FILED
October 27, 2021
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC FOR (1) APPROVAL OF PETITIONER'S TDSIC PLAN FOR ELIGIBLE TRANSMISSION, DISTRIBUTION, AND STORAGE SYSTEM IMPROVEMENTS, PURSUANT TO IND. CODE § 8-1-39-10(a) INCLUDING TARGETED ECONOMIC DEVELOPMENT PROJECTS PURSUANT TO IND. CODE § 8-1-39-10(c), (2) AUTHORITY TO DEFER COSTS FOR FUTURE RECOVERY, (3) APPROVAL FOR INCLUSION OF NIPSCO'S TDSIC PLAN PROJECTS IN ITS RATE BASE IN ITS NEXT GENERAL RATE PROCEEDING PURSUANT TO IND. CODE § 8-1-2-23, AND (4) AUTHORITY TO RECOVER OPERATION AND MAINTENANCE EXPENSES AS TDSIC COSTS PURSUANT TO IND. CODE § 8-1-39-7 UNDER ITS APPROVED RIDER 888 – ADJUSTMENT OF CHARGES FOR TRANSMISSION, DISTRIBUTION AND STORAGE SYSTEM IMPROVEMENT CHARGES.	)	CAUSE NO. 45557

JOINT BRIEF OF NIPSCO INDUSTRIAL GROUP AND
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
IN SUPPORT OF EXCEPTIONS AND PROPOSED ORDER

The NIPSCO Industrial Group (Industrial Group) and Indiana Office of Utility Consumer Counselor (OUCC) hereby jointly submit this post-hearing brief to address deficiencies in the proposed order submitted by Northern Indiana Public Service Company (NIPSCO), and in support of the exceptions and alternative proposed order submitted herewith.

I. INTRODUCTION

Following substantial completion of its prior Electric TDSIC Plan, NIPSCO is proposing a new Plan involving much higher spending in a shorter time period, for considerably less benefits to ratepayers. Even though NIPSCO has already completed the most urgent work on its system, it seeks Commission approval to accelerate and intensify its investment in lower priority

projects, with massive and long-lasting rate impacts on its customers. What is absent from NIPSCO's presentation, however, is any reasonable explanation as to why the prevailing level of spending requires a sharp increase, in pursuit of what are unmistakably diminishing returns for ratepayers. This is a juncture of considerable importance: NIPSCO clearly envisions a future with larger and larger TDSIC Plans adding billions of dollars to rate base value, despite less and less improvement to system reliability and service quality. The TDSIC Statute, however, requires a proposed Plan to be cost-justified and reasonable. NIPSCO's proposal in this case fails to meet those essential statutory requirements.

Under the earlier Plan, recoverable costs were capped at $1.19 billion over a 7-year period, for an annual average of $170 million. The new proposed Plan would increase the level of investment to $1.635 billion in a shorter 5-1/2 year period, averaging $293 million per year. That is more than a 70% increase in annual spending. By 2026, the revenue requirement in the TDSIC tracker would be in excess of $100 million annually. An even greater impact will be embedded in base rates for decades to come. From 2016 to 2026, NIPSCO expects to increase its T&D rate base from $1.2 billion to $4.2 billion, a 250% increase in just ten years. The critical question here is what level of added value ratepayers will derive from the tripling or quadrupling of T&D rate base. The answer is that NIPSCO has failed to show any measure of ratepayer benefits commensurate with the aggressive spending that NIPSCO proposes to force them to fund through rates.

For Aging Infrastructure projects, involving the majority of total Plan costs, NIPSCO did not quantify a dollar value of projected ratepayer benefits, and instead relies on a risk reduction rationale. According to NIPSCO, the prior Plan reduced system risk by 21% relative to a 2016 baseline. The new Plan, compared to the same 2016 beginning point, is projected to yield an

incremental reduction of only 12.64%, or 40% less risk reduction despite the steep increase in spending. For both Plans, moreover, NIPSCO's computation is based on a false premise. NIPSCO compares the planned system work to a "break/fix" alternative in which it essentially does nothing to maintain the system until assets break down and require replacement. But that is not NIPSCO's actual practice: its longstanding approach, supported in base rates, involves proactive measures and preventative maintenance. By comparing TDSIC work to a fictional "break/fix" scenario, NIPSCO greatly exaggerates the computed impact on risk. NIPSCO's actual history of system reliability indices shows no discernible improvement from TDSIC spending to date, and NIPSCO is not projecting any from the new Plan, either. The purpose of Aging Infrastructure investment is to enhance reliability, but NIPSCO has not shown tangible reliability benefits that justify the enormous level of spending proposed.

For the other two project categories, the cost-benefit analysis put forward by NIPSCO is deficient as well. System Deliverability projects are driven by load growth and increased demand, yet NIPSCO proposes to retain all of the increased revenue from added sales between rate cases, while imposing all of the associated system costs on ratepayers. In contrast, NIPSCO's Gas TDSIC Plan has long featured an offsetting credit for incremental revenues arising from rural extensions, recognizing that added sales mean additional revenue and not just more costs. Similarly, for the Grid Modernization category, NIPSCO proposes to retain all cost savings between rate cases, and force ratepayers to cover the new investment while paying base rates reflecting costs that NIPSCO no longer incurs. In addition, NIPSCO's estimates for AMI in particular are unreliable and excessive, and the Plan would render the recent rate-funded investment in AMR obsolete before substantial benefits can be realized. NIPSCO's proposals are unbalanced, unreasonable, and lacking in cost justification.

NIPSCO's response to those identified defects cannot establish compliance with the Section 10 requirements. NIPSCO argues the Plan would not violate the separate 2% cap on annual revenue increases, as if that obviates the need to demonstrate cost justification and reasonableness as required by Section 10. NIPSCO contends only the overall Plan and not individual projects need to be cