

STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE )  
COMPANY FOR (1) APPROVAL OF AN ADJUSTMENT TO ITS GAS )  
SERVICE RATES THROUGH ITS TRANSMISSION, DISTRIBUTION, )  
AND STORAGE SYSTEM IMPROVEMENT CHARGE ("TDSIC") RATE )  
SCHEDULE; (2) AUTHORITY TO DEFER 20% OF THE APPROVED )  
CAPITAL EXPENDITURES AND TDSIC COSTS FOR RECOVERY IN )  
PETITIONER'S NEXT GENERAL RATE CASE; AND (3) APPROVAL OF )  
PETITIONER'S UPDATED 7-YEAR GAS PLAN, INCLUDING ACTUAL )  
AND PROPOSED ESTIMATED CAPITAL EXPENDITURES AND TDSIC )  
COSTS THAT EXCEED THE APPROVED AMOUNTS, ALL PURSUANT )  
TO IND. CODE CH. 8-1-39 AND THE COMMISSION'S ORDERS IN )  
CAUSE NOS. 44403 AND 44403-TDSIC-1. )

CAUSE NO. 44403-  
TDSIC-4 *On Remand*

AND

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE )  
COMPANY LLC FOR (1) APPROVAL OF AN ADJUSTMENT TO ITS )  
GAS SERVICE RATES THROUGH ITS TRANSMISSION, )  
DISTRIBUTION, AND STORAGE SYSTEM IMPROVEMENT CHARGE )  
("TDSIC") RATE SCHEDULE; (2) AUTHORITY TO DEFER 20% OF THE )  
APPROVED CAPITAL EXPENDITURES AND TDSIC COSTS FOR )  
RECOVERY IN PETITIONER'S NEXT GENERAL RATE CASE; (3) )  
APPROVAL OF PETITIONER'S UPDATED 7-YEAR GAS PLAN, )  
INCLUDING ACTUAL AND PROPOSED ESTIMATED CAPITAL )  
EXPENDITURES AND TDSIC COSTS THAT EXCEED THE APPROVED )  
AMOUNTS IN CAUSE NO. 44403-TDSIC-8, ALL PURSUANT TO IND. )  
CODE CH. 8-1-39-9, AND (4) APPROVAL OF PETITIONER'S RETURN )  
OF EXCESS INCOME TAX REVENUE RECOVERED THROUGH ITS )  
BASE RATES BETWEEN JANUARY 1 AND APRIL 30, 2018 THROUGH )  
ITS TDSIC FACTOR. )

CAUSE NO. 44403-  
TDSIC-9

OFFICIAL  
EXHIBITS

Verified Testimony of

Cory Brundage

On behalf of

The NIPSCO Industrial Group

November 9, 2018

IURC  
INTERVENOR'S *IF*  
EXHIBIT NO. 4  
*11-29-18*  
DATE REPORTER

**TESTIMONY OF CORY BRUNDAGE IN SUPPORT OF  
SUPPLEMENTAL SETTLEMENT ON AWARD OF  
ATTORNEY FEES AND LITIGATION EXPENSES**

1   **Q     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2   A     My name is Cory Brundage, and my business address is One American Square, Suite  
3         2500, Indianapolis, Indiana 46282.

4   **Q     COULD YOU SUMMARIZE YOUR PROFESSIONAL BACKGROUND AND**  
5         **CREDENTIALS?**

6   A     I am an attorney licensed to practice law in the State of Indiana. I graduated magna cum  
7         laude from Indiana University School of Law in Bloomington, Indiana in 1972, where I  
8         was selected to the Law Journal and Order of the Coif. I then attended Harvard Law  
9         School where I received a Masters of Law (LL.M) degree in 1973. I was a partner with  
10        the firm of Ice Miller, where I was employed for 29 years, where I held various  
11        management positions including Director of Litigation Section and Chairman of the  
12        Professional Responsibility Committee. In 2002, I formed my own firm, Cory Brundage,  
13        LLC, in which I have practiced as a sole practitioner through the present time. A  
14        portion of my practice focuses upon issues dealing with attorney malpractice and ethics,  
15        including issues involving the reasonableness of attorney's fees. I also have experience  
16        with commercial litigation and a variety of other types of disputes, including issues  
17        relating to fee recovery in a range of contexts.

