF and HLF customers that are not on the RTP program provide a subsidy necessary to fund the bill credits during the two-year phase out period. Accordingly, PSI would file three consecutive sets of tariffs for Rates LLF and HLF -- Phase I, Phase II, and Phase III. The amounts of the subsidies required would be as follows:

	<b>RTP Credits</b>		
	Total	Phase I	Phase II
Applicable to HLF	\$ 7,492,263	\$ 5,019,816	\$ 2,472,447
Applicable to LLF	\$ 187,694	\$ 125,755	\$ 61,939
Total	\$ 7,679,957	\$ 5,145,571	\$ 2,534,386

*Id.* at 9-10.

The Company proposed to transition RTP customers that do have the capability of curtailing usage to its PowerShare(R) program, and they would be eligible for the program even while they are getting bill credits from the RTP program phase-out. Pet Ex. AA, p. 21. Mr. Bailey observed that [\*349] the Company's Time-Of-Use rate is another option that may be a good fit for some RTP customers.

Mr. Bailey added that there may be some customers who can create additional value by the nature of operations they adopt, citing as an example a customer that can consistently reduce its load during peak hours, which may create value for PSI that is in excess of the PowerShare(R) CallOption premiums. For these customers, he said, the Company will entertain a special contract, subject to Commission approval. *Id.*

(2) PSI-IG Position. The PSI-IG opposed elimination of the RTP rate. It argued that the rate is theoretically sound and accurately sets forth hourly rates based on PSI's hourly costs. PSI-IG Ex. No. 1, p. 21. To PSI's point that RTP customers do not adequately shed load at the time of PSI's summer peak, witness Phillips argued that the RTP rate should not be discontinued for that reason, arguing that their rate is not an interruptible rate, but a rate that charges customers an accurate price for each hour of the year. *Id.* He added that the customer has the option of paying an extremely high price during high cost hours or reducing purchases based on operational and economical [\*350] considerations and that PSI should not be allowed to eliminate this rate because it does not agree with the choice made by its customers. *Id.* at 21-22.

Mr. Phillips argued that the current RTP has a 10% adder to hourly costs for HLF and a 25% adder to hourly costs for Rate LLF, which, he said, means that PSI always recovers actual hourly costs, plus a 10% to 25% adder to those actual hourly costs. So, he said, it is impossible for PSI to lose money with respect to the cost to serve its RTP customers. *Id.* at 22. He concluded that the elimination of this rate structure would be viewed as a backward step for providing customers with accurate price signals and an economic choice. *Id.*

(3) Kroger Position. Kroger disagreed with PSI's proposal to have rates HLF and LLF customers fund a subsidy to former RTP customers migrating to those rate schedules. Kroger witness Higgins observed "the irony of this situation is that the purpose of the subsidy is to shield the RTP customers from the immediate pain of paying these very same HLF and LLF rates; so the customers who are already on these 'painful' rates are asked to pay even more, in order to ease the pain' of the RTP customers [\*351] that are now joining them." Kroger Ex. No. 1, p. 22. Accordingly, Mr. Higgins recommended that PSI's subsidy proposal be denied, arguing that if Rates HLF and LLF are found to be just and reasonable, then there is no compelling reason to shield RTP customers from the pain of being on these rates. *Id.* at 23. Alternatively, he argued that if the RTP subsidy is adopted, it should be funded, 50% by PSI and 50% by all customer classes, in proportion to each class's base revenue requirement. *Id.*

(4) Testimonial Staff's Testimony. Staff witness Dr. Borum stated that the Testimonial Staff is not convinced that the RTP program should be terminated, rather than continued or modified. IURC Staff Ex. No. 3, p. 35. The problems cited by PSI, he maintained, are essentially financial. *Id.* He said that wholesale market prices have been low for the past few years and as PSI's on-system incremental costs are also low, RTP customers have not shifted load in response. *Id.* Thus, he observed, if PSI is getting no value from load shifting, putting these customers on regular tariffs allows the Company to collect more revenues. *Id.* In essence, he said, PSI wants to terminate the program [\*352] because it is not receiving enough financial benefit in today's low price environment. PSI's financial concerns do not mean that the RTP program has no value, he argued. *Id.*

Dr. Borum said that he is convinced that retail prices that are designed to better reflect actual hourly wholesale market costs will benefit both customers and utility companies. Over time, he argued, customers shifting loads in response to these hourly wholesale market costs would benefit both the RTP program participants and the utility with lower overall costs. Thus, Staff believes PSI has put undue emphasis on immediate results and under-valued the likelihood of significant effectiveness of the RTP program over time. *Id.*

Dr. Borum noted that this Commission, in approving a previous version of PSI's purchased power tracker, directed PSI to explore all possible methods and resources of providing efficient and economical energy to its customers, including "innovative rate options." *Id.* at 35-36. As a result, he said, Staff recommended that "approval of the purchased power tracker be conditioned on PSI entering into a collaborative process with Staff and other interested groups to not only explore [\*353] whether and how the RTP program should be modified, but to actively evaluate the feasibility of implementing other innovative rate options." *Id.* at 36.

(5) PSI Rebuttal. PSI's witness Bailey testified in response to Mr. Phillip's claim that the Company's proposals on the RTP and PowerShare(R) Programs would be reviewed as a backward step for providing customers with accurate price signals and an economic choice. He said that the Company's proposal to eliminate the RTP rider and transition its customers to special contracts or to the newly enhanced PowerShare(R) program would constitute an appropriate course to maximize the value of its peak load management program. Pet Ex. SS, p.2.

Responding to Mr. Borum, Mr. Bailey testified that PSI's track record shows continued

experimentation with innovative rate and demand-side management options, and demonstrates that the Company is committed to the goal of reducing the need for additional generating capacity. He said that the Company is certainly willing to discuss with Staff and interested parties real time pricing and other innovative rate options for the future. However, he believes that the current RTP program is so flawed that [\*354] the only feasible option is termination. There is no clear solution, he said, to improve price signals from a market that currently does not adequately reflect the long-term cost of capacity. *Id.* at 3.

Regarding the contention that PSI's request to terminate the RTP is largely motivated by short-term financial concerns, Mr. Bailey responded that PSI's revenue requirement is derived completely independently of any of its optional rate programs, and would remain the same if the RTP program is retained or terminated. *Id.* PSI's direction, he said, is not motivated by financial self-interest, but rather by the fact that the program is not cost effective. *Id.* He added that retention of the program would cause other customers to bear the burden of a program that produces no tangible value for them. *Id.*

As to Mr. Phillip's complaint that PSI appears to be driven by some notion of revenue neutrality in its RTP proposal, Mr. Bailey responded that PSI *is* driven by the notion of revenue neutrality, pointing out that one only needs to read the RTP rider (Standard Contract Rider No. 21) to see that the design of the RTP program was to make customers "bill neutral" with respect [\*355] to their historical usage. *Id.* Customers could then respond to real time prices accordingly, he said. *Id.* With respect to Mr. Phillip's contention that because PSI charges an adder to hourly costs, it is impossible for PSI to lose money with respect to the cost to serve its RTP customers, Mr. Bailey responded that even if PSI recovers the incremental costs of generation (*e.g.*, fuel), there is not sufficient remaining margin to support the cost of additional capacity that RTP customers are using. *Id.* at 5.

To Dr. Borum's contention that by eliminating the RTP Program PSI is no longer reducing the disconnect between wholesale and fixed retail prices and Mr. Phillips' opinion that the RTP is theoretically sound and accurately sets forth hourly rates, Mr. Bailey responded that a major point in the Company's case-in-chief is that the price signals being sent to RTP customers are *not* accurate. *Id.* He explained that the RTP pricing mechanism sends a price signal to customers based on the lesser of PSI's internal generation cost or the market. Whatever the signal attempted to be sent from wholesale prices, he said, is negated by a mechanism that allows the customer [\*356] to always receive the lowest price of generation or market. *Id.* Mr. Bailey testified that the fact that the RTP program is voluntary, not mandatory, substantially influences the long-term cost effectiveness of the program, as customers have no long-term requirement to remain with the program and subject themselves to the volatility of the wholesale market. *Id.*, at 5-6.

