

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NIPSCO GENERATION LLC )  
FOR CERTAIN DETERMINATIONS BY THE )  
COMMISSION WITH RESPECT TO ITS JURISDICTION ) CAUSE NO. 46183  
OVER PETITIONER'S ACTIVITIES AS A NON-RETAIL )  
GENERATOR OF ELECTRIC POWER. )

**RESPONSE OF INTERVENOR, TAKANOCK, INC. TO NIPSCO'S MOTION TO  
STRIKE TESTIMONY OF KENNETH DAVIES**

Intervenor Takanock, Inc. ("Takanock"), by counsel, hereby submits its Response to Northern Indiana Public Service Company and NIPSCO GenCo's (together "NIPSCO's") Motion to Strike portions of the prefiled testimony of Kenneth Davies (the "Motion"). While any party has the absolute right to object to evidence, the Commission has discretion regarding whether to admit that evidence. NIPSCO argues that Mr. Davies' testimony is outside the scope of this proceeding, but that is untrue. Requests for declination of the Commission's jurisdiction are governed by *whether that declination of jurisdiction is in the public interest*. Ind. Code § 8-1-2.5-5(b). As discussed below, what is in the "public interest" is a very broad standard.

Petitioner claims the proposed GenCo structure and the related declination request are *specifically tied to new data center and other megaload developments in Indiana*. Whitehead Direct at pp. 5, 6 and 37.<sup>1</sup> This case is absolutely about how NIPSCO plans to serve data center load and Takanock is the only data center developer in the NIPSCO territory currently granted intervention in this case. Mr. Davies' testimony directly addresses his personal experience with Takanock's attempts at energy procurement from NIPSCO for its planned data center.

---

<sup>1</sup> GenCo has filed a notice indicating that Ms. Whitehead's Direct Testimony will be adopted by Vincent Parisi at the evidentiary hearing.

NIPSCO seems to dislike that Mr. Davies paints a “less than rosy picture” of Takanock’s experience and thus asks the Commission in its Motion to delete *more than half* of his testimony.<sup>2</sup> Nonetheless, Mr. Davies’ testimony is both relevant and admissible evidence in this case. Finally, we note that the Confidential portions of Mr. Davies’ direct testimony have not been submitted to the Commission yet, as NIPSCO did not file its Motion for a Protective Order until April 14, 2025 (the same day the Motion was filed). That request for a Protective Order has not been ruled upon, and thus it would be a violation of Takanock’s due process rights to rule upon the Motion without the Commission ever seeing the Confidential materials that NIPSCO requests to strike.

**I. The Evidentiary Rules in Commission Proceedings Support Admission of Mr. Davies’ Direct Testimony in Full.**

NIPSCO’s Motion must be viewed consistent with Indiana case law that provides that in general, administrative bodies are not bound by the strict rules of evidence. *Warren v. Indiana Telephone Co.*, 26 N.E.2d 399, 409 (Ind. 1940); *Lewis v. Review Board of the Indiana Employment Security Division*, 282 N.E.2d 876, 880-881 (Ind. Ct. App. 1972); *Hammond v. Indiana H. B. R. Co.*, 373 N.E.2d 893, 898-899 (Ind. Ct. App. 1978). In Commission proceedings, the Presiding Officers have discretion on the admission of evidence as provided in 170 IAC 1-1.1-21(a).

The Commission has stated repeatedly in ruling on Motions to Strike and live objections as to the admissibility of testimony in evidentiary hearings that it applies a flexible standard, with most rulings going to the weight, and not the admissibility, of evidence. As the Commission has explained:

Pursuant to 170 LAC 1-1.1-26(a), the Commission may be guided generally by relevant provisions of the Indiana Rules of Trial Procedure and the Indiana Rules

---

<sup>2</sup> Takanock also notes that granting NIPSCO’s Motion results in at least one non-sensical sentence on page 6, lines 9-11 that would read: “However, I will let these other parties make those arguments 2) share successful approaches from other states to the challenge of providing generation to data center developers and other megasusers; and 3) recommend that the Commission deny NIPSCO GenCo’s requested relief in this cause as against the public interest.”

of Evidence to the extent they are consistent with that rule. However, the Commission is not a judicial body, and the Rules of Trial Procedure and Rules of Evidence are not specifically controlling over the Commission's administrative rules of practice and procedure. The Commission generally proceeds with a looser application . . . ."