1 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

2 A I am providing support for the Supplemental Settlement on Award of Attorney Fees and  
3 Litigation Expenses (the “Supplemental Settlement”) as filed in this case by the NIPSCO  
4 Industrial Group, its counsel, and the Indiana Office of Utility Consumer Counselor  
5 (“OUCC”). In particular, my analysis supports the conclusion that the award provided  
6 for in the Supplemental Settlement is reasonable and appropriate in the circumstances of  
7 this case, and is consistent with common fund principles and applicable law.

8 **Q WHAT MATERIALS DID YOU REVIEW IN CONNECTION WITH THE**  
9 **PREPARATION OF YOUR TESTIMONY?**

10 A I reviewed the following materials: the Indiana Supreme Court decision reported as  
11 *NIPSCO Industrial Group v. Northern Indiana Public Service Co.*, 100 N.E.3d 234 (Ind.  
12 2018) (the “Supreme Court Decision”); the Stipulation and Settlement Agreement  
13 between Northern Indiana Public Service Company (“NIPSCO”), the Industrial Group  
14 and the OUCC as filed in this cause on November 5, 2018 (the “TDSIC Settlement”); the  
15 settlement testimony and exhibits filed by the respective parties; the Supplemental  
16 Settlement; and the Verified Declaration of Todd A. Richardson with the attached  
17 exhibits, including time and expense records for the underlying litigation.

18 **Q ARE YOU FAMILIAR WITH THE COMMON FUND DOCTRINE AS APPLIED**  
19 **IN INDIANA?**

20 A Yes. Under the common fund doctrine, when litigation results in tangible financial  
21 benefits to be distributed to a large number of beneficiaries, the litigants are compensated

1 from the fund before it is distributed, so that all the beneficiaries contribute to the  
2 payment of fees, costs and expenses. The principle was established long ago by the  
3 United States Supreme Court in *Trustees v. Greenough*, 105 U.S. 527 (1881). The  
4 doctrine was recognized by the Indiana Supreme Court in *City of Hammond v.*  
5 *Darlington*, 241 Ind. 536, 162 N.E.2d 619 (1959), and has been an established part of  
6 Indiana law since that time. I am familiar with Indiana case law interpreting and  
7 applying the doctrine, as well as Indiana case law addressing the reasonableness of  
8 attorney's fees in the litigation.

9 **Q UNDER INDIANA LAW, IS THE COMMON FUND DOCTRINE APPLICABLE**  
10 **TO REGULATORY PROCEEDINGS INVOLVING PUBLIC UTILITIES?**

11 **A** Yes. In *Northern Indiana Public Service Co. v. Citizens Action Coalition*, 548 N.E.2d  
12 153, 161-62 (Ind. 1989), the Indiana Supreme Court held the Commission has authority  
13 to make a common fund award of fees and expenses in the context of rate refunds being  
14 provided by a public utility. The standards and methods for computing an award in a  
15 utility rate proceeding, then, were explained in *Citizens Action Coalition v. PSI Energy,*  
16 *Inc.*, 664 N.E.2d 401 (Ind. Ct. App. 1996). In that case, the Court prescribed an approach  
17 by which an appropriate award is computed by two methods, lodestar-multiplier and  
18 percentage of the fund, as a double check on reasonableness. The Court also held that a  
19 settlement between the litigants seeking an award and the OUCC should be approved by  
20 the Commission if it is reasonable. Another reported case involving a common fund  
21 award arising from a Commission proceeding is *Citizens Action Coalition v. Northern*  
22 *Indiana Public Service Co.*, 812 N.E.2d 814 (Ind. Ct. App. 2004), in which the Court

1 rejected a narrow definition of “common fund” and found the doctrine applicable where  
2 ascertainable benefits are being provided to ascertainable beneficiaries such that the  
3 award can be divided among those benefiting with some exactitude.

4 **Q IS AN AWARD OF FEES AND EXPENSES UNDER THE COMMON FUND**  
5 **DOCTRINE APPROPRIATE IN THIS CASE?**

6 A Yes. The litigation efforts by the Industrial Group and their counsel clearly resulted in  
7 substantial, tangible, financial benefits to NIPSCO’s retail gas customers, which  
8 constitute an ascertainable class of beneficiaries. The amounts can be determined with  
9 reasonable precision and traced with accuracy, the award can be spread across those  
10 receiving the benefits with exactitude, and the Commission has sufficient control over the  
11 distribution of the rate benefits to direct the payment of the award from the recovery  
12 flowing to ratepayers. In all respects, the ascertainable rate benefits in this case constitute  
13 a common fund and an award of fees and expenses is consistent with established law.

