

186 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
Allison Clements, and Mark C. Christie.

Linde Inc. and
Northern Indiana Public Service Company LLC

Docket No. IN24-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 4, 2024)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), Linde Inc. (Linde), and Northern Indiana Public Service Company LLC (NIPSCO). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation (Investigation) under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2023), into whether Linde's participation in a Midcontinent Independent System Operator, Inc. (MISO) demand response program between August 2017 and July 2022 (the Relevant Period) violated MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff or Tariff) or Commission regulations. NIPSCO was the Market Participant for Linde's participation in the demand response program.

2. Linde agrees to: (a) disgorge \$48,500,000 it received through its participation as a Demand Response Resource-Type 1 (DRR-1) asset in MISO during the Relevant Period; (b) pay a civil penalty of \$10,500,000 to the United States Treasury; and (c) provide compliance training to all personnel involved if it intends to participate again as a DRR-1 asset in MISO.

3. NIPSCO agrees to: (1) disgorge \$7,700,000 it received in connection with Linde's participation as a DRR-1 asset in MISO, and (2) make an appropriate filing with the Indiana Utility Regulatory Commission (IURC) to ensure that NIPSCO customers receive a refund equivalent to the amount they were charged because of Linde's participation as a DRR-1 asset in MISO during the Relevant Period.

4. Linde and NIPSCO stipulate to the facts set forth in Section II of the Agreement, but neither admit nor deny the alleged violations in Section III of the Agreement.

I. Facts

5. Linde operates a large air separation facility known as the Calumet Area Pipeline Operations Center (CAPOC) in northwest Indiana. At CAPOC, Linde distills gases such

as oxygen, nitrogen, and argon from the atmosphere, for use by its industrial and medical customers. Linde's equipment at CAPOC requires as much as 330 megawatts (MW) to operate.

6. NIPSCO is a Load Serving Entity (LSE), providing distribution service to approximately 468,000 retail electric customers in Indiana.

7. MISO administers Day Ahead and Real Time electricity markets for Energy.¹ MISO allows two types of Demand Response Resource (DRR) assets to participate in its Energy markets: DRR-1 assets and DRR-2 assets. DRR-1 assets are expected to supply in real-time a specific quantity of Energy through behind-the-meter generation or controllable load if and to the extent the DRR-1 asset's offers clear MISO's Day Ahead market. For the Relevant Period, Linde's CAPOC facility participated in MISO as a DRR-1 asset. Linde submitted DRR-1 offers to MISO's Day Ahead market but not to its Real Time market.

8. Section 38.2.5.d.ii.e of the MISO Tariff requires a "Market Participant selling Energy" to "respond to [MISO's] directives to start, shutdown, or change output levels of Resources, in accordance with the terms specified in the Offer"

9. NIPSCO served as the Market Participant for Linde's participation as a DRR-1 asset in MISO. As a result, Linde submitted its demand response offers through NIPSCO and received payments from MISO through NIPSCO. Nevertheless, Linde decided what offers to submit to MISO and what Linde would do if its offers were accepted.

10. NIPSCO sponsored Linde's DRR-1 participation under a series of Riders (Nos. 681, 781, and 881) to its Indiana state tariff, and under more detailed contracts between Linde and NIPSCO implementing the Riders. At all times during the Relevant Period, the applicable riders authorized NIPSCO to collect an administrative fee equal to 5% of Linde's DRR-1 revenues. In addition, until 2020, the riders allowed NIPSCO to collect a Marginal Foregone Retail Rate charge from Linde for periods when Linde was participating as a DRR-1 asset. NIPSCO thus kept a portion of the money that MISO paid for Linde's participation as a DRR-1 asset, while passing on the rest to Linde.

11. MISO pays DRR-1 assets at the Locational Marginal Price (LMP) for the difference between the unit's baseline and its actual load.² The default baseline calculation method under the MISO Tariff, and the one that Linde chose, is the calculated baseline method,³ which is based on the average load over certain days within the past 45 days.⁴ Days when

¹ The MISO Tariff defines "Energy" as "[a]n amount of electricity that is Bid or Offered, produced, purchased, consumed, sold, injected, withdrawn, or transmitted over a period of time and measured or calculated in megawatt hours (MWh)." MISO Tariff, Definitions – E. "Energy" is used herein as defined in the Tariff.

² MISO Tariff Attachment TT § 3(b); *see also* MISO BPM-26-r7 at 56-57.

³ MISO Tariff Attachment TT § 3(b).

⁴ *Id.*

MISO accepts a DRR-1 asset's load reduction offer are called "event days"; other days are called "non-event days." Under the calculated baseline method, event days are normally excluded from the baseline calculation, leaving only non-event days to be used in the calculation.

12. During the Relevant Period, Linde obtained DRR-1 payments for CAPOC by: (i) setting a high baseline during a short period of non-event days, (ii) operating at a lower level for a much longer period of event days (when CAPOC submitted, and MISO accepted, DRR-1 offers), and (iii) during the second period, collecting DRR-1 payments at LMP for the difference between CAPOC's high baseline and the lower loads at which (by plan) it operated during that period. On days when Linde submitted DRR-1 offers, it planned how to operate CAPOC in advance and submitted offers in the morning that reflected an operating level below its baseline. Linde did not change that plan when it received a Day-Ahead award in the afternoon. These offers routinely cleared the MISO Day-Ahead market.

13. Linde planned the sequence and duration of the CAPOC facility's higher and lower load levels in advance of its DRR-1 offers, based on calculations about the plant's DRR-1 baseline and on Linde's production requirements. Linde determined, based on the MISO baseline calculation method that Linde chose, that the ideal length of a non-event period for Linde's purposes was seven days because that would set the CAPOC facility's baseline for both weekdays and weekends. Linde also determined that a seven-day spike would set the baseline for 38 event days thereafter because, under the calculated baseline method, MISO looked back 45 days to determine a DRR-1 asset's baseline. Between December 2019 and February 2022, the CAPOC facility's non-event day periods, during which it operated at a higher level and did not submit DRR-1 offers to MISO, averaged 6.5 days. The CAPOC facility's event day periods, during which it operated at a lower level and submitted DRR-1 offers to MISO, averaged 41 days during that same period.

14. Starting in 2020, Linde implemented an "enhanced" DRR-1 strategy in which it operated certain equipment solely for the purpose of increasing its electricity use and thereby raising its baseline. Linde vented to the atmosphere the gases it distilled using this strategy.

15. Throughout the Relevant Period, during event day periods, Linde collected DRR-1 payments for the difference between its baseline and the planned lower levels at which it operated on those days. Because Linde's enhanced DRR-1 strategy (starting in 2020) further raised its baseline, Linde submitted larger DRR-1 offers and received awards from MISO for those offers, which increased its DRR-1 revenues on event days.

16. During the Relevant Period, Linde's net revenues from its cleared offers to provide load reductions to MISO as a DRR-1 asset were approximately \$48,500,000 and NIPSCO received an additional amount of approximately \$7,700,000.

17. Under its Tariff, MISO charges market participants for all amounts paid for a DRR-1 asset's participation in MISO. To cover the amounts it paid out to Linde and NIPSCO during the Relevant Period, MISO assessed charges to certain market participants in MISO, including NIPSCO. NIPSCO paid the largest share of these amounts; other

affected market participants paid the remaining amounts. NIPSCO passed MISO's charges for Linde's DRR-1 participation to its retail customers through the Indiana state regulatory process.

18. Linde and NIPSCO have fully cooperated with Enforcement during the Investigation.

II. Violations

19. MISO Tariff § 38.2.5.d.ii.e requires Market Participants to respond to MISO directives to provide the Energy they have offered to provide:

A Market Participant selling Energy . . . shall . . . (e) **respond to the Transmission Provider's directives to start, shutdown, or change output levels of Resources**, in accordance with the terms specified in the Offer" (emphasis added).

20. NIPSCO was (as the Market Participant for Linde) selling Energy, in the form of reduced energy usage, in MISO's Day Ahead market. Linde did not reduce energy consumption levels when MISO accepted its demand response offers. Instead, Linde operated at load levels based on the preplanned schedule described above.

21. Enforcement concludes that this conduct violated § 38.2.5(d)(ii)(e) of the MISO Tariff because Linde did not "respond to [MISO] directives to . . . change output levels" by reducing its load below what it would otherwise have been. Instead, when MISO accepted Linde's DRR-1 offers, Linde did not reduce its load below the level at which it had already planned to operate.

22. Because NIPSCO was the Market Participant for Linde's participation as a DRR-1, Enforcement concludes that NIPSCO is responsible for Linde's conduct that violated the MISO Tariff. The MISO Tariff makes a Market Participant "financially responsible to [MISO] for all of its Market Activities and obligations. . . ." MISO Tariff, Definitions - M.

III. Stipulation and Consent Agreement

23. Enforcement, Linde, and NIPSCO have resolved the Investigation by means of the attached Agreement.

24. Linde and NIPSCO stipulate to the facts set forth in Section II of the Agreement, but neither admit nor deny the alleged violations set forth in Section III of the Agreement.

25. Linde agrees to disgorge \$48,500,000 it received through its participation as a DRR-1 unit in MISO during the Relevant Period.

26. Linde agrees to pay a civil penalty of \$10,500,000 to the United States Treasury.

27. Linde agrees that if it resumes participation as a DRR-1 asset in MISO prior to January 1, 2027, it will notify the MISO Independent Market Monitor (IMM) in advance of its plans, provide extensive compliance training to all personnel involved, and, for a period of three years following the start of such participation, submit annual reports to the

MISO IMM and the Director of the Office of Enforcement describing in detail Linde's DRR-1 activities over the previous year.

28. NIPSCO agrees to disgorge \$7,700,000 it received in connection with Linde's participation as a DRR-1 unit in MISO.

29. Linde and NIPSCO agree to reasonably cooperate with MISO to ensure that the \$56,200,000 disgorged under this Agreement will be returned to the LSEs and other market participants that were charged those amounts.

30. Within ten business days after the Effective Date, NIPSCO shall provide a copy of this Agreement, and of any Commission order approving the Agreement, to the General Counsel for the IURC. Thereafter, NIPSCO shall make an appropriate filing with the IURC to ensure that NIPSCO customers receive all refunds that NIPSCO receives under this Agreement. NIPSCO will propose to the IURC that this be accomplished through a semiannual NIPSCO filing that shall take effect on May 1, 2024 (with interest on the refunded amounts accruing from the month in which the refunds are issued by MISO). NIPSCO shall provide Enforcement and Linde with a copy of the relevant filing and any orders the IURC may issue relating to NIPSCO's filing or the credit to customers. NIPSCO shall promptly notify Enforcement and Linde of any orders the IURC may issue relating to NIPSCO's proposal for returning this amount to customers.

31. Linde and NIPSCO agree to take all necessary steps to ensure that Linde does not share in any of the disgorged funds that will be credited to NIPSCO and other affected LSEs and market participants in connection with this Agreement

IV. Determination of Appropriate Sanctions and Remedies

32. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,⁵ including the fact that both Linde and NIPSCO cooperated with Enforcement during the Investigation.

33. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

34. The Commission also concludes that Linde's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.

35. The Commission directs Linde to satisfy disgorgement and pay the civil penalty as required under the Agreement within thirty days of the Effective Date of the Agreement.

36. The Commission directs NIPSCO to satisfy disgorgement as required under the Agreement within thirty days of the Effective Date of the Agreement.

⁵ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

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37. The Commission directs Linde and NIPSCO to reasonably cooperate with MISO to assist MISO in its efforts to ensure that the amounts disgorged under the Agreement will be returned to the LSEs or other market participants that were charged those amounts.

38. The Commission directs NIPSCO to take the steps described in paragraphs 29-31 above to ensure that NIPSCO customers receive a refund equivalent to the amount they were charged because of Linde's participation as a DRR-1 asset in MISO during the Relevant Period. The Commission also directs Linde to comply with the provisions in the Agreement requiring it to provide compliance training to its personnel if it intends to participate again as a DRR-1 unit in MISO.

39. MISO shall return the amounts disgorged under this Agreement to the LSEs and other market participants that were charged those amounts by MISO during the Relevant Period.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Linde Inc. and
Northern Indiana Public Service Company LLC

Docket No. IN24-3000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), Linde Inc. (Linde), and Northern Indiana Public Service Company LLC (NIPSCO) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2022). The Investigation examined whether Linde's participation in a Midcontinent Independent System Operator, Inc. (MISO) demand response program between August 2017 and July 2022 (the Relevant Period) violated MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff or Tariff) or Commission regulations. NIPSCO was the Market Participant for Linde's participation in the demand response program.

