

BEFORE THE

INDIANA UTILITY REGULATORY COMMISSION

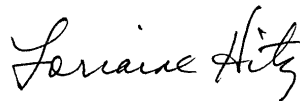
VERIFIED PETITION OF NORTHERN INDIANA PUBLIC)
SERVICE COMPANY LLC FOR (1) APPROVAL OF AND A)
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY)
FOR A FEDERALLY MANDATED ASH POND COMPLIANCE)
PROJECT; (2) AUTHORITY TO RECOVER FEDERALLY)
MANDATED COSTS INCURRED IN CONNECTION WITH)
THE AS POND COMPLIANCE PROJECT; (3) APPROVAL OF)
THE ESTIMATED FEDERALLY MANDATED COSTS)
ASSOCIATED WITH THE ASH POND COMPLIANCE)
PROJECT; (4) AUTHORITY FOR THE TIMELY RECOVERY)
OF 80% OF THE FEDERALLY MANDATED COSTS)
THROUGH RIDER 887 – ADJUSTMENT OF FEDERALLY)
MANDATED COSTS AND APPENDIX I – FEDERALLY)
MANDATED COST ADJUSTMENT FACTOR (“FMCA)
MECHANISM”); (5) AUTHORITY TO DEFER 20% OF THE)
FEDERALLY MANDATED COSTS FOR RECOVERY IN)
NIPSCO’S NEXT GENERAL RATE CASE; (6) APPROVAL OF)
SPECIFIC RATEMAKING AND ACCOUNTING TREATMENT;)
(7) APPROVAL TO AMORTIZE THE ASH POND)
COMPLIANCE PROJECT COSTS THROUGH 2032; (8))
APPROVAL OF ONGOING REVIEW OF THE ASH POND)
COMPLIANCE PROJECT; ALL PURSUANT TO IND. CODE §)
8-1-8.4-1 ET SEQ., § 8-1-2-19, § 8-1-2-23, AND § 8-1-2-42; AND,)
TO THE EXTENT NECESSARY, APPROVAL OF AN)
ALTERNATIVE REGULATORY PLAN PURSUANT TO IND.)
CODE § 8-1-2.5-6.)

CAUSE NO. 45700

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR’S
(Corrected) PUBLIC’S EXHIBIT NO. 2
TESTIMONY OF OUCC WITNESS
BRIAN A. WRIGHT

September 9, 2022

Respectfully submitted,



Lorraine Hitz
Attorney No. 18006-29
Deputy Consumer Counselor

TESTIMONY OF OUCC WITNESS BRIAN A. WRIGHT
CAUSE NO. 45700
NORTHERN INDIANA PUBLIC SERVICE COMPANY

1 **Q: Please state your name and business address.**

2 A: My name is Brian A. Wright, and my business address is 115 W. Washington St.,
3 Suite 1500 South, Indianapolis, IN, 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed as a Utility Analyst II in the Electric Division for the Indiana Office
6 of Utility Consumer Counselor ("OUCC"). A summary of my qualifications can be
7 found in Appendix A.

8 **Q: What is the purpose of your testimony in this proceeding?**

9 A: I discuss Northern Indiana Public Service Company LLC's ("NIPSCO") request to
10 obtain a Certificate of Public Necessity and Convenience for costs related to the
11 closure and remediation of ash impoundments at the Michigan City Generation
12 Station ("Michigan City") as part of its Ash Pond Compliance Project.

13 I address the regulatory requirements and the Indiana Department of
14 Environmental Management's ("IDEM") investigation process that led to the
15 decision to close and remediate the impoundments, and NIPSCO's evaluation of
16 the alternative closure methods for the ash impoundments, closure by removal
17 ("CBR") and closure in place ("CIP"). I recommend the Indiana Utility Regulatory
18 Commission ("Commission") approve NIPSCO's choice of CBR.

19 My testimony also supports the testimony of OUCC Witnesses Cynthia
20 Armstrong and Kaleb Lantrip.

21 **Q: What did you do to prepare for your testimony?**

1 A: I reviewed the Verified Petition, Direct Testimony and Exhibits submitted by
2 NIPSCO in this Cause and toured NIPSCO's Michigan City ash impoundments. I
3 also reviewed documents from IDEM relating to the Michigan City ash
4 impoundments, the federal regulations on coal combustion residuals ("CCR"), and
5 pending federal rulemakings on CCR.

6 **Q: To the extent you do not address a specific item or adjustment, does this mean**
7 **you agree with those portions of NIPSCO's proposals?**

8 A: No. Excluding any specific adjustments, issues or amounts NIPSCO proposes does
9 not indicate my approval of those adjustments, issues, or amounts. Rather, the scope
10 of my testimony is limited to the specific items addressed herein.