PSI proposes to terminate the program, he said, because it does not produce its intended goal of price response. *Id.* at 7. A prerequisite, he said, to a customer's being placed on the rider was its ability to shift load from higher cost to lower cost pricing periods and to add new load during lower cost pricing periods. If such load shifting is not occurring, and PSI cannot depend on the program for peak load reduction, then the program is not fulfilling its intended purpose, Mr. Bailey testified. *Id.* Other options, he said, like special contracts or PowerShare (R), will save the customer money and produce a benefit to PSI and its remaining customers. *Id.* The Company's position, he said, is that if a customer is going to pay less than tariffed rates, then that customer must bring something of value [\*357] to the Company, and non-participating customers. However, under the RTP rider, the discount to participating customers is large while the benefit to the Company and remaining customers is small. *Id.* at 7-8.

Mr. Bailey also disagreed with Mr. Phillips' contentions that a separate cost of service study should be done for RTP customers, observing that RTP is a Rider to Rates HLF and LLF, and the customers on RTP are properly HLF and LLF customers who have chosen to participate in

a voluntary rider available to those rates. *Id.* at 8. PSI, he observed, has numerous riders each of which is included with its base rate for cost of service purposes, citing examples PSI's Smart aver(R) under Rate RS, Optional Commercial Electric Service under Rate CS, Total Electric Commercial Service under Rate LLF, and Time-of-Use options under both Rates LLF and HLF. *Id.* None of these riders, he pointed out, have ever been fully segregated from its base rate for the development of rates.

Defending the Company's proposed phase-out of the RTP credits to affected customers, Mr. Bailey said that the proposed phase-out, to mitigate the large rate increase the RTP customers will incur if the entirety [\*358] of their load is immediately placed on Rates HLF or LLF, is something the Company has done in the past, with some success. He cited as an example, Cause No. 40003, where the Company used a three-year phase-in approach to mitigate the bill impacts to Rate MLF customers as that rate was combined with Rate HLF. *Id.* He said that while the Company believes that termination of the RTP program is proper, it also recognizes the hardship it may cause customers because of a large increase in their bill all at one time. A gradualism approach, he observed, is common in the industry and, in the Company's opinion, the right thing to do here. *Id.* at 8-9.

(6) Evidence at Hearing. On cross-examination by PSI at the November hearings in this Cause, Dr. Borum clarified that his testimony was not intended to call for the continuation of the RTP program as is. Rather, he believes that a collaborative process involving interested parties is the best way to examine the future of the RTP program and other innovative rate programs. He also indicated that a goal of any collaborative process concerning innovative rate options should be to increase the cost effectiveness of the rate options. Tr. [\*359] at R107-R108.

(7) Discussion and Findings. This Commission and its regulated utilities have a responsibility not only to encourage experimental innovative rate options, but also to ensure that programs meet standards of cost effectiveness. Based on the evidence we find that it is apparent that the RTP program, as currently designed, has some serious flaws. No party presented evidence that the program was, in fact, cost effective. However, this Commission believes that innovative rate options such as real time pricing, which encourage customers to react to hourly wholesale market prices, are an important offering.

Consistent with the recommendation of Testimonial Staff, we find that the best venue to deal with the RTP problems would be a collaborative process involving PSI, Staff, and other interested parties. Before this pilot program is discontinued, we feel that the parties should consider ways that it can be redesigned or modified in order to make it an effective program. While the collaborative parties are meeting, the RTP program shall continue in place as is. However, our decision does not prejudice that continuation of the RTP program is necessary or appropriate. Rather, [\*360] the goal of the collaborative is to design rate options which will be effective while providing value to PSI, its participating customers, and PSI's non-participating customers (these options may or may not include some form of a real time pricing program). Additionally, we find that the collaborative process should be concluded by October 15, 2004. PSI shall file a report detailing the efforts of the collaborative process by November 15, 2004.

Because PSI has met its burden of proof in regards to the termination of the program *as it is currently designed*, we find that the RTP rider, Rider No. 21 should be extended until January 31, 2005, whereupon it will automatically terminate. However, we would expect that it will be replaced by one or more innovative pricing options developed during the collaborative, or that the majority of PSI's RTP customers will be transitioned to PSI's PowerShare(R) program.

In reaching the foregoing conclusions we also find that phase-out credits proposed by PSI are not necessary or appropriate. While we recognize that in many instances it might be

appropriate to phase in the effect of rate changes when certain classes of customers are disproportionately [\*361] affected by a certain change, we recognize that the very customers we would be seeking to protect through the phase out in this instance have already reaped financial benefits from a program that does not appear to be working as envisioned. As the program will not end until January 31, 2005, and may be replaced by an improved RTP program, current customers will have a sufficient opportunity to prepare for the change. Therefore, we find that phase out credits are not necessary and are hereby denied.

### C. PowerShare(R) Program CallOption Pricing Change.

(1) Background. PSI's witness Bailey described PSI's PowerShare(R) program, offered under its Standard Contract Rider No. 23. This program, implemented in January, 2000, is currently a market-based program that provides financial incentives in the form of bill credits to industrial and commercial customers to reduce their electric demand during PSI's peak load times. Customers may choose to participate in either CallOption or QuoteOption.

CallOption requires customers to commit to a pre-selected load reduction, based on historic or usual demand, at a selected strike price. The strike price is selected by the customer based upon [\*362] the customer's willingness and ability to comply with the call for load reduction. In return for this commitment to reduce when called, CallOption customers receive a monthly premium payment from PSI as a credit to their bill. In addition, when customers are called to reduce load, they receive an energy credit. PSI's standard CallOption product may be exercised by PSI when the next day's market prices are projected to be greater than the customer's selected strike price. The term of the standard CallOption program agreement is four months -- June through September. Pet. Ex. AA, pp. 10-11. Mr. Bailey also described the QuoteOption component of PowerShare(R), which allows a customer to elect whether or not to reduce its load when called upon by PSI when prices reach a minimum price. No monthly premium is paid to QuoteOption customers since they may elect not to respond when called, but an energy credit is paid for load reductions made in response to PSI's calls.

(2) PSI Proposal. Mr. Bailey explained that since inception of the program, PowerShare(R) has been a market-based program, where the credits provided to customers for load curtailments have been based on the value of those [\*363] curtailments in the short term wholesale energy market. Because market prices are highly variable, customer credits have varied dramatically from year to year. In 2000 and 2001, customer credits were relatively high and these credits produced excellent customer participation. However, recent low market prices have resulted in low credits for customers that have the ability to curtail load. These low credits have drastically reduced participation in the PowerShare(R) program, even as PSI has set new peak demand records and has installed additional generating capacity. So, while the PowerShare(R) program has great potential value to PSI in providing needed capacity, it has been valued less by customers because of the current low market-based credits. *Id.* at 13.

In an effort to reinvigorate the program, and to transition it to a stable program capable of producing consistent capacity value for PSI, the Company proposed to treat PowerShare(R) CallOption similar to PSI's regulated DSM programs, which are evaluated based upon the long-term avoided costs, rather than on short-term market prices for the summer ahead. In essence, PSI will be giving a long-term capacity value to the CallOption [\*364] customer's agreement to curtail usage. Under this new pricing methodology, the credits offered to PowerShare(R) CallOption customers would be based upon the value of avoiding investment in a combustion turbine as opposed to the short-term, highly variable market value. This should, Mr. Bailey said, stabilize the credits PSI can pay customers at an attractive level to customers in exchange for an agreement to reduce their load when called upon. While this would be a material increase over current credit levels, the Company does not anticipate that such credits would exceed half the value of the annual avoided cost of a combustion turbine,

he said. *Id.*

Mr. Bailey testified that the test year contains \$ 1,023,000 of expenditures in the form of bill credits related to PSI's PowerShare(R) CallOption program, and with the transition of this program to more traditional DSM pricing, PSI believes that program expenditures will be at or above this level. The change in philosophy which results in increased credits to customer should, he said, enhance customer participation levels. *Id.* at 14

(3) Positions of Other Parties and Testimonial Staff. Testimonial Staff expressed disappointment [\*365] over PSI's proposal to move to a capacity avoidance cost standard for PowerShare(R) credits. Staff indicated that it is important that utilities find effective ways to provide price signals to end-use customers. The CallOption program was one means of providing price signals to customers who are sophisticated enough to understand and react to those price signals. Staff noted however, that with low market prices, came lower participation and the Commission should not take a negative view of the program when participation fluctuates widely due to the change in premium payments. IURC Staff Ex. No. 2, p.24. PSI-IG witness Mr. Phillips also recommended maintaining the short-term market pricing of CallOption premiums. He testified that using market prices would increase participation when the market prices were high, precisely when such load reduction is most needed. PSI-IG Ex. No. 1, pp. 23-24.

(4) PSI Response. PSI responded that the changes it is proposing to PowerShare(R) should enhance, rather than detract from the goal of providing price signals that result in changes in customer consumption patterns. Mr. Bailey observed that PSI's proposal merely replaces a short-term, volatile [\*366] wholesale market price signal with a stable, long-term price signal for the CallOption component of the PowerShare(R) program. He emphasized that PSI will maintain *short-term wholesale market pricing* through the PowerShare(R) *QuoteOption* component. This change, he contended, will make PowerShare(R) an even more effective rate option than the current structure. Pet Ex. AA, p. 10.

(5) Discussion and Findings. We find PSI's PowerShare(R) proposal reasonable. The CallOption program requires a contractual commitment to reduce load and allows the Company to depend on the load reductions in its Integrated Resource Plan. Under the current proposal, customers would be paid the true value of that reduction. In the current wholesale market, as CallOption is currently structured, it does not appear that customers are getting paid any capacity value. Moreover, the QuoteOption aspect of the PowerShare(R) program maintains a short term market price based option. Thus, PSI can still benefit when prices are high through higher participation in the QuoteOption program. Therefore we approve the pricing change as proposed by the Company.

#### D. Line Extension Advance Deposit ("LEAD") Credit [\*367] .

(1) Evidence. PSI witness Pefley testified in support of PSI's proposed change in its LEAD credit. Ms. Pefley testified that PSI's Standard Contract Rider No. 52, Line Extension -- Advance Deposit, is patterned after 170 LAC 4-1-27(C) ("Rule 27") which provides that PSI will require a line extension advance deposit if the estimated cost of extending its facilities to serve a customer exceeds the estimated revenue from the customer over a period of 2 1 / 2 years. Pet. Ex. J, p. 11. Ms. Pefley said that the Company has determined that the application of Rider 52 does not provide for a sufficient amount to allow the Company to earn an adequate return on its line extension costs. She pointed out that while the number of customers has increased by 16% since the end of the test period in the last rate case, PSI's net investment to connect such customers to its system has increased by more than twice this amount, with the result that new customers are not bearing the full costs of connecting to PSI's system. In these circumstances, she said, the unrecovered costs are being passed on to existing customers and results in regulatory lag for PSI between rate cases. [\*368] PSI proposed to replace the 2 1 / 2 years of revenue credit in Rider No. 52 with a credit equal to

the actual net book value of the plant investment required to connect new customers as of the end of the test period in this proceeding. *Id.* at 13. For the residential class, the credit is a fixed dollar amount per customer. Ms. Pefley maintained that PSI's proposed approach is fair because it reflects the connection costs embedded in the distribution rates that the customer will pay.

OUCG witnesses Endris and Brosch opposed PSI's proposed change to Rider No. 52. Mr. Endris had three concerns with the proposal: (1) in his opinion, PSI has not sufficiently demonstrated that it needs the change; (2) PSI's proposal does not adequately reflect the benefits and contributions of new customers; and (3) PSI's proposal would impede economic growth. Pub. Ex. No. 6, p. 39. Mr. Endris argued that PSI provided no historical analysis demonstrating that the experience since the last rate case is any different from the past. He said that Ms. Pefley failed to consider that some of the growth in plant investment is for replacement projects due to deterioration or obsolescence. [\*369] In addition, Mr. Endris indicated that Ms. Pefley failed to show whether some projects contributed disproportionately to the increase in PSI's net plant investment.

Mr. Endris thought that PSI's proposal ignored the prediction of PSI witness Stevie that the 2003-2008 growth rate in kilowatt-your sales will be greater than the growth rate in peak demand. If this is true, Mr. Endris argued, the new customers will be contributing to fixed cost recovery to a greater extent than their contribution to peak demand capacity requirements. Therefore, he maintained, the capacity cost recovery is likely to contribute to PSI's overall rate of return in a manner that would tend to offset increases in plant investment in the accounts identified by Ms. Pefley. *Id.* at 45.

Mr. Endris went on to testify that the proposed change also upsets the balance of customer and utilities' interests underlying Rule 27. Mr. Endris claimed that if the Commission had intended the line extension rule to result in no increases in rate base, it would not have utilized a revenue basis, but rather something linked to return on investment. Pub. Ex. No. 6, p. 47. Mr. Endris also argued that [\*370] the Commission's balancing of interests has an impact upon economic development in the form of new housing growth. He said this Commission could have chosen to have the customer pay 100% of the hook-up charges, but instead chose to impose a lesser financial burden. According to Mr. Endris, PSI's proposed change upsets this balancing of interests. *Id.* at 48.

Mr. Brosch asserted that the proposed Rule 27 change ignores the revenues and profits to be contributed by the new customer. Pub. Ex. No. 2, p. 117. He pointed out that a new fixed credit of \$ 856 would be available for a new residential customer regardless of whether the projected revenue from that customer would justify capital expenditure. He also said the proposed credits do not reflect costs, because the net depreciated cost of plant balances used in Ms. Pefley's calculations are not the values included in the revenue requirements. *Id.* at 118. Finally, Mr. Brosch argued that the investments reflected in the depreciated plant accrual balances were made for different reasons, not just to connect new customers. These balances further include, he said, all prior vintages of construction, rather [\*371] than the current period costs that might indicate what it actually costs to serve customers today. *Id.* at. 119-120.

On rebuttal, Ms. Pefley disagreed with Mr. Endris' concern about PSI's proposal impeding economic development. Ms. Pefley observed that construction costs come in eighth in a list of site selection factors -- behind availability of skilled labor and labor costs. Pet. Ex. LL, p. 2. She also did not believe that the proposed Rider 52 change will significantly impact larger commercial or industrial customers locating in PSI's service territory. Ms. Pefley presented an analysis which showed that using PSI's proposed LEAD credit to several actual connections in PSI's Noblesville service territory, only one large commercial or industrial customer would have been required to pay a deposit in the amount of \$ 57. *Id.* at 3. With respect to the possible chilling affect on residential development predicted by Mr. Brosch, Ms. Pefley



observed that the increase in the cost of a new home under PSI's proposal would be only approximately 0.5% for the average non-electric space heating customer and 0.9% for the average electric space heating customer.

Ms. Pefley also disagreed **[\*372]** with Mr. Brosch's characterization of PSI's proposal as being contrary to sound economic theory. She said that there is no rational economic theory that supports the provision of a credit against distribution construction costs based on fuel cost charge derived revenues that are a dollar-for-dollar pass-through, with no profit margin, as the current rule provides. *Id.* at 4. She observed that Rider 52 as proposed is consistent with the regulatory principle of cost causation, in that it provides a credit to each class of customers based on the distribution-related construction costs reflected in that class's rates. She also stated that Rider 52, if approved, would provide an "apples to apples" standard by crediting construction costs to connect a customer with construction costs reflected in the rates that the customer will pay. *Id.* at 5. Ms. Pefley also rejected Mr. Endris' claim of a need to perform an analysis of individual work orders, observing that the problem of utility investors and existing customers subsidizing the connection costs of new customers is not new or unique to PSI. *Id.* at 6.