14 **Q HOW IS AN AWARD OF FEES AND EXPENSES COMPUTED USING THE**  
15 **LODESTAR-MULTIPLIER METHOD?**

16 A The first step is to determine a base “lodestar” by multiplying the number of hours  
17 reasonably expended in the litigation by reasonable hourly rates. That amount is then  
18 enhanced where appropriate by a multiplier to determine the fee portion. Finally,  
19 reasonable litigation expenses, without a multiplier, are added to the fee portion to  
20 compute the total award.

1 **Q** **WHAT ARE THE RELEVANT PROCEEDINGS HERE FOR PURPOSES OF**  
2 **DETERMINING THE TIME EXPENDED ON THE LITIGATION?**

3 A My understanding is that the Industrial Group asserted the legal challenges that were  
4 ultimately vindicated in the Supreme Court Decision starting with the TDSIC-4  
5 proceeding in early 2016. Related challenges were raised by the Industrial Group in  
6 TDSIC-5, TDSIC-6, TDSIC-7 and TDSIC-8 and in the appeals arising from those  
7 proceedings. Partial relief was provided in the TDSIC-8 proceeding, when NIPSCO  
8 revised its plan and reduced its requested rate relief in direct response to the Supreme  
9 Court Decision. The pending TDSIC-9 proceeding, finally, has been consolidated with  
10 the remand in TDSIC-4 and is the docket in which the remaining rate relief under the  
11 terms of the TDSIC Settlement will be effectuated. As I understand it, the Supreme  
12 Court Decision resolves a substantial portion of the rate disputes raised in TDSIC-5  
13 through TDSIC-8, in favor of NIPSCO ratepayers, and the TDSIC Settlement further  
14 provides additional rate benefits resolving the remaining disputes in the pending appeals  
15 from TDSIC-5, TDSIC-6 and TDSIC-7. In *Citizens Action Coalition*, 664 N.E.2d at 408-  
16 10, the Court held that related proceedings are properly included in the compensable  
17 scope of work where they arise from a common core of facts and the work contributed to  
18 the benefits achieved for ratepayers. In this case, the relevant proceedings are TDSIC-4  
19 through TDSIC-9 and the associated appeals.

1 **Q IN YOUR OPINION, IS THE TOTAL TIME EXPENDED BY THE INDUSTRIAL**  
2 **GROUP'S ATTORNEYS ON THE RELEVANT PROCEEDINGS AT ISSUE**  
3 **REASONABLE?**

4 A Yes. The attorneys maintained contemporaneous time records showing the actual time  
5 spent on each of the proceedings. I have reviewed those records, which reflect the level  
6 of attention and effort that I would expect in litigation of this magnitude. The litigation  
7 involved a series of proceedings and appeals with overlapping procedural schedules,  
8 calling for intensive efforts over a period of nearly three years. Given the stakes and the  
9 complexity of the issues, I believe the reported hours are reasonable.

10 **Q WILL ADDITIONAL ATTORNEY TIME BE REQUIRED TO COMPLETE THE**  
11 **RELEVANT PROCEEDINGS?**

12 A Yes. The time records cover the period through about the end of October 2018, but  
13 substantial additional work has continued and will be required as the TDSIC Settlement  
14 is presented for approval, supported with evidence, reviewed by the Commission and, if  
15 approved, implemented on its terms. Pursuant to the Supplemental Settlement, the  
16 Industrial Group and its counsel are not seeking any additional award of fees and  
17 expenses for that work subsequent to October 2018.

1 **Q HOW ARE REASONABLE HOURLY RATES DETERMINED FOR PURPOSES**  
2 **OF COMPUTING A BASE LODESTAR?**

3 A The standard approach is to utilize prevailing market rates in the particular legal  
4 community for similar services. In addition, the established hourly rate actually charged  
5 by the particular attorney is normally regarded as the applicable market rate.

6 **Q IN YOUR OPINION, ARE THE HOURLY RATES SHOWN IN THE TIME**  
7 **RECORDS HERE REASONABLE?**

8 A Yes. My understanding is that the hourly rates shown in the time records are the actual  
9 rates regularly charged by the attorneys who worked on this litigation for services in  
10 utility proceedings and appeals. Since those are the established rates paid by clients for  
11 similar services, they are the relevant prevailing market rates. In addition, I am familiar  
12 with the rates typically charged by experienced attorneys in Indiana for commercial  
13 litigation, and in that light the rates at issue here are in line with the legal market and are  
14 reasonable.