11 **Q: What are the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C.**
12 **§ 82) regulatory requirements applicable to NIPSCO's Michigan City ash**
13 **impoundments?**

14 A: NIPSCO is required by a RCRA-based Corrective Action Agreed Order ("Agreed
15 Order") with IDEM to develop closure and post-closure plans for five
16 impoundments at Michigan City, Primary #2 Pond, Boiler Slag Pond, Primary #1
17 Pond, Secondary #1 Pond, and Secondary #2 Pond. An IDEM inspection on
18 October 12, 2011 resulted in the Agreed Order, which found multiple areas of
19 concern on the Michigan City site.¹ As a result of the inspection, IDEM and
20 NIPSCO agreed to a process for evaluating the risk posed by solid waste
21 management units ("SWMU") and areas of concern ("AOC"), and to take
22 corrective actions necessary to prevent or mitigate any migration or releases of

¹ IDEM Draft RCRA Facility Assessment, April 9, 2012 (IDEM Virtual File Cabinet (VFC) Document No. 65581933).

1 hazardous constituents from the SWMUs and AOC. NIPSCO consented to the
2 Agreed Order as an alternative to a Notice of Violation.²

3 The Agreed Order required NIPSCO to develop a RCRA Facility
4 Investigation (“RFI”) Work Plan for Michigan City. IDEM required NIPSCO to
5 conduct soil and ground water investigations to determine the extent of all releases
6 of hazardous waste and/or hazardous constituents for the ash impoundments.
7 NIPSCO was also required to perform a RCRA Corrective Measures Study
8 (“CMS”) to develop and evaluate alternatives for corrective action to prevent or
9 mitigate release of hazardous constituents from the ash impoundments. Based on
10 the results of the RFI and CMS, NIPSCO would thereafter implement IDEM-
11 approved corrective measures. The result was an amended Agreed Order requiring
12 NIPSCO to develop closure and post-closure plans for the five ash impoundments.³
13 The final Agreed Order required removal of the CCR material in the impoundments
14 down to one foot below the slag layer underlining each pond. NIPSCO must also
15 meet post-closure requirements which include monitoring and maintaining the
16 closure area over a thirty-year period and maintaining the exterior sheet pile along
17 Lake Michigan.⁴

18 **Q: What are the applicable requirements of the federal CCR rule?**

19 A: The CCR Rule sets multiple requirements and standards that utilities must meet in
20 operating and managing their CCR disposal units. CCR includes any solid waste

² *IDEM v. NIPSCO*, Cause No. H-13872, October 21, 2013 (IDEM VFC Document No. 69102798).

³ Turman Direct, p. 9, ll. 2-18.

⁴ IDEM Approval of CCR Closure/Post-Closure Plan, March 10, 2021 (IDEM VFC Document No. 83125009).

1 products left over from the combustion or use of coal as an energy source. This
2 includes fly ash, bottom ash, boiler slag, and products resulting from the flue gas
3 desulfurization process. Owners or operators of CCR units that were still open and
4 had not yet begun closure or had a closure plan in place as of October 19, 2015, the
5 effective date of the rule, are subject to the requirements. Requirements for weekly
6 and annual inspections, groundwater monitoring, vegetation management,
7 corrective action for leaking or leached units, plans for closure and post-closure
8 care, recordkeeping, and reporting certain data to the public through a dedicated
9 website apply to both types of units. However, surface impoundments that cannot
10 meet structural stability requirements, fail locational requirements, or demonstrate
11 they impact groundwater, will be forced to close.

12 Primary Settling Pond No. 2 and the Boiler Slag Pond are both subject to
13 the CCR rule since they were receiving waste as of October 19, 2015. The other
14 three impoundments are not subject to the rule since they were no longer receiving
15 waste at that time.

16 **Q: Are the ash pond closures necessary?**

17 A: Yes. The Agreed Order requires the closure of all five ponds. In addition, the federal
18 CCR rule requires closure of the Primary Settling Pond No. 2 and the Boiler Slag
19 Pond because the bottoms of these ponds do not meet the minimal required distance
20 from the ground water table, and also because the ground water monitoring has
21 demonstrated an impact to ground water from the impoundments.

22 **Q: Is the Ash Pond Compliance Project a federally mandated project?**

1 A: Yes. Closure of the five surface impoundments is required under the federal CCR
2 rule and the IDEM Agreed Order. The Agreed Order was created under IDEM's
3 authority to implement RCRA corrective actions under Ind. Code art. 13-19 and
4 329 Ind. Admin. Code 3.1. The closure is also required by the standards of the
5 federal CCR rule. Based on Commission findings in similar causes, these
6 requirements constitute a federally mandated requirement under I.C. ch. 8-1-8.4.