*Complaint of Northcrest R.V. Park, et al.*, Cause No. 44973 (May 16, 2018), 2018 WL 2329328 (Ind. U.R.C.) at 6. The Commission's rule of thumb that objections "go to the weight, and not to the admissibility" of evidence is also a recognition that the issues before it often involve complex public policy considerations and are highly technical in nature. Given these cornerstones, the Presiding Officers may properly admit evidence noting that it will be given the appropriate weight.

## **II. Mr. Davies' Testimony is Admissible and Relevant to the Issue of Whether Declining Commission Jurisdiction Over the GenCo is in the Public Interest.**

NIPSCO desires to limit the scope of Takanock's testimony because it does not wish for the Commission to consider things beyond NIPSCO's own interests in this case. That is not the purpose of a public interest analysis. As the Commission has explained, determining what is in the "public interest" requires the agency to conduct a broad analysis:

In determining the public interest, the Commission must **consider the impact of the matter upon all customers and all parts of the service area**. In addition, the public interest includes the **interests of the utility, its stakeholders, and the State as a whole**. Our evaluation of the public interest recognizes that the public interest changes from time to time, and that **the State's interest may be more comprehensive and take a longer range view than any of the individual parties' interests**.

*In re the Commission's Investigation of the Rates and Charges for Telephone Service Provided by Verizon North System*, Cause No. 42259 and 42251, 2004 WL 2309827 (Ind. U.R.C.) (July 28, 2004) (emphasis added).<sup>3</sup>

The Commission has also discussed its analysis when applying the (now repealed) alternative regulatory statute for telephone utilities (Ind. Code ch. 8-1-2.6), which had similar

---

<sup>3</sup> There is no pagination for this Final Order in Westlaw.

language to Ind. Code ch. 8-1-2.5 regarding the Commission's consideration of whether to decline jurisdiction. Like the energy utility alternative regulatory statute, the telephone utility regulatory statute also did *not* define the "public interest" for purposes of declining Commission jurisdiction.

The Commission opined that in that situation:

. . . we note that while I.C. 8-1-2.6-2 includes a definition of the considerations to be made by the Commission when it examines whether to decline, in whole or in part, its jurisdiction over either telephone companies or telephone services, I.C. 8-1-2.6-3 does not contain such a definition. **Therefore, we find that under I.C. 8-1-2.6-3, when making our determination of whether a proposed regulatory procedure filed thereunder is in the public interest, we must be guided by our historic charge to protect the public interest by balancing the rights of the utility to earn a fair and nonconfiscatory return on the fair value of its used and useful property dedicated to providing service to its customers while assuring that the using public will receive prompt and efficient service under reasonable terms and conditions at a reasonable price.**

*In Re Indiana Bell Telephone Company, Inc.*, Cause No. 37997, 102 P.U.R.4th 181, 1989

WL 418597 (Ind. U.R.C., May 3, 1989).

The portions of Mr. Davies' testimony that NIPSCO wishes to strike address Takanock's *direct experience* with NIPSCO as a data center developer. Mr. Davies' testimony also discusses his direct experience with various data center regulatory frameworks in other states. This evidence includes *precisely* the type of broad public interest perspectives that the Commission addressed above that are relevant to its analysis of whether it should grant NIPSCO's request for declination of jurisdiction in this case, *i.e.*, whether the GenCo can provide prompt and efficient service to data center customers at reasonable terms and conditions at a reasonable price.

### **III. The Motion Should Be Denied.**

Mr. Davies' verified direct testimony shows he is both an expert in data center development and in energy procurement for data centers. Davies Direct at pp. 3-4. "In Indiana, expert opinion on the ultimate fact in issue is not objectionable." *City of Columbia City v. Ind. Util. Regulatory*

*Comm'n*, 618 N.E.2d 21, 28 (Ind. Ct. App. 1993) (internal citations omitted)). It is also responsive to GenCo's direct testimony in this case, which speaks to data center development in Indiana and the impact of megausers on NIPSCO's load specifically. Based on his experience in the highly technical field of data center development and energy procurement, Mr. Davies properly provides his opinion on the public policy and regulatory implications of the GenCo proposal. His opinions are admissible and provide an observation the Commission should consider in deciding whether and to what extent to exercise jurisdiction over NIPSCO.