15 **Q WHAT IS THE BASE LODESTAR IN THIS INSTANCE?**

16 A For the six regulatory proceedings, the associated appeals and the related settlement  
17 negotiations, the recorded time at counsel's established hourly rates yields a base lodestar  
18 of \$473,249. Given the intensity of the litigation and the results achieved for NIPSCO  
19 ratepayers, that is a reasonable computation of the base lodestar.



1 **Q IN YOUR OPINION, IS A MULTIPLIER TO ENHANCE THE BASE LODESTAR**  
2 **APPROPRIATE IN THE CIRCUMSTANCES PRESENTED HERE?**

3 A Yes. The services were performed predominantly on a contingent fee basis, imposing  
4 substantial risk that counsel could receive no compensation at all for most of the work  
5 absent a successful outcome. The severity of that risk is underscored by the fact that the  
6 Industrial Group's legal positions were repeatedly rejected by the Commission and the  
7 TDSIC-4 order was initially affirmed by the Court of Appeals, so that success ultimately  
8 hinged on the difficult task of persuading the Supreme Court to grant transfer and reverse  
9 the Commission's rulings. The proceedings were contentious, NIPSCO vigorously  
10 opposed the Industrial Group's challenges, the issues were novel and complicated, and  
11 the outcome provides enormous direct benefits to NIPSCO ratepayers while setting  
12 valuable precedent advancing consumer interests in future TDSIC proceedings. In these  
13 circumstances, a multiplier is clearly warranted under common fund principles.

14 **Q WHAT MULTIPLIER IS APPLIED TO THE BASE LODESTAR IN THE**  
15 **AWARD PROVIDED FOR IN THE SUPPLEMENTAL SETTLEMENT?**

16 A The Supplemental Settlement utilizes a multiplier of slightly less than 3.2.

17 **Q IN YOUR OPINION, WOULD A MULTIPLIER OF 3.2 BE REASONABLE IN**  
18 **THE CONTEXT OF THIS CASE?**

19 A Yes. Multipliers as high as 5 or more have been applied in cases such as the Marble Hill  
20 fee award addressed in *Citizens Action Coalition*, 664 N.E.2d 401. See November 8,  
21 1996 Order in Cause Nos. 39498 & 39786 at 17-18 (noting requested multiplier of 5 but

1 applying multiplier of 4.5); July 16, 1997 Order in same causes (granting full award  
2 requested after subsequent appeal). In a class action context, the Indiana Court of  
3 Appeals affirmed a common fund award in which the lodestar computation used a  
4 multiplier of 3 but the final award reflected an effective multiplier of 5 in *Community*  
5 *Care Centers, Inc. v. Family and Social Services Adm.*, 716 N.E.2d 519, 552 (Ind. Ct.  
6 App. 1999). A number of legal authorities have noted multipliers greater than the 3.25  
7 used here are reasonable and not uncommon. *See Kuhnlein v. Department of Revenue*,  
8 662 So.2d 309, 315 (Fla. 1995) (holding multipliers up to 5 should be allowed in  
9 common fund cases); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 696 (N.D. Ga. 2001)  
10 (describing multiplier between 2.5 and 4 as “mid-range”); *In re NASDAQ Market-Makers*  
11 *Antitrust Litigation*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (multipliers between 3 and 4.5  
12 “have become common”); Conte, *Attorney Fee Awards* §2.06, p.40 (2d ed. 1993)  
13 (“multiples ranging from two to four are becoming standard in common fund cases”). In  
14 a recent case involving a common fund of about \$7 million, the Commission found a  
15 multiplier of 3 to be reasonable. *See* June 13, 2018 Order in Cause No. 43114-IGCC15-  
16 S1 at 10. In light of those authorities and Commission precedent, and the record here  
17 showing that the legal effort yielded exceptional value to NIPSCO ratepayers, the  
18 multiplier of less than 3.2 is consistent with established law and Commission practice and  
19 falls well within the range of reasonableness.

20 **Q WHAT IS THE AMOUNT OF LITIGATION EXPENSES INCLUDED IN THE**  
21 **AWARD PROVIDED FOR IN THE SUPPLEMENTAL SETTLEMENT?**

22 **A** The total expenses are \$20,639.

1 **Q IN YOUR OPINION, ARE THOSE EXPENSES REASONABLE FOR PURPOSES**  
2 **OF INCLUSION IN A COMMON FUND AWARD OF FEES AND EXPENSES?**

3 A Yes. The total includes expert witness fees as well as itemized expenses that are listed in  
4 the time and expense records. The kinds of expenses shown, including transcript fees,  
5 filing fees, photocopying charges and the like, are costs that law firms routinely incur in  
6 the course of legal representation and typically bill to clients. Given the magnitude and  
7 complexity of this litigation, a much higher level of expenses would not be unusual.

8 **Q WHAT IS THE RESULT OF THE LODESTAR-MULTIPLIER COMPUTATION?**

9 A The base lodestar of \$473,249 enhanced with the multiplier of 3.2 equals \$1,514,397.  
10 Adding the \$20,639 in expenses results in a total of \$1,535,036. Since that amount is  
11 higher than the \$1.5 million award called for by the Supplemental Settlement, the  
12 lodestar-multiplier computation confirms that the agreed award is reasonable.

13 **Q HOW IS AN AWARD COMPUTED USING THE PERCENTAGE METHOD?**

14 A The common fund is first quantified as the ascertainable financial benefits achieved  
15 through the legal work at issue. The fee portion is then computed as a reasonable  
16 percentage of the fund. Finally, recoverable expenses are added to yield the total award.

17 **Q WHAT IS THE AMOUNT OF THE RELEVANT COMMON FUND IN THIS**  
18 **CASE?**

19 A Based on the settlement testimony of Mr. Phillips and Mr. Grosskopf, and the Verified  
20 Declaration of Mr. Richardson, the total amount of the relevant common fund is

1 \$10,449,774. That total includes the ascertainable rate benefits to NIPSCO ratepayers  
2 that are directly attributable to the Supreme Court Decision and the TDSIC Settlement.  
3 The amount is a conservative valuation of those benefits, because it does not include  
4 amounts that NIPSCO did not seek in TDSIC-9 for multiple unit projects that were  
5 removed in TDSIC-8 in response to the Supreme Court Decision, nor does it reflect any  
6 rate savings in future TDSIC proceedings due to the changes in the NIPSCO plan  
7 resulting from the TDSIC Settlement.

8 **Q WHAT PERCENTAGE IS REFLECTED IN THE AWARD PROVIDED FOR IN**  
9 **THE SUPPLEMENTAL SETTLEMENT?**

10 A The Supplemental Settlement utilizes a percentage of less than 14.4%.

11 **Q IN YOUR OPINION, WOULD 14.4% BE A REASONABLE PERCENTAGE IN**  
12 **THIS CASE?**

13 A Yes. In *Citizens Action Coalition*, 664 N.E.2d at 410, the Court noted that 25% has been  
14 recognized as a “benchmark” for common fund cases, while indicating a smaller  
15 percentage may be appropriate where the recovery is many millions of dollars. A leading  
16 treatise states that awards in complex class actions “normally constitute 20 to 30 per cent  
17 of the class recovery, up to common funds of approximately \$50 million.” *See Conte,*  
18 *Attorney Fee Awards* §2.08, p.50 (2d ed. 1993). The Commission recently found an  
19 award of nearly 16% reasonable in a case involving a common fund of about \$7 million.  
20 *See June 13, 2018 Order in Cause No. 43114-IGCC15-S1 at 9.* In my experience, the  
21 percentage here is on the low end of the range typically awarded in cases involving

1 common funds of comparable magnitude. The use of 14.4% in this case is entirely  
2 consistent with common fund principles and established practice, and is well within the  
3 range of reasonableness.

4 **Q WHAT IS THE TOTAL AWARD USING THE PERCENTAGE**  
5 **CONTEMPLATED IN THE SUPPLEMENTAL SETTLEMENT?**

6 A Applying 14.4% to the fund of \$10,449,774 results in fees of \$1,504,767. Adding the  
7 expenses of \$20,639 yields a total award of \$1,525,406. Again, since that amount is  
8 higher than the \$1.5 million award provided for in the Supplemental Settlement, the  
9 percentage computation confirms the reasonableness of the agreed award.