2. Linde and NIPSCO stipulate to the facts in Section II, but neither admit nor deny the violations alleged in Section III, as set forth in this Agreement. Linde agrees to: (a) disgorge \$48,500,000 it received through its participation as a Demand Response Resource-Type 1 (DRR-1) asset in MISO during the Relevant Period; (b) pay a civil penalty of \$10,500,000 to the United States Treasury; and (c) provide compliance training to all personnel involved if it intends to participate again as a DRR-1 asset in MISO. NIPSCO agrees to: (1) disgorge \$7,700,000 it received in connection with Linde's participation as a DRR-1 asset in MISO, and (2) make an appropriate filing with the Indiana Utility Regulatory Commission (IURC) to ensure that NIPSCO customers receive a refund equivalent to the amount they were charged because of Linde's participation as a DRR-1 asset in MISO during the Relevant Period.

II. STIPULATIONS

Enforcement, Linde, and NIPSCO hereby stipulate and agree to the following facts.

3. Linde operates a large air separation facility known as the Calumet Area Pipeline Operations Center (CAPOC) in northwest Indiana. At CAPOC, Linde distills gases such as oxygen, nitrogen, and argon from the atmosphere, for use by its industrial and medical customers. Linde's equipment at CAPOC requires as much as 330 megawatts (MW) to operate.

4. NIPSCO is a Load Serving Entity (LSE), providing distribution service to approximately 468,000 retail electric customers in Indiana.

5. MISO administers Day Ahead and Real Time electricity markets for Energy.¹ MISO allows two types of Demand Response Resource (DRR) assets to participate in its Energy markets: DRR-1 assets and DRR-2 assets. DRR-1 assets are expected to supply in real-time a specific quantity of Energy through behind-the-meter generation or controllable load if and to the extent the DRR-1 asset's offers clear MISO's Day Ahead market. For the Relevant Period, Linde's CAPOC facility participated in MISO as a DRR-1 asset. Linde submitted DRR-1 offers to MISO's Day Ahead market but not to its Real Time market.

6. Section 38.2.5.d.ii.e of the MISO Tariff requires a "Market Participant selling Energy" to "respond to [MISO's] directives to start, shutdown, or change output levels of Resources, in accordance with the terms specified in the Offer" MISO pays DRR-1 assets at the Locational Marginal Price (LMP) for the difference between the asset's "baseline" load and its actual load.

7. NIPSCO served as the Market Participant for Linde's participation as a DRR-1 asset in MISO. As a result, Linde submitted its demand response offers through NIPSCO and received payments from MISO through NIPSCO. Nevertheless, Linde decided what offers to submit to MISO and what Linde would do if its offers were accepted.

8. NIPSCO sponsored Linde's DRR-1 participation under a series of Riders (Nos. 681, 781, and 881) to its Indiana state tariff, and under more detailed contracts between Linde and NIPSCO implementing the Riders. At all times during the Relevant Period, the applicable riders authorized NIPSCO to collect an administrative fee equal to 5% of Linde's DRR-1 revenues. In addition, until 2020, the riders allowed NIPSCO to collect a Marginal Foregone Retail Rate charge from Linde for periods when Linde was participating as a DRR-1 asset. NIPSCO thus kept a portion of the money that MISO paid for Linde's participation as a DRR-1 asset, while passing on the rest to Linde.

9. MISO pays DRR-1 assets for the difference between the unit's baseline and its actual load.² The default baseline calculation method under the MISO Tariff, and the one that Linde chose, is the calculated baseline method,³ which is based on the average load over certain days within the past 45 days.⁴ Days when MISO accepts a DRR-1 asset's load reduction offer are called "event days"; other days are called "non-event days." Under the

¹ The MISO Tariff defines "Energy" as "[a]n amount of electricity that is Bid or Offered, produced, purchased, consumed, sold, injected, withdrawn, or transmitted over a period of time and measured or calculated in megawatt hours (MWh)." MISO Tariff, Definitions – E. "Energy" is used herein as defined in the Tariff.

² MISO Tariff Attachment TT § 3(b); *see also* MISO BPM-26-r7 at 56-57.

³ MISO Tariff Attachment TT § 3(b).

calculated baseline method, event days are normally excluded from the baseline calculation, leaving only non-event days to be used in the calculation.