7 **Q: Does the OUCC agree with the closure alternative NIPSCO selected?**

8 A: Yes. Based on the requirements of the federal CCR rule and the IDEM Agreed
9 Order, NIPSCO has two major options for closure of the five ash ponds: CIP and
10 CBR. CIP would involve dewatering the ash ponds and installing an impermeable
11 cap over the ash impoundments. Under this approach, NIPSCO would incur post-
12 closure costs from maintaining the cover and a groundwater monitoring. Due to the
13 shallow ground water table in the area (almost equal with the level of Lake
14 Michigan), this approach would pose a high risk of additional contamination from
15 CCR. As a result, NIPSCO would also need to install and maintain a slurry wall to
16 allow for pumping and treatment of any contaminated groundwater.⁵ NIPSCO
17 estimated the closure costs for the CIP alternative to be \$37.2 million.⁶

18 CBR would involve excavating the CCR from the five ash ponds and
19 shipping the wastes to the regulated landfill located at the Schahfer Generating
20 Station. Clean fill would then be placed in the impoundments and properly graded.
21 The former impoundment areas and a ground water monitoring system would need

⁵ Turman Direct, p. 1, ll. 5-8.

⁶ Ridge Direct, Attachment 3-E.

1 to be maintained after closure. Since the CCR is being removed from the site and
2 placed in a lined landfill, this alternative poses a significantly lower risk of future
3 contamination and additional cleanup costs than CIP. The estimate for closure costs
4 under CBR is \$26.1 million.⁷

5 I recommend the Commission approve NIPSCO's CBR plan since this
6 alternative is less costly and poses less risk of future contamination and additional
7 cleanup being required.

8 **Q: Do NIPSCO's cost estimates seem reasonable?**

9 A: Yes. NIPSCO used a Class 3 (Association for the Advancement of Cost
10 Engineering Cost Estimate Classification System) estimate to calculate closure
11 costs under the CBR and CIP scenarios. A cost estimate range of -10% to +30%
12 was provided for each scenario, which is typically used when preparing funding
13 requests. Once NIPSCO secured a contract with its contractor, Charah, LLC, for
14 the majority of the work, NIPSCO revised the cost estimate to \$40,044,000
15 (\$36,112,000 in direct costs and \$3,932,000 in indirect costs). This estimate is
16 classified as Class 2, which has an accuracy range of -5% to +20%.

17 **Q: Does this conclude your testimony?**

18 A: Yes.

⁷ Ridge Direct, Attachment 3-D.

APPENDIX A

1 **Q: Summarize your professional background and experience.**

2 A: I graduated from Beloit College in 1997 with a Bachelor of Arts degree in Biology.
3 I worked for nine years as a policy director with the Hoosier Environmental
4 Council. I actively worked on state and federal rulemakings in regard to coal
5 combustion residuals (CCR) and mercury emissions from power plants. I graduated
6 from Indiana University, Bloomington in May 2010 with a Master of Public Affairs
7 degree and a Master of Science degree in Environmental Science. During graduate
8 school, I was a consultant for EarthJustice and Citizens Coal Council and worked
9 to identify ground and surface water contamination at CCR disposal sites. I served
10 as a graduate assistant for a toxicology course offered at the School of Public and
11 Environmental Affairs. I worked for nine years as an environmental manager in the
12 Indiana Department of Environmental Management's Office of Air Quality. I have
13 been employed by the OUCC since January 2022.

14 **Q: Describe some of your duties at the OUCC.**

15 A: I review and analyze utilities' requests and file recommendations on behalf of
16 consumers in utility proceedings. Depending on the case at hand, my duties may
17 also include analyzing state and federal regulations, evaluating rate design and
18 tariffs, examining books and records, inspecting facilities, and preparing various
19 studies. Since my expertise lies in environmental science and policy, I assist in
20 many cases where environmental compliance is an issue.

21 **Q: Have you previously provided testimony to the Indiana Utility Regulatory
22 Commission (IURC)?**

23 A: Yes.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



Brian A. Wright
Utility Analyst II
Indiana Office of Utility Consumer Counselor

Cause No. 45700
NIPSCO, LLC

Date: September 9, 2022

CERTIFICATE OF SERVICE

This is to certify that a copy of *OUCC (Corrected) Public's Exhibit No. 2 Testimony of OUCC Witness Brian A. Wright* has been served upon the following parties of record in the captioned proceeding by electronic serve on September 9, 2022.

Petitioner-NIPSCO

Robert Heidorn

Bryan Likins

Debi McCall

NIPSCO, LLC

rheidorn@nisource.com

blikins@nisource.com

demccall@nisource.com

Intervenor-CAC

Jennifer A. Washburn

CITIZENS ACTION COALITION

jwashburn@citact.org

Copy to:

Reagan Kurtz

rkurtz@citact.org

Intervenor-IG


Todd A. Richardson

Joseph P. Rompala

LEWIS-KAPPES, P.C.

trichardson@lewis-kappes.com

jrompla@lewis-kappes.com



Lorraine Hitz

Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

PNC Center

115 West Washington Street, Suite 1500 South

Indianapolis, Indiana 46204

317-232-2494 Main Office

317-232-2775 Lorraine's Direct Line

317-232-5923 Facsimile

infomgt@oucc.in.gov