(2) Discussion and Findings. In support of her request in this Cause Ms. **[\*373]** Pefley directed our attention to two specific provisions in the rule. The first provision is 170 IAC 4-1-27(C) which states as follows:

Each electric utility shall, upon proper applications for service from overhead and/or underground distribution facilities, provide necessary facilities for rendering adequate service, without charge for such facilities, when the estimated total revenue for a period of two and one half (2 1 / 2) years to be realized by the electric utility from permanent and continuing customers on such extension is at least equal to the estimated cost of such extension.

#### 170 IAC 4-1-27(C)

Ms. Pefley then indicated that PSI is requesting relief from the Commission under section 170 IAC 4-1-27(H), which states:

This Rule 25 [this section] shall not be construed as prohibiting an electric utility from (1) making extensions without charge where the cost of the same is greater than is provided in (C) above, or (2) providing an alternate plan to be approved by the commission; provided that in the application of this subsection (H) no discrimination is practiced between customers whose service requirements are similar.

#### 170 IAC 4-1-27(H)

Our line extension **[\*374]** Rule 27 permits a utility to collect a line extension deposit when the estimated costs to connect a new customer exceed 2 1 / 2 years of anticipated revenues from the customer. Thus, a linkage is established between the expected stream of revenues and profits from the customer and the service connection costs required to achieve such revenues and profits. We note that this approach has been applied by Indiana electric utilities for many years.

It is undisputed under Rule 27 that someone must pay for new customer connections and if

the new customer does not bring sufficiently compensatory profits to the utility, that new customer must pay a deposit. Alternatively, if a new customer's revenues are expected to be large, the costs to connect and serve the customer will be recovered relatively quickly through regular monthly billings and the new revenue stream, so that no subsidization is caused by new customers. At issue under the Company's new proposal is whether or not a revenue-based framework of evaluation is reasonable, or should be modified in the manner PSI now advocates.

As the modification requested by PSI is properly characterized as a request for variance under 170 IAC 4-1-27(H), [\*375] the burden of proof is upon PSI to fully support its variance request in order for us to conclude that we may properly deviate from the provisions contained in the rule. We do not have sufficient evidence before us to make such a finding. PSI's proposed changes to Rider 52 reflect a construction credit based upon PSI's construction costs relating to the extension of service, without regard to whether a new customer will generate large streams of revenues and profits or only modest new revenues. The OUCC maintained that the present framework of analysis is valid, and that the Company has not proven otherwise.

We agree with the OUCC on this issue. PSI failed to provide any cost justification for its position. The Company's distribution plant balances include costs of constructing plant for replacement, modernization, highway relocations and reliability enhancement in addition to costs to connect and serve new customers. In order to accurately isolate costs to connect new customers, a special study seems necessary to disaggregate plant costs incurred for this purpose and relate such costs to the profits contributed from new customers. The evidence in this proceeding compels the conclusion [\*376] that PSI's variance request is not supported by sufficient evidence to allow us to find that we should deviate from the requirements of Rule 27. Therefore, we deny PSI's request to modify the existing LEAD credit mechanism.

E. Optional High Efficiency Residential Service Rate. Mr. Brosch testified that PSI had originally proposed to continue a 20 percent discount under Standard Contract Rider 6.3. Pub. Ex. No. 2, p. 111. He said that the discount arose during implementation of PSI's Smart Saver program and was intended as an incentive to promote the installation of high efficiency electric heating and cooling equipment. However, during discovery PSI stated that it appeared that the 20 percent discount would not pass the Utility Cost Test, but that a 10 percent discount would. PSI recommended a reduction of the discount to 15 percent, in order to continue to avoid adverse impact to customers currently on the rate. *Id.* at 111. Mr. Brosch testified that the OUCC supported reducing the Rider 6.3 High Efficiency discount to 15 percent. We find this compromise and proposal of the OUCC and PSI reasonable, and it is approved.

F. Customer Connection Charges. PSI proposed increasing [\*377] its residential and commercial customer connection charges from \$ 8.15 to \$ 9.90. Mr. Brosch objected to these increases, claiming that PSI's current customer connection charges are higher than other Indiana electric utilities. Pub. Ex. No. 2, p. 109. However, in describing the cost support supplied by PSI in support of the proposed connection charges, Mr. Brosch admitted that a customer connection charge as high as \$ 11.20 could be justified. *Id.* at 110. Mr. Brosch recommended that the charge remain at \$ 8.15, because this rate recovers a "high percentage" of customer-related fixed costs.

In response to Mr. Brosch's proposition, Mr. Bailey observed that the fixed connection charge is intended to recover fixed costs and if the charge is not large enough to recover such costs, the part not covered is recovered through variable charges, which penalizes large volume users. This result, according to Mr. Bailey, creates an intra-class subsidy issue not considered by Mr. Brosch. *Id.* at 18. In Mr. Bailey's opinion, the cost of connection does not vary with usage and should be recovered through fixed charges.

No party disputed that PSI's proposed connection charge of \$ 9.90 is cost **[\*378]** justified. Nor did any party dispute that connection costs do not vary with usage and should be recovered as a fixed charge. PSI has proposed a gradual increase, which will ultimately lead to the goal of cost causation -- having customers who cause costs to be incurred be responsible for those costs. This Commission has repeatedly endorsed this fundamental principle of ratemaking. We find the development of PSI's proposed residential and commercial connection charge of \$ 9.90 to be just and reasonable. We authorize PSI to increase the connection charge to Rates RS and CS in the manner described in Mr. Bailey's testimony (Pet. Ex. BB, pp. 2-3), commensurate with the relief granted herein and it is approved.

#### G. PSI's Lighting Tariff Proposals.

(1) Evidence. PSI proposed several changes to its lighting tariffs (Rate SL -- schedule for street lighting service, rate AL -- schedule for area lighting service, and rate OL -- schedule for outdoor security lighting) in order to streamline its offerings of lighting equipment by restricting the number of lighting options provided to customers, and decoupling the capital costs of the lighting systems from the tariff. Mr. Bailey indicated **[\*379]** that the number of lighting types and fixtures has grown considerably over the years, and this has made the administration of PSI's lighting programs more difficult and time consuming. Pet. Ex. BB, p. 11. PSI proposed to freeze certain rate schedules (SL, AL and OL), and transition customers to an Outdoor Lighting Equipment Service ("OLES") agreement for maintenance and equipment costs, and Rate UOLS -- Unmetered Outdoor Lighting Service or Rate MOLS -- Metered Outdoor Lighting Service for the energy charges associated with the lighting equipment. *Id.* at 12.

Mr. Bailey explained that customers would benefit from these changes because, the OLES agreement provides a one-on-one equipment contract with the customer where the customer pays the current price of the lighting system. This locks in the customer's equipment purchase price, eliminates future rate increases, and eliminates subsidies to other lighting customers. Customers will have an option to pay for the lighting system up-front or over time, up to a maximum of ten (10) years. At the end of the equipment contract, the customer will no longer have a monthly payment for the equipment. In contrast, under rates SL, AL, and OL **[\*380]** customers pay a monthly fee for the equipment as long as they require electric service. *Id.* Mr. Bailey also recommended eliminating several PSI lighting rates that were frozen.

OUCG witness Mr. Brosch commented that he did not object to PSI's proposals to freeze and phase out rates SL, AL and OL, as long as PSI continues to offer rate OLES at reasonable cost-based rates. Pub. Ex. No. 2, p. 113. Mr. Brosch noted that PSI should clarify its proposal for OLES pricing.

In response to Mr. Brosch's testimony, PSI witness Bailey confirmed that future charges under OLES will continue to be cost based. More specifically, PSI committed to the use of actual cost to acquire and install the lighting systems with appropriate loadings, and will use a rate of return for the computation of levelized fixed charge rates based on the most recent figures approved by the Commission. In brief, the calculations for the recovery of capital related costs will be the same as PSI has used historically in the development of its lighting rates; however, the recovery period will be no longer than ten years, and can be less at the customer's discretion. Additionally, PSI committed that the capital portion of **[\*381]** the various lighting rate schedules will not be increased as long as the same lighting system is used by the customer.

