

FILED
May 14, 2025
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NIPSCO GENERATION LLC FOR CERTAIN DETERMINATIONS BY THE COMMISSION WITH RESPECT TO ITS JURISDICTION OVER PETITIONER'S ACTIVITIES AS A NON-RETAIL GENERATOR OF ELECTRIC POWER.

CAUSE NO. 46183

Verified Settlement Testimony of

Michael P. Gorman

On behalf of

NIPSCO Industrial Group

May 14, 2025



1 **Q WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

2 A Michael P. Gorman. My business address is 16690 Singley Ridge Road, Suite 140,
3 Chesterfield, MO 63017.

4 **Q ARE YOU THE SAME MICHEAL P. GORMAN WHO FILED DIRECT
TESTIMONY IN THIS PROCEEDING?**

5 A Yes.

6 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A I am testifying on behalf of the NIPSCO Industrial Group in support of the Stipulation and
8 Settlement Agreement (“Settlement Agreement” or “Agreement”) entered into between
and among the Industrial Group, GenCo and NIPSCO.

9 **Q WHAT DID YOU DO TO PREPARE YOUR TESTIMONY?**

10 A In addition to the Settlement Agreement, I reviewed the direct and rebuttal testimony of
11 GenCo, the cross-answering testimony of NIPSCO, and the testimony submitted on behalf
12 of the intervening parties. I also reviewed the discovery questions and responses, and
13 responses to the Commission’s docket entry requesting additional information.

14 **Q WOULD YOU PLEASE SUMMARIZE YOUR CONCLUSIONS WITH RESPECT TO THE
15 SETTLEMENT AGREEMENT?**

16 A Based on my prior testimony and the material described above, I believe that the
17 Settlement Agreement is a comprehensive resolution of the issues raised in this
18 proceeding on the relief requested by GenCo. Specifically, the Settlement Agreement
19 addresses concerns raised by myself and others with respect to the scope of GenCo’s
20 requested declination of Commission jurisdiction, Commission oversight and review of

1 critical GenCo actions, and the potential interrelationship between GenCo and NIPSCO.
2 With appropriate safeguards addressing these concerns embedded in the Settlement
3 Agreement, which incorporates modifications and clarifications made in GenCo's rebuttal
4 testimony and NIPSCO's cross-answering testimony as well as additional terms
5 responsive to the issues raised by the Industrial Group, it is my opinion that the public
6 interest will be served by the IURC declining to exercise its jurisdiction over GenCo as a
7 public utility in the manner and to the extent delineated in the Settlement.

8 **Q CAN YOU PLEASE DESCRIBE THE KEY ELEMENTS OF THE SETTLEMENT**
9 **AGREEMENT?**

10 A The Settlement Agreement is formatted in, essentially, four parts. First, the Settlement
11 incorporates changes and clarifications to the requested relief which were incorporated
12 into GenCo's rebuttal testimony and NIPSCO's cross-answering testimony. Next, the
13 Settlement Agreement reflects further modifications and clarifications as agreed to by and
14 among GenCo, NIPSCO and the Industrial Group. These include specific limits on the
15 scope of GenCo's operations, the implementation of Commission review over GenCo and,
16 finally, protections relating to the affiliate relationship between GenCo and NIPSCO.
17 My testimony will focus on the last three portions of the Agreement.

18 **Q HOW DOES THE SETTLEMENT AGREEMENT LIMIT THE SCOPE OF GENCO'S**
19 **OPERATIONS?**

20 A The Settlement Agreement does that in several ways. First, it reflects a specific
21 agreement that GenCo will be primarily limited in its operations to serving as a provider of
22 energy and capacity to megaload customers through purchase power agreements (PPAs)
23 with NIPSCO subject to Commission review. Although this is how GenCo framed its
24 expected scope of operations, the Settlement Agreement explicitly makes this status of

1 operations a binding commitment. This effectively addresses the concern that GenCo
2 could operate as a speculative entity in the wholesale market or otherwise take excessive
3 risks and potentially construct or acquire excess generation in order to support competitive
4 sales in the wholesale market.

5 **Q WILL GENCO BE ALLOWED TO UTILIZE ITS RESOURCES IN OTHER WAYS?**

6 A Yes, but only under limited circumstances and subject to interrelated checks and controls
7 meant to ensure any such usage is incidental to GenCo's core operations. For example,
8 while GenCo may potentially make wholesale power sales, the company would need to
9 use "existing, non-committed capacity" to do so. Because capacity acquisition is, itself,
10 subject to controls which align GenCo's resource portfolio with NIPSCO's integrated
11 resource planning process and actual customer demands and contracts, as well as review
12 by the Commission, there are reasonable protections against GenCo significantly
13 expanding its generation resources beyond the needs of megaload customers. This, in
14 turn, would limit the opportunities for GenCo to engage in market transactions.