10. During the Relevant Period, Linde obtained DRR-1 payments for CAPOC by: (i) setting a high baseline during a short period of non-event days, (ii) operating at a lower level for a much longer period of event days (when CAPOC submitted, and MISO accepted, DRR-1 offers), and (iii) during the second period, collecting DRR-1 payments at LMP for the difference between CAPOC's high baseline and the lower loads at which (by plan) it operated during that period. On days when Linde submitted DRR-1 offers, it planned how to operate CAPOC in advance and submitted offers in the morning that reflected an operating level below its baseline. Linde did not change that plan when it received a Day-Ahead award in the afternoon. These offers routinely cleared the MISO Day-Ahead market.

11. Linde planned the sequence and duration of the CAPOC facility's higher and lower load levels in advance of its DRR-1 offers, based on calculations about the plant's DRR-1 baseline and on Linde's production requirements. Linde determined, based on the MISO baseline calculation method that Linde chose, that the ideal length of a non-event period for Linde's purposes was seven days because that would set the CAPOC facility's baseline for both weekdays and weekends. Linde also determined that a seven-day spike would set the baseline for 38 event days thereafter because, under the calculated baseline method, MISO looked back 45 days to determine a DRR-1 asset's baseline. Between December 2019 and February 2022, the CAPOC facility's non-event day periods, during which it operated at a higher level and did not submit DRR-1 offers to MISO, averaged 6.5 days. The CAPOC facility's event day periods, during which it operated at a lower level and submitted DRR-1 offers to MISO, averaged 41 days during that same period.

12. Starting in 2020, Linde implemented an "enhanced" DRR-1 strategy in which it operated certain equipment solely for the purpose of increasing its electricity use and thereby raising its baseline. Linde vented to the atmosphere the gases it distilled using this strategy.

13. Throughout the Relevant Period, during event day periods, Linde collected DRR-1 payments for the difference between its baseline and the planned lower levels at which it operated on those days. Because Linde's enhanced DRR-1 strategy (starting in 2020) further raised its baseline, Linde submitted larger DRR-1 offers and received awards from MISO for those offers, which increased its DRR-1 revenues on event days.

14. During the Relevant Period, Linde's net revenues from its cleared offers to provide load reductions to MISO as a DRR-1 asset were approximately \$48,500,000 and NIPSCO received an additional amount of approximately \$7,700,000.

15. Under its Tariff, MISO charges market participants for all amounts paid for a DRR-1 asset's participation in MISO. To cover the amounts it paid out to Linde and NIPSCO during the Relevant Period, MISO assessed charges to certain market participants in MISO, including NIPSCO. NIPSCO paid the largest share of these amounts; other affected market

participants paid the remaining amounts. NIPSCO passed MISO's charges for Linde's DRR-1 participation to its retail customers through the Indiana state regulatory process.

16. Linde and NIPSCO have fully cooperated with Enforcement during the Investigation.

III. VIOLATIONS

17. Enforcement made the following determinations about violations.

18. MISO Tariff § 38.2.5.d.ii.e requires Market Participants to respond to MISO directives to provide the Energy they have offered to provide:

A Market Participant selling Energy . . . shall . . . (e) **respond to the Transmission Provider's directives to start, shutdown, or change output levels of Resources**, in accordance with the terms specified in the Offer" (emphasis added).

19. NIPSCO was (as the Market Participant for Linde) selling Energy, in the form of reduced energy usage, in MISO's Day Ahead market. Linde did not reduce energy consumption levels when MISO accepted its demand response offers. Instead, Linde operated at load levels based on the preplanned schedule described above.

20. Enforcement concludes that this conduct violated § 38.2.5(d)(ii)(e) of the MISO Tariff because Linde did not "respond to [MISO] directives to . . . change output levels" by reducing its load below what it would otherwise have been. Instead, when MISO accepted Linde's DRR-1 offers, Linde did not reduce its load below the level at which it had already planned to operate.

21. Because NIPSCO was the Market Participant for Linde's participation as a DRR-1, Enforcement concludes that NIPSCO is responsible for Linde's conduct that violated the MISO Tariff. The MISO Tariff makes a Market Participant "financially responsible to [MISO] for all of its Market Activities and obligations. . . ." MISO Tariff, Definitions – M.

IV. REMEDIES AND SANCTIONS

22. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to Linde's and NIPSCO's conduct evaluated in Enforcement's Investigation, Linde and NIPSCO stipulate to the facts in Section II of this Agreement, but they neither admit nor deny the violations described in Section III of this Agreement. Linde and NIPSCO further agree to undertake the obligations set forth in the following paragraphs.