(2) Discussion and Findings. PSI's proposed changes to its lighting schedules are hereby approved. Under the new rates, customers will pay cost-based rates for the lighting equipment, and a separate kwh charge for the energy used. No party objected to the

streamlining of these tariffs and we find the new proposal to be a more workable and efficient method of offering various lighting services to PSI's customers.

H. General Terms and Conditions for Electric Service. PSI proposed certain minor changes in the General Terms and Conditions for Electric Service contained in its retail electric rate tariff. Pet. Ex. BB-3. No party objected to any of PSI's proposed changes to its General Terms and Conditions. Based on the evidence presented, and the lack of opposition to the proposed changes, we find that PSI's General Terms and Conditions for Electric Service as contained in its proposed retail electric rate tariff are reasonable and should be approved.

I. Undisputed Changes to Tariff. In addition to the changes, deletions and additions to or from PSI's current [\*382] retail electric rate tariff previously discussed, PSI proposed various other rate schedule changes, deletions and additions which were not disputed in this proceeding. All of such changes, deletions and additions to or from PSI's current retail electric rate tariff that were not disputed are hereby approved, even though they may not be specifically discussed herein.

#### **10. Fuel Cost Adjustment Charge Issues.**

A. New Base Cost of Fuel. PSI proposed in this proceeding to increase the base cost of fuel to be used in its fuel cost adjustment charge proceedings from 14.112 mills per kWh to 14.484 mills per kWh. Pet. Ex. X, pp. 34-35. No party challenged such proposal. We find that such proposal is reasonable and proper and should be approved. When PSI files its new schedule of rates and charges as ordered below, PSI should file with the Electricity Division of this Commission a new base cost of fuel as approved by this Finding, and a new fuel cost charge as approved on the date of approval of the new rates and charges, modified to reflect the new base cost of fuel.

B. Authorized Net Operating Income for Fuel Cost Adjustment Charge Purposes. For purposes of the earnings [\*383] test contained in the fuel cost adjustment charge statute, and consistent with our return findings in this Order, PSI shall be authorized to earn \$ 267,500,000, prior to any additional return on qualified pollution control property approved by the Commission, pursuant to Ind. Code §§ 8-1-2-6.6 and 6.8, not taken into account in this case as of the August 31, 2003 update of Petitioner's plant for rate base purposes. The Commission also finds that, for purposes of computing the authorized net operating income for IC 8-1-2-42(d)(3), the increased return shall be phased-in over the appropriate period of time that the Petitioner's net operating income is affected by the earnings modification as a result of the Commission's approval of this Order.

C. OUCC Recommendation to Restate PSI's Books and Records for FAC Earnings Test Purposes. Mr. Brosch recommended that the Commission recognize that the FAC earnings test is vulnerable to serious distortions due to accounting reclassifications and what Mr. Brosch termed as abusive levels of selective rate tracking and excessive cost deferrals. Pub. Ex. No. 1, pp. 20-23 and 127. In fact, Mr. Brosch asserted that the FAC earnings tests cannot [\*384] be relied on to backstop inappropriate regulatory policies or the approval of piecemeal rate trackers and accounting deferrals. Mr. Brosch took particular exception to the Company's accounting for mark-to-market valuation adjustments recorded by the Company pursuant to Financial Accounting Standards Board Statements Nos. 133 and 138. Mr. Brosch explained that from late 1997 through November 2001, the Company recorded unrealized gains and losses relating to the market value of certain trading positions above-the-line. Mr. Brosch quoted from Mr. Farmer's prefiled testimony wherein Mr. Farmer stated that PSI began recording mark-to-market gains and losses below-the-line in December 2001 in response to an accounting directive from the Chief Accountant of FERC that was received in August 2001. *Id.* at 122. The effect of this accounting change was that such revaluations would not thereafter be included in reported utility operating income.

Mr. Brosch objected to the inconsistency between the accounting policy before and after the FERC directive. He proposed that this Commission should direct PSI to restate its books for purposes of the FAC earnings test, to reflect the application of [\*385] either an above-the-line or below-the-line classification of mark-to-market gains and losses across all relevant reporting periods. Mr. Brosch sponsored an attachment to his testimony (MLB-3) which purported to show that if mark-to-market gains and losses had been excluded from jurisdictional above-the-line income, PSI's cumulative earnings differential through the relevant period in PSI's FAC58 would have shown a cumulative earnings excess of \$ 58.3 million rather than the cumulative earnings deficit of \$ 6.6 million reported by PSI.

PSI witness Farmer urged this Commission to reject the OUCC's invitation to retroactively restate its FAC earnings test results due to the fact that the FERC now directs utilities to account for mark-to-market gains and losses below-the-line. He observed that, with one exception related to the accounting for PSI's Marble Hill related costs, which by order of the 135 Indiana Supreme Court were directed to be excluded from ratemaking processes, the FAC earnings test has always been calculated by reference to a utility's actual books and records. Pet. Ex. QQ, p. 44. Mr. Farmer testified that PSI has faithfully calculated its earnings test results by reference [\*386] to its actual books and records, complying with FERC-mandated accounting requirements, including the directive to record mark-to-market gains and losses below-the-line, beginning in 2001. *Id.* It was Mr. Farmer's view that the Indiana custom and practice of following actual books and records should not be changed retroactively to produce a different result from that shown by the Company's books and records.

D. Discussion and Findings on this Issue. We are mindful of the fact that accounting principles represent a dynamic rather than a static set of rules, and that changes in accounting principles are typically applied on a prospective as opposed to a retroactive basis. We also recognize that there will likely be many such changes in the future. An important principle of regulation is that a utility maintain its books and records in accordance with generally accepted accounting principles and orders of the bodies that regulate the utility. There is no suggestion here that PSI has done anything other than act in accordance with this principle. We do not believe it would be good policy to require a utility to restate its income in a way that does not reflect its actual books. [\*387] For the reasons stated above, we reject the OUCC's recommendation that PSI adjust and retroactively restate its books for FAC earnings test purposes.

## **11. Purdue University Issues.**

A. Evidence. Intervenor Purdue University ("Purdue") witnesses, Mr. Van Meter and Ms. Haase suggest Rider 67 -- and its successor Rider 70 -- should not be applied to Purdue because it is unfair for Purdue to pay costs to meet PSI's peak demand when Purdue has self generation that can meet Purdue's peak load requirement. Purdue has a special contract with PSI. Ms. Haase also complains that PSI failed to update the proportionate contribution to peak demand, noting that Purdue installed significant self generation after entering into its contract with PSI. Purdue Ex. No. 2, pp. 8-9 For this reason, Ms. Haase recommends that PSI update its load calculations when costs are updated. *Id.* at 11. Additionally, Mr. Van Meter complains generally about the volatility that trackers provide in Purdue's bill. He noted that trackers make up more than 10 percent of Purdue's bill to PSI, and cause great fluctuation in Purdue's bill, making it difficult to budget. Purdue Ex. No. 1, pp. 9-10.

In response, [\*388] PSI witness Bailey stated that whatever load Purdue places on PSI's system during peak load conditions contributes to PSI's peak. In addition, in accordance with operating criteria, PSI must carry spinning and supplemental reserves associated with whatever Purdue load it is experiencing. The stability and predictability of Purdue's load is immaterial to this process. Pet. Ex. SS, pp. 12-13. Therefore, PSI must carry, and plan for, sufficient reserves attributable to meeting the load that Purdue imposes on PSI's system.

Mr. Bailey explains that Ms. Haase's contention, that PSI has failed to update the proportionate contribution to peak demand, is simply incorrect. As the lead negotiator of the Purdue contract, Mr. Bailey noted that PSI recognized that Purdue's load would change as a result of their additional generation. In the development of the allocators in Cause No. 40003, PSI made a *pro forma* adjustment to reflect the amount of load Purdue expected to take from PSI following the addition of its new generating equipment. *Id.* at 13. In response to Ms. Haase's contention that PSI should update its load calculation when costs are updated, Mr. Bailey explained that while the [\*389] loads of Purdue are readily ascertainable, the class loads for PSI's major rate schedules are not. Allocators for PSI's major rate schedules are derived through load research and require an extensive study. Mr. Bailey comments that it is not practical or cost effective to update them outside the context of a rate case. *Id.*

In response to Mr. Van Meter's concern about the volatility that rate tracking mechanisms produce for Purdue, PSI indicated that it understands the concern, but that Purdue probably has more certainty in its electric bill than any other PSI customer, due to its special contract. Mr. Bailey noted that Purdue's electric bill from PSI was only 0.78% of its budget for 2002-2003. *Id.* at 14.

At the evidentiary hearing Purdue entered into three stipulations, namely: (1) Purdue places load on PSI's system during PSI peak load conditions; (2) PSI must carry and plan for reserves attributable to meeting all of its anticipated load, including the load associated with Purdue's contract; and (3) there are expenses other than purchased power that Purdue has difficulty accurately budgeting.

B. Discussion and Findings. As to the applicability of PSI's Summer Reliability [\*390] Tracker to Purdue, we find that it is appropriate. Purdue concedes that it placed load on PSI's system at times of peak demand, and that PSI must carry and plan for reserves, including reserves to meet Purdue's needs. Purdue's self generation does not change the fact that it contributes to PSI's peak and should pay its fair share of purchased power costs -- both energy and demand components. Concerning Purdue's complaint that PSI failed to update Purdue's contribution to peak demand to account for its additional generation, we find that not to be the case. Mr. Bailey explained that PSI took the additional self generation into account when calculating Purdue's contribution to peak demand. Additionally, we find that there is no basis for updating demand allocators every time costs are updated as proposed by Purdue. We agree with Mr. Bailey, that updating demand allocators outside of a rate case is not practical or cost effective

Finally, concerning the volatility of trackers, while we understand the concern, the record reflects that trackers were 10% of Purdue's bill, and electricity makes up less than 1% of Purdue's budget. Based on the evidence presented in this Cause, we do not find [\*391] the volatility of trackers to be overwhelming to Purdue.

## 12. Holding Company Issues.

A. Evidence. CAC witness Christopher Williams testified that Cinergy's holding company and business unit structure lends itself to abuse and conflicts of interest, claiming that the organizational structure, operating policies and executive pay and performance programs of Cinergy since the merger between PSI and CG&E in 1994 have had the effect of "hollowing out"

PSI, significantly compromising the corporate integrity of PSI in performing its public service role in order to serve the total shareholder return goals of Cinergy. CAC Ex. A, p 7.

CAC witness Michael Sheehan also indicated that PSI has been "hollowed out "as Cinergy has been gradually dismantling PSI's management control over its utility business and operations

and transferring that control to one or another of Cinergy's unregulated subsidiaries. CAC Ex. C. p. 36. He said that this was so with respect to control over PSI's operations, the division of loyalties in management, and the structure of incentive pay for executives. Dr. Sheehan pointed out that PSI managed much of its operations via service agreements with affiliates, **[\*392]** which are unregulated and which, in his view, have their own interests to maximize. *Id.* at 37-40. He also pointed out that many of the management positions "ostensibly working for PSI and having loyalties to PSI and its function as a regulated utility are employees of, or hold positions with, one or another of Cinergy's unregulated subsidiaries." *Id.* CAC witness Mr. Biewald claimed that the JGDA was extremely complex and subject to manipulation. CAC Ex. B, pp. 22-23. He said that each of the 14 PSI officers listed in Cinergy's 2002 Annual Report on Form 10-k is an officer of at least one other unregulated Cinergy subsidiary or Cinergy itself, and none is actually employed by PSI, but rather, by Cinergy Services Inc., or Cinergy Power Generation Services Inc. *Id.* at 41.

Dr. Sheehan also claimed that the structure of executive incentives at Cinergy predominantly favor improving the financial condition of Cinergy, as opposed to PSI. Dr. Sheehan concluded that Cinergy's executive incentive programs serve to direct the attention of PSI's executives and affiliate executives working at PSI away from PSI's public utility goals and responsibilities and focus it, instead, on Cinergy's **[\*393]** goals, which are largely directed to its unregulated companies and operations. *Id.* at 43. As to what should be done about this, Dr. Sheehan recommended that this Commission establish a separate docket to investigate the ongoing dismantling of PSI via Cinergy's structural changes, and the accounting ramifications of the resulting already dense web of inter-affiliate, less than arms length transactions, claiming "there is too much smoke here to safely ignore." *Id.* at 44.

Both CAC and the OUCC also urged this Commission to initiate a separate investigation into PSI's implementation of the 2002 Joint Generation Dispatch Agreement, citing concerns with PSI's implementation protocols. OUCC witness Mr. Endris testified that an investigation was needed to fully understand the tremendous complexity of intra-company energy transfers and to ensure that customers have not been short-changed. Pub. Ex. No. 6, p. 52.

PSI witnesses Esamann and Reising disagreed with CAC's claims. Mr. Esamann observed that there are numerous safeguards in place to guard against abuse and conflicts of interest, and pointed out that many benefits and synergies (cost savings) accrue to PSI by virtue of its participation **[\*394]** in a holding company, service company and business unit structure. The safeguards in place, he said, include federal and state laws; SEC, FERC and IURC oversight; PSI's own affiliate guidelines; FERC code of conduct requirements; the provisions of Cinergy's own service agreements; and, the provisions of agreements such as the 2002 JGDA and the Joint Transmission System Agreement ("JTA") between PSI and CG&E. Pet. Ex. DD, p. 36.

Mr. Esamann pointed out that the Cinergy merger has also allowed PSI and CG&E to share their best practices in a variety of areas that benefit customers, such as power production operations, T&D system operations, and customer service operations. Being part of a merged, holding company structure, he added, also allows PSI and CG&E to share both operating and financial resources. Important to customers, he said, is the fact that PSI has access to CG&E operating resources -- such as CG&E generation through the JGDA, CG&E line trucks and line crews for storm restoration purposes, and a variety of expertise shared between the Cinergy companies. *Id.* at 37-38.

Expanding on Mr. Esamann's observation, Mr. Reising gave examples of protective financial safeguards **[\*395]** in place, consistent with the legal separation between PSI and Cinergy. For example, the creditors of PSI clearly have the priority claim on the assets of PSI. Further, PSI is legally prohibited by the Public Utility Holding Company Act of 1935 ("PUHCA") from loaning money to Cinergy. PSI is also prohibited from guaranteeing the debt of Cinergy. Finally, there are no cross defaults between Cinergy debt and PSI; in other words, if there

would be a default on Cinergy debt, that default would not trigger a default on PSI debt. Pet. Ex. EE, pp. 12-14.

Mr. Reising pointed out the financial support that Cinergy and the holding company structure have provided to PSI. For example, PSI's dividend payout ratio averaged only 31% for the four-year period from 1999 to 2002. By virtue of being a part of the Cinergy holding company structure, PSI was able to rely on its affiliates to fund the majority of Cinergy's dividend payout during this period. PSI's lower dividend payout ratio allowed PSI to improve its liquidity by almost \$ 240 million versus what it would have been if PSI had met a standard 70% dividend payout ratio in each of those years.

Mr. Esamann disagreed with CAC's contention, and [\*396] that of the OUCC, that the Commission should initiate a separate investigation into Cinergy's implementation of the JGDA. He observed that since April, 2002, PSI has worked hard to implement the JGDA in a manner consistent with both the spirit and letter of the agreement, working to fashion a number of business rules to implement the JGDA in a fair and objective manner. The Company's primary business rules, and the system energy transfers that take place under the JGDA, he observed, have been presented to the Commission in PSI's various FAC proceedings. Additionally, consistent with the terms of the JGDA and the underlying Indiana settlement agreement, he pointed out, the hourly market prices at which system energy transfers are priced are regularly audited by an independent audit firm, Jefferson Wells, and the related audit reports have also been presented to the Commission and to the OUCC in connection with PSI's FAC proceedings. *Id.* at 38-39.