10 **Q ARE YOU AWARE OF ADDITIONAL FACTORS THAT THE COMMISSION**  
11 **MAY APPROPRIATELY CONSIDER WHEN DETERMINING THE**  
12 **REASONABLENESS OF THE SUPPLEMENTAL SETTLEMENT?**

13 A Factors bearing on the reasonableness of attorney fees are recited in Rule 1.5(a) of the  
14 Rules of Professional Conduct. That rule states:

15 A lawyer's fee shall be reasonable. The factors to be considered in  
16 determining the reasonableness of a fee include the following:

- 17  
18 (1) the time and labor required, the novelty and difficulty of  
19 the questions involved, and the skill requisite to perform  
20 the legal service properly;  
21 (2) the likelihood, if apparent to the client, that the acceptance  
22 of the particular employment will preclude other  
23 employment by the lawyer;  
24 (3) the fee customarily charged in the locality for similar  
25 service;  
26 (4) the amount involved and the results obtained;  
27 (5) the time limitations imposed by the client or by the  
28 circumstances;

- 1 (6) the nature of the length of the professional relationship with
- 2 the client;
- 3 (7) the experience, reputation, and ability of the lawyer or
- 4 lawyers performing the services; and
- 5 (8) whether the fee is fixed or contingent.

6 That list is not self-contained or complete. Other factors that can be considered include  
7 the general quality of the effort expended. In addition, what transpires from the  
8 beginning to the end of the litigation is indirect evidence of what constitutes a reasonable  
9 attorney fee.

10 **Q HAVE YOU TAKEN THE RULE 1.5(a) FACTORS INTO ACCOUNT IN YOUR**  
11 **ANALYSIS OF THE LODGE-STAR-MULTIPLIER AND PERCENTAGE**  
12 **COMPUTATIONS?**

13 **A** Yes. In a common fund situation, the primary factors are the results achieved and the  
14 time and labor required. Those are the same considerations directly addressed by the  
15 percentage and lodestar-multiplier approaches, respectively. Since the award at issue is  
16 well within the bounds of reasonableness under both of those approaches, the double  
17 check called for in *Citizens Action Coalition*, 664 N.E.2d at 410-11, supports the  
18 conclusion that the award is reasonable in light of the most significant Rule 1.5(a) factors  
19 as well. Additional factors confirm that conclusion. Most notably, the work was  
20 performed predominantly on a contingent fee basis, where counsel faced serious risk of  
21 receiving no compensation at all for most of the efforts absent a successful outcome. The  
22 multiplicity of proceedings and overlapping appeals placed significant demands on  
23 counsel's time and attention over a period of several years. The legal issues were novel  
24 and raised important questions of first impression, as recognized in the Supreme Court

1 Decision. The precedent established by the Supreme Court Decision, correspondingly,  
2 will benefit ratepayers in TDSIC proceedings for years to come. The Industrial Group  
3 and its counsel were not supported in the legal challenges and appeals by any other  
4 litigants, and they demonstrated perseverance and resolve by pressing the challenges to  
5 the Indiana Supreme Court despite recurrent rejections at the Commission level and in  
6 the initial Court of Appeals decision. The attorneys have extensive experience in the  
7 specialty practice area of utility regulation, close and longstanding client relationships  
8 with industrial energy consumers, and strong professional credentials. NIPSCO  
9 vigorously opposed the Industrial Group's positions throughout the litigation, was  
10 represented by skilled and experienced counsel, and had advantageous access to in-house  
11 expertise and information resources. In all respects, the relevant considerations support  
12 the reasonableness of the award contemplated in the Supplemental Settlement.

13 **Q WHAT IS YOUR CONCLUSION REGARDING THE SUPPLEMENTAL**  
14 **SETTLEMENT?**

15 **A** I believe the Supplemental Settlement and the agreed award of fees and expenses are  
16 reasonable and in the public interest. The circumstances firmly support the award as  
17 being consistent with common fund principles as applied in Indiana, as well as  
18 established Commission practice. The context in which the Supplemental Settlement was  
19 reached – subsequent to and independent of the TDSIC Settlement, without NIPSCO's  
20 participation, through negotiations with experienced OUCC attorneys familiar with the  
21 litigation, with full access to all relevant information including time records – provides  
22 further indicia of reasonableness. The endorsement of the OUCC, which represents the

1 consuming public, underscores the conclusion that the Supplemental Settlement is in the  
2 public interest. I believe the Commission should approve the Supplemental Settlement.

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

4 **A** Yes.



**VERIFICATION**

I, Cory Brundage, affirm under the penalties of perjury that the foregoing representations and true and correct to the best of my knowledge, information and belief.

A handwritten signature in cursive script that reads "Cory Brundage". The signature is written in black ink and is positioned above a horizontal line.

Cory Brundage

November 9, 2018