A. Civil Penalty

23. Linde agrees to pay a civil penalty of \$10,500,000 to the United States Treasury, by wire transfer, within thirty (30) days after the Effective Date of this Agreement, as defined herein.

B. Disgorgement

24. Linde agrees to pay disgorgement within thirty (30) days of the Effective Date of this Agreement to MISO, by wire transfer, in the amount of \$48,500,000.

25. NIPSCO agrees to pay disgorgement within thirty (30) days of the Effective Date of this Agreement to MISO, by wire transfer, in the amount of \$7,700,000.

C. Compliance Training

26. If Linde resumes participation as a DRR-1 asset in MISO prior to January 1, 2027, it will notify the MISO Independent Market Monitor (IMM) in advance of its plans, provide extensive compliance training to all personnel involved, and, for a period of three years following the start of such participation, submit annual reports to the MISO IMM and the Director of the Office of Enforcement describing in detail Linde's DRR-1 activities over the previous year.

D. Cooperation with MISO and State Utility Commission

27. Linde and NIPSCO agree to reasonably cooperate with MISO to assist MISO in its efforts to ensure that the \$56,200,000 disgorged under this Agreement will be returned to the LSEs that were charged those amounts.

28. Within ten business days after the Effective Date, NIPSCO shall provide a copy of this Agreement, and of any Commission order approving the Agreement, to the General Counsel for the IURC. Thereafter, NIPSCO shall make an appropriate filing with the IURC to ensure that NIPSCO customers receive all refunds that NIPSCO receives under this Agreement. NIPSCO will propose to the IURC that this be accomplished through a semiannual NIPSCO filing that shall take effect on May 1, 2024 (with interest on the refunded amounts accruing from the month in which the refunds are issued by MISO). NIPSCO shall provide Enforcement and Linde with a copy of the relevant filing and any orders the IURC may issue relating to NIPSCO's filing or the credit to customers. NIPSCO shall promptly notify Enforcement and Linde of any orders the IURC may issue relating to NIPSCO's proposal for returning this amount to customers.

29. Linde and NIPSCO agree to take all necessary steps to ensure that Linde does not share in any of any the disgorged funds that will be credited to NIPSCO and other LSEs in connection with this Agreement.

V. TERMS

30. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to Linde and NIPSCO and any parent or subsidiary company or affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

31. Commission approval of this Agreement without material modification shall release Linde and NIPSCO and forever bar the Commission from holding Linde and NIPSCO and any affiliated entity, parent or subsidiary company, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

32. Failure by Linde or NIPSCO to make their respective disgorgement payments, failure by Linde to pay the civil penalty, or failure by either party to comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. § 792, et seq., and may subject Linde and/or NIPSCO to additional action under the enforcement provisions of the FPA.

33. If Linde or NIPSCO do not make the required disgorgement payments described above within the times agreed by the parties, or if Linde does not pay the required civil penalty described above within the times agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) from the date that payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

34. This Agreement binds Linde and NIPSCO and their agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Linde or NIPSCO, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

35. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or by Linde or NIPSCO has been made to induce the signatories or any other party to enter into the Agreement.

36. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Linde nor NIPSCO shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement, Linde, and NIPSCO.

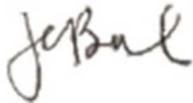
37. In connection with the disgorgement payments and civil penalty provided for herein, Linde and NIPSCO agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order under 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). Linde and NIPSCO waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

38. This Agreement can be modified only if in writing and signed by Enforcement, Linde, and NIPSCO, and any modifications will not be effective unless approved by the Commission.

39. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

40. Each of the undersigned representatives of Linde and NIPSCO affirm that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

41. This Agreement may be executed in counterparts, each of which shall be deemed an original.



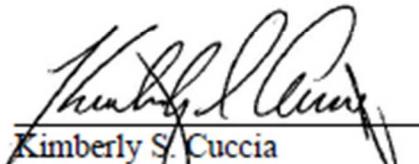
Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: November 22, 2023



Eric S. Sarner
Associate General Counsel and Chief
Litigation Counsel
Linde Inc.

Date: November 22, 2023



Kimberly S. Cuccia
Senior Vice President, General Counsel &
Corporate Secretary
Northern Indiana Public Service Company
LLC

Date: November 28, 2023

Document Content(s)

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