Mr. Esamann further emphasized, as did Staff witness Borum, that the 2001 Indiana settlement agreement that accompanied the JGDA required PSI to meet with the Indiana signatory parties in January 2004, to assess the feasibility, efficacy [\*397] and equity of continuing joint system dispatch and system energy transfers. Subsequently, in March 2004, PSI must initiate a proceeding before the Commission to begin a formal assessment of the functioning of the JGDA. *Id.* at 39. n11 Given these commitments and PSI's ongoing presentation of information concerning JGDA system energy transfers in its quarterly FAC proceedings, Mr. Esamann saw no reason for a separate Commission investigation into JGDA issues. *Id.*

----- Footnotes -----

n11 The initiation of discussions, as agreed in Cause No. 41954 (*Ind. Util. Reg. Comm'n*, September 11, 2001), was extended at the request of the parties until June 1, 2004.

----- End Footnotes-----

B. Discussion and Findings. We believe that the record has adequately established numerous benefits of its merger -- financial, operational, and synergistic -- with CG&E, as well as the continuing presence of safeguards in place to protect against abuses. As for the JGDA, that Agreement will be the subject of our further review, under Cause No. 41954. Therefore, it would [\*398] be premature for this Commission to establish an investigation into the JGDA at this stage of the proceedings. As for allegations that PSI has been "hollowed out" we do not believe that the evidence supports such a claim. This Commission is satisfied that PUHCA, in conjunction with additional safeguards, including the Commission's full jurisdiction over PSI's operations, remains in place. Therefore, based on the evidence presented on this issue we do not believe an investigation is warranted on this issue and hereby deny all requests for such an investigation.

### 13. Environmental Planning.



A. Testimony Presented by the CAC. CAC witness Chris Williams stated that the CAC is concerned that PSI has essentially adopted a policy of making capital investments to address environmental risk only to the extent and at the times required by law. CAC Ex. A, p. 8. CAC witness Mr. Bruce Biewald also noted that PSI's actions reflect an approach of doing the minimum required. According to Mr. Biewald, PSI has reduced its DSM expenditures, is too reliant on coal, and doesn't promote renewables. CAC Ex. B, pp. 37-43.

Mr. Biewald indicated that he believes there is a disparity between **[\*399]** the way Cinergy/PSI manages its financial risk versus the way it manages environmental risk, arguing that PSI could more actively address its environmental risks. He conceded PSI has made some effort to diversify its generation mix, to reduce emissions from its existing plants, and to implement demand-side management programs. Mr. Biewald cited EPA data (eGRID") showing Cinergy's generation mix in the year 2000 was 98% coal. Cinergy's emissions of CO<sub>2</sub>, SO<sub>2</sub>, and NO<sub>x</sub> in 2000 were 67 million tons, 560 thousand tons, and 154 thousand tons, respectively. According to Mr. Biewald, PSI's share of Cinergy's generation was about 59% in 2000 amount. PSI's share of CO<sub>2</sub> emissions was also 59% of the total. For SO<sub>2</sub>, PSI's share was higher (66% of total) and its NO<sub>x</sub> share was lower (53% of total). These shares are based upon EPA's eGRID data. Mr. Biewald concluded that PSI should serve its customers with low cost, reliable power in a way that also diversifies the resource mix, cleans up the existing fleet of plants, and expands energy efficiency programs.

Mr. Biewald recognized that Cinergy has made investments in selective catalytic reduction ("SCR") to control NO<sub>x</sub> emissions. He also **[\*400]** noted that the repowering of Noblesville has increased the station's capacity and switched its fuel from coal to gas. This represents progress toward improving the efficiency of Cinergy's generating mix, and diversity of its fuel supply, but Noblesville represents just 300 MW of capacity in a system of about 12,000 MW. Mr. Biewald noted that PSI progress in diversifying its resource mix is very gradual, and not designed to meet environmental mandates that are not yet in place. Carbon dioxide emissions, fine particulates, and toxics such as mercury will likely need to be addressed by Cinergy in the near future.

Mr. Biewald also testified that demand side programs and renewable generating resources will be essential components of a low cost and prudent strategy to manage these emissions and associated risks. Given the Company's heavy reliance on coal generation and its pronounced vulnerability to new environmental regulations, Mr. Biewald suggests that aggressively pursuing DSM would seem to be a prudent environmental risk management policy that the Company should not overlook. In addition, Mr. Biewald testified that if PSI were to utilize an increased share of renewable generating capacity, **[\*401]** this would also serve to reduce its exposure to environmental risks at costs that could reasonably be borne by customers. Mr. Biewald concluded his testimony by recommending that PSI should aggressively develop and implement cleaner generating resources and energy efficiency programs, in order to better serve its customers.

B. PSI Testimony. PSI witnesses agreed that environmental compliance planning is complex and that a utility the size of PSI cannot wait until the last minute, or until all requirements are fully known to begin such planning. Mr. Roebel testified that even after environmental compliance equipment is installed there remain operating challenges that must be addressed. He also described how PSI had to begin construction of, not just plan for, SCRs for compliance with the NO<sub>x</sub> SIP Call while a court order staying those requirements was still in place. Mr. Roebel went on to explain that PSI has been actively planning and evaluating options for compliance with what the Company believes will be more stringent environmental requirements in the near future. Pet. Ex. KK, p. 4. Similarly Mr. Esamann explained that he believed that it is good public policy to encourage **[\*402]** utilities such as PSI to present

their environmental compliance plans to regulators and interested customer groups. Mr. Esamann went on to state that with mercury rules imminent the Company anticipates that it will be submitting an environmental compliance and cost recovery plan to the Commission in 2004. Pet. Ex. DD p. 35.

C. Discussion and Findings. It is very clear for the record in this proceeding that major coal burning utilities such as PSI face significant environmental compliance costs and challenges. We agree with the CAC that it is prudent for PSI to begin evaluating options and planning to address environmental compliance issues well before the specific requirements are known with absolute certainty. Due to PSI's reliance on coal, the development of an improved resource mix, including the implementation of cleaner generating resources in conjunction with the utilization of energy efficiency programs, must be undertaken by PSI in order to ensure long term benefits to its customers. Accordingly, we anticipate and expect that future environmental compliance issues will come before us for review, and anticipate that PSI will take the steps necessary to address environmental [\*403] compliance issues in a proactive manner consistent with our findings herein.

**14. The FERC-Seven-Factor Test.** PSI witnesses Ronald R. Jackups and Edward F. Kirschner explained the FERC Seven Factor Test for classifying PSI's facilities as transmission or distribution and why PSI is seeking this Commission's approval of such classification in this case. Mr. Jackups testified that the FERC's Seven-Factor Test provides specific criteria to determine whether facilities should be classified as transmission facilities or distribution facilities under the Uniform System of Accounts. Pet. Ex. M, p. 63. Mr. Kirschner described in detail each of the tests. Pet. Ex. N, pp. 8-13.

Mr. Jackups said that the Midwest ISO Agreement requires that, prior to the end of the fourth year of the transition period of the Midwest ISO, each transmission owner shall file a request with the appropriate regulatory authority for a determination as to which of its electric system facilities are transmission facilities and which are distribution facilities, in accordance with the FERC's Seven-Factor Test. Pet. Ex. M, pp. 63-64. Mr. Jackups explained that because of the potential for changes in the transmission [\*404] and distribution components of PSI's retail electric rates when the FERC's Seven-Factor Test is implemented, PSI elected to request this Commission's review of the Company's implementation of the FERC's Seven-Factor Test in this proceeding, so that any changes ordered by this Commission could be implemented within the context of this general rate case. Pet. Ex. M, p. 64.