15 Similarly, the Settlement Agreement allows GenCo to serve as a provider of energy
16 and capacity for resale to NIPSCO's other retail customers using excess, non-committed,
17 capacity, including NIPSCO's customers taking service under Rate 531 Tier 3. That
18 portion of Rate 531 allows customers to purchase their capacity through third parties,
19 provided that NIPSCO remains in the chain of title. Such sales by GenCo, however, are
20 subject to the same limitation as general wholesale transactions in that they need to be
21 made from excess, non-committed, capacity. This, effectively, puts GenCo on the same
22 footing as other wholesale providers, without giving them any competitive advantage.

23 I think it is also important to note that this arrangement leads to the efficient use of
24 resources. It is unlikely that there will ever be an exact match between megaload
25 customer needs and the capacity of GenCo's resource portfolio. In the absence of this

1 provision, then, that mismatch would lead to the underutilization of generation resources.
2 With the provision, however, GenCo is able to make efficient use of its full portfolio.
3 Importantly, this use then benefits the customers for whom the resource is being utilized
4 with margins from such sales being controlled by terms of agreements between NIPSCO
5 and its customers, or NIPSCO and GenCo.

6 In short, absent the Settlement, GenCo could have economic incentive to
7 speculatively construct more capacity than necessary to meet the needs of NIPSCO's
8 megaload customers. I, and others, identified this as a root concern with GenCo's initial
9 filing. With the Settlement, however, the degree of excess capacity and associated risk
10 are both limited, while GenCo is still able utilize uncommitted capacity in defined
11 circumstances. This is a reasonable, and efficient, economic outcome.

12 **Q HOW WILL GENCO'S OPERATIONS BE SUBJECT TO REVIEW BY THE IURC?**

13 Again, there are several provisions in the Settlement Agreement which work together to
14 ensure Commission, and public, oversight remains in place with respect to GenCo's core
15 functions. In particular, GenCo has agreed to obtain approval, or a specific declination,
16 from the Commission with respect to the construction, purchase or lease of resource(s) in
17 order to ensure the expenditure is consistent with what is needed to serve NIPSCO's
18 megaload customers. This process will require GenCo to support the filing by identifying
19 the proposed cost, that the expected load growth will occur, and that the resource addition
20 is necessary to meet GenCo's obligations to NIPSCO as the provider of capacity/power.
21 That need will be, further, demonstrated by annual filings from NIPSCO and GenCo which
22 provide valuable information about GenCo's resource plans, the committed customer load,
23 and the cost of the expected investment in generation resources. Importantly, the public
24 process at the Commission contemplated by the Settlement Agreement provides a further
25 safeguard to GenCo's commitments as to the scope of its operations. That is, it provides

1 mechanisms by which the Commission and other interested parties can review GenCo's
2 actions and confirm that the company is acting consistent with its core purpose rather than
3 expanding its operations without connection to a defined plan and articulated need.
4 GenCo previously emphasized the importance of its ability to develop generation
5 resources quickly so as not to impede economic development within NIPSCO's service
6 territory; while other parties, including the Industrial Group, emphasized the importance of
7 a review process. The timelines proposed in the Settlement Agreement, in my opinion,
8 represent a reasonable compromise between the competing positions.

9 I would further note that GenCo agreed to limit any exercise of eminent domain to
10 those circumstances where a generation asset has gone through the approval or
11 declination process at the Commission, and in doing so, GenCo must also provide
12 information about how it attempted to avoid the exercise of eminent domain. This further
13 limits any potential competitive advantage over other market providers that might have
14 existed under GenCo's initial proposal. By tying any exercise of eminent domain only to
15 instances where Commission approval has been secured, GenCo is putting itself on a
16 level playing field with other non-retail providers.

17 Moreover, GenCo has explicitly agreed to remain subject to the Commission's
18 investigative powers, as well as re-affirming its agreement that the declination and
19 alternative regulatory plan contemplated in the case, remain subject to later investigation
20 and revocation. This too is an important safeguard which ensures that if GenCo acts
21 outside the boundaries of its commitments, avenues exist to challenge its activities.