Mr. Davies' testimony is probative and tends to provide context to the Commission that shows the delays experienced by Takanock. The evidence also has a tendency to make more probable the fact that NIPSCO's proposed GenCo structure and the related deregulation of GenCo is not in the public interest, than this fact would be without the evidence. As such, the testimony is entirely relevant, admissible, and should be afforded the weight deemed appropriate by the Presiding Officers.

Contrary to NIPSCO's mischaracterization, Mr. Davies' testimony is offered to contextualize the conditions in the data center development industry in NIPSCO's territory. The passage helps the trier of fact understand that Takanock's experience could be consistent with the experiences of other NIPSCO megaload customers, and in particular, whether a deregulated GenCo is more or less likely to benefit customers and the State of Indiana generally.

#### **IV. Conclusion.**

It is appropriate for these reasons to allow Mr. Davies to present his complete direct testimony as filed, which is directly related to the statutory factors the Commission should consider when determining whether to reassert jurisdiction.

Dated: April 24, 2025

Respectfully submitted,

A handwritten signature in blue ink that reads "Kristina Kern Wheeler". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

---

Nikki G. Shoultz, #16509-41  
Kristina Kern Wheeler, #20957-49A  
Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204  
(317) 684-5000 (office)  
(317) 223-0242 (facsimile)  
[nshoultz@boselaw.com](mailto:nshoultz@boselaw.com)  
[kwheeler@boselaw.com](mailto:kwheeler@boselaw.com)

Attorneys for Intervenor,  
Takanock, Inc.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following counsel electronically this 24<sup>th</sup> day of April, 2025:

Tiffany Murray  
Bryan M. Likins  
Erin A. Whitehead  
Debi McCall  
**NiSource Corporate Services—Legal**  
[tiffanymurray@nisource.com](mailto:tiffanymurray@nisource.com)  
[blikins@nisource.com](mailto:blikins@nisource.com)  
[ewhitehead@nisource.com](mailto:ewhitehead@nisource.com)  
[demmcalls@nisource.com](mailto:demmcalls@nisource.com)

Nicholas K. Kile  
Lauren Aguilar  
**Barnes & Thornburg LLP**  
[nicholas.kile@btlaw.com](mailto:nicholas.kile@btlaw.com)  
[lauren.aguilar@btlaw.com](mailto:lauren.aguilar@btlaw.com)

Jennifer A. Washburn  
Reagan Kurtz  
**Citizens Action Coalition**  
[jwashburn@citact.org](mailto:jwashburn@citact.org)  
[rkurtz@citact.org](mailto:rkurtz@citact.org)

Shaw R. Friedman  
**Friedman & Associates, P.C.**  
[Sfriedman.associates@frontier.com](mailto:Sfriedman.associates@frontier.com)

Clayton C. Miller  
**Clayton Miller Law, P.C.**  
[clay@claytonmillerlaw.com](mailto:clay@claytonmillerlaw.com)

Elizabeth Wheeler  
**Clean Grid Alliance**  
[ewheeler@cleangridalliance.org](mailto:ewheeler@cleangridalliance.org)

Robert A. Hicks  
**Macey Swanson Hicks & Sauer**  
[rhicks@maceylaw.com](mailto:rhicks@maceylaw.com)

Christine Soares  
**Polsinelli PC**  
[csoares@polsinelli.com](mailto:csoares@polsinelli.com)

Todd A. Richardson  
Joseph P. Rompala  
Emily R. Vlasak  
Amanda Tyler  
Ellen Tennant  
**Lewis & Kappes PC**  
[trichardson@lewis-kappes.com](mailto:trichardson@lewis-kappes.com)  
[jrompala@lewis-kappes.com](mailto:jrompala@lewis-kappes.com)  
[evlasak@lewis-kappes.com](mailto:evlasak@lewis-kappes.com)  
[atyler@lewis-kappes.com](mailto:atyler@lewis-kappes.com)  
[etennant@lewis-kappes.com](mailto:etennant@lewis-kappes.com)

William Fine  
Carol Sparks Drake  
T. Jason Haas  
Adam J. Kashin  
**Indiana Office of Utility Consumer  
Counselor**  
[wfine@oucc.in.gov](mailto:wfine@oucc.in.gov)  
[cadrake@oucc.in.gov](mailto:cadrake@oucc.in.gov)  
[thaas@oucc.in.gov](mailto:thaas@oucc.in.gov)  
[akashin@oucc.in.gov](mailto:akashin@oucc.in.gov)  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov)



Kristina Kern Wheeler, #20957-49A