Mr. Kirschner testified that the application of the FERC Seven-Factor Test resulted in the determination that all of PSI's electric delivery system facilities rated 69 kV and above, networked or radial, should be classified as transmission, and that all of PSI's electric delivery system facilities rated below 69 kV should be classified as distribution. Pet. Ex. N, p. 8. This represented no change from PSI's previous classification of its facilities. Pet. Ex. N, pp. 8 and 14.

No party contested these classifications or objected to PSI's implementation of the FERC's Seven-Factor Test in this proceeding. We find that PSI has properly implemented the test and has appropriately determined which of its facilities should be classified as transmission facilities and which should be classified as distribution facilities for [\*405] purposes of the FERC Seven-Factor Test.

**15. Compliance with Hold Harmless Commitment.** PSI witness John P. Steffen submitted testimony regarding the Company's compliance with the "hold harmless" provisions of the Indiana Settlement Agreement as approved by this Commission in its March 29, 1994 Order in Cause No. 39897. Mr. Steffen testified that under the terms of the Settlement Agreement as approved by the March 29, 1994 Order, PSI was required to make affirmative showings with respect to net merger production capacity savings, net merger production cost savings

and net merger non-fuel O&M cost savings. Pet. Ex. C, p. 28. Mr. Steffen also said that the March 29, 1994 Order also required PSI to submit, as part of certain post-merger general rate case proceedings, information regarding 16 different categories. Mr. Steffen sponsored an exhibit that set forth this required information. *Id.* at 27-31; Pet. Ex. C-8.

As to production capacity savings, Mr. Steffen said that Ms. Diane Jenner's direct testimony shows that PSI has used a target planning reserve margin of less than 20%, PSI's previous standalone margin, since the 1994 merger. Pet. Ex. C, p. 31. With respect to [\*406] production cost savings, Mr. Steffen noted that under the 2002 Joint Generation Dispatch Agreement and as part of the Indiana Settlement Agreement in Cause No. 41954, PSI committed to provide its retail electric customers with \$ 7.3 million in annual joint dispatch savings rate credits through 2004. Mr. Steffen testified that since April, 2002, PSI has implemented these credits through its fuel adjustment clause. *Id.* at 32. As to non-fuel O&M costs, Mr. Steffen sponsored an exhibit which showed that O&M costs for this proceeding would have been an estimated \$ 8.3 million higher but for the merger. Pet. Ex. C-9. Mr. Steffen said that converting the non-fuel O&M costs to a per customer basis shows that PSI's annual non-fuel O&M cost per customer today is \$ 579, compared to an indexed PSI annual non-fuel O&M per customer of \$ 583 in 1992. Pet. Ex. C, p. 37.

Mr. Steffen testified that the non-fuel O&M savings produced by the merger exceed the cost of the merger and, therefore, PSI's customers have been held harmless from the effects of the merger and are clearly better off as a result of the merger. *Id.* at 38. Mr. Steffen added that it was noteworthy that this demonstration was [\*407] made by referencing only non-fuel O&M savings, without any consideration given to the savings produced by deferred capacity, and joint dispatch and financing and fuel cost savings.

No party disputed Mr. Steffen's testimony regarding PSI's compliance with the "hold harmless" provisions of the Settlement Agreement in Cause No. 39897. We find that PSI has complied with the provisions of that settlement and the terms and conditions of the March 29, 1994 Order approving it.

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

1. PSI shall be, and hereby is, authorized to place into effect rates and charges for retail electric utility service rendered by it in the territories served by it in the State of Indiana in accordance with this Order, including an annual increase to its rates and charges of \$ 107,344,000 which represents an increase in operating revenues of 8.36%. Said rates will produce total jurisdictional electric operating revenues of \$ 1,406,596,000 and, on the basis of annual jurisdictional electric operating expenses of \$ 1,139,096,000, will result in annual jurisdictional electric utility operating income \$ 267,500,000. PSI is hereby authorized [\*408] to file with the Commission a new schedule of rates and charges which will properly reflect, establish and provide the operating revenues herein authorized. Said schedule of rates and charges should be in accordance with this Order.
2. PSI shall file with the Electricity Division of this Commission, appropriate tariffs using the rate design criteria specified in Finding No. 9 of this Order, including the rates and charges authorized herein for Phase I. Such Phase I rates and charges shall be effective upon such filing, subject to refund, pending review and approval by the Commission's Electricity Division. For Phase II, PSI shall file with the Commission's Electricity Division appropriate tariffs for such phases, including the applicable rates and charges authorized herein, at least forty-five (45) days before their respective implementation dates in order to allow sufficient time for review and approval. The rates and charges for Phases II shall be effective upon approval of the filed tariffs.
3. PSI's filing of its new Phase I rates and charges with the Commission's Electricity Division

shall be accompanied by a simultaneous refiling of: (a) its fuel cost charge in effect on the **[\*409]** date of the approval of such new rates and charges, modified to reflect the new base cost of fuel provided for in Finding No. 10A of this Order; (b) its Clean Coal Operating Cost Revenue Adjustment, Standard Contract Rider No. 71 to reflect the effect of costs that will be contained in base rates in accordance with the provision of this Order; and (c) its Qualified Pollution Control Property Revenue Adjustment, Standard Contract Rider No. 62 to reflect the effect of costs that will be contained in base rates in accordance with the provision of this Order.

4. PSI shall be, and hereby is, authorized to recover in its retail electric rates its deferred Dynegy buyout costs, as determined in accordance with Finding No. 6D(13)(a) of this Order, and to continue to defer, for subsequent recovery in its retail electric rates, the unamortized balance of its deferred Dynegy buyout costs, as determined in accordance with that same Finding.

5. PSI shall be, and hereby is, authorized to recover in its retail electric rates its deferred transaction costs and costs to achieve benefits associated with the 1994 Cinergy merger, as determined in accordance with Finding No. 6D(13)(b) of this Order, and **[\*410]** to continue to defer, for subsequent recovery in its retail electric rates, the unamortized balance of its deferred transaction costs and costs to achieve benefits associated with the 1994 Cinergy merger, as necessary.

6. PSI shall be, and hereby is, authorized to: (a) recover in its retail electric rates its Midwest ISO-related deferred administrative costs, all as determined in accordance with Finding No. 6D(13)(c) of this Order; and (b) to continue to defer, for subsequent recovery in its retail electric rates, the unamortized balance of its Midwest ISO-related deferred administrative costs, all as determined in accordance with that same Finding.

7. PSI shall be, and hereby is, authorized to recover in its retail electric rates its post-in service deferred depreciation and AFUDC, as determined in accordance with Finding No. 6D(13)(d) of this Order, and to continue to defer, for subsequent recovery in its retail electric rates, the unamortized balance of its post-in service depreciation and AFUDC, all as determined in accordance with that same Finding.

8. Commencing with the first day of the month coincident with or immediately following the effective date of this Order, PSI is **[\*411]** hereby authorized to place into effect the depreciation rates approved in Finding No. 6D(1) of this Order.

9. PSI's proposed classification of its electric delivery system facilities as transmission facilities and distribution facilities, as described in Finding No. 14 of this Order, shall be, and hereby is, approved for purposes of the FERC Seven-Factor Test.

10. PSI shall be, and hereby is, authorized to implement the charges and credits for the payment of its Indiana property taxes incurred after the effective date of this Order in the manner provided in Finding No. 6D(11) of this Order.

11. PSI shall be, and hereby is, authorized to implement the Summer Reliability Standard Contract Rider, NO[X] Emission Allowance Standard Contract Rider, and Midwest ISO Cost and Revenue Adjustment Standard Contract Rider, all as determined in Finding No. 9A of this Order.

12. PSI shall be, and hereby is, directed to participate in a collaborative process involving Commission Staff and other parties concerning PSI's RTP Program, all as provided in Finding No. 9B of this Order.

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

**HADLEY, RIPLEY AND ZIEGNER CONCUR; McCARTY [\*412] AND LANDIS ABSENT:**

**APPROVED:** May 18, 2004

**CONCURBY:** HADLEY; RIPLEY; AND ZIEGNER

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