22 **Q ARE THERE OTHER SAFEGUARDS IN THE AGREEMENT?**

23 Yes. An important one is GenCo's agreement to submit information about issuances of
24 debt to the Commission. This, in my opinion, together with the other controls on GenCo,
25 substantially reduces the risk to NIPSCO and its other retail ratepayers as a result of debt

1 issuances supporting GenCo's operations. As I articulated in my direct testimony, a
2 potential concern was that debt issued on behalf of GenCo could impact NIPSCO's own
3 cost of debt. In conjunction with commitments to limit construction to committed load
4 growth, or agreements such as PPAs with NIPSCO to serve existing load if shown to be
5 cost effective, as well as continued review by the IURC of GenCo's operations and
6 adherence to the guidelines set out in the case, it is my opinion that this provision
7 effectively addresses the risk of a potential impact on ratepayers arising from excessive
8 debt issuances. Importantly, GenCo debt will be secured by agreements which are
9 subject to Commission approvals (that is any special contract or PPA) which are tied to
10 regulatory approvals for the construction. Further, the amount of debt will be known and
11 subject to evaluation in relation to the cost of construction and the resource mix. This
12 information, and the regulatory approval, will serve to help shield ratepayers from
13 excessive costs of debt.

14 **Q HAVE NIPSCO AND GENCO AGREED TO THE ESTABLISHMENT OF AFFILIATE**
15 **GUIDELINES?**

16 **A** Yes. NIPSCO and GenCo both agreed to the development of affiliate guidelines to protect
17 customers and competitive markets conditions. These include provisions to limit access
18 to non-public information and separation of personnel to ensure neither obtains a
19 competitive advantage over other providers. Further, the Settlement Agreement contains
20 provisions which address the transfer of assets between GenCo and NIPSCO, which
21 ensure that such transfers occur on a level playing field and subject to review.
22 Additionally, NIPSCO and GenCo have agreed that neither can "tie" customer agreements
23 beyond retail electric service, to service by the other. This helps ensure that neither
24 company can act discriminatorily against a customer who seeks to utilize services offered
25 on the open market by other entities. The development of these guidelines is an important

1 step in ensuring that the two companies do not interact in ways that would be detrimental
2 to customers or competitive markets.

3 **Q ARE THERE ANY OTHER PROVISIONS OF THE SETTLEMENT AGREEMENT YOU**
4 **WOULD LIKE TO COMMENT UPON?**

5 A Yes. The Settlement also addresses the possibility that, although NIPSCO wants to rely
6 on GenCo to provide the capacity to serve megaload customers, there may be situations
7 where that is not possible. Specifically, the Agreement recognizes that in some cases
8 temporary service under NIPSCO's existing large general service, commercial and
9 industrial rates may be necessary or desirable. In cases where the prospective customer
10 otherwise qualifies for the rate and such service is provided to a megaload customer,
11 NIPSCO has committed, through the Agreement, to take account of temporary use of its
12 legacy assets through its service offerings in the immediately subsequent electric base
13 rate case and to make appropriate adjustments, as necessary. The precise circumstances
14 of any arrangement will dictate how the use of NIPSCO's system ought to be reflected.
15 Having reviewed the language in the Settlement, however, and understanding that the
16 circumstances in which temporary service under NIPSCO's service offerings may vary
17 significantly such that not every contingency can be addressed specifically, I believe the
18 Agreement makes adequate and reasonable provisions for existing retail customers in the
19 event such service is extended.

20 **Q WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE SETTLEMENT**
21 **AGREEMENT?**

22 A I recommend that the Commission find the Agreement and the requested declination as
23 revised in the Settlement to be in public interest and should be approved.

1 In my view, the Settlement Agreement implements changes to the scope of
2 GenCo's request which provide meaningful protections to existing ratepayers and
3 reasonably address the concerns raised in this proceeding. The Settlement terms retain
4 the objective of allowing GenCo to develop and hold the capacity resources needed to
5 meet the demands of megaload customers while protecting existing ratepayers from risk,
6 while establishing limitations and protections responsive to the issues and concerns
7 presented in my initial testimony. In this way, the Settlement Agreement and the agreed
8 declination are broadly supportive of a policy in Indiana to encourage economic
9 development by attracting new business to the state, and further, will remove barriers to
10 NIPSCO's ability to serve the new megaload customers.

11 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

12 **A Yes.**

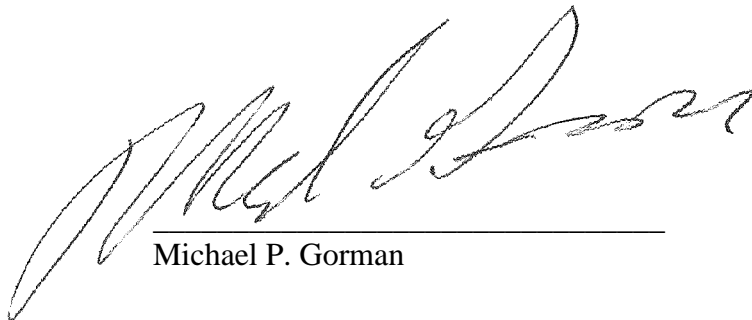
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Verification

I, Michael P. Gorman, a Managing Principal of Brubaker & Associates, Inc., affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.



Michael P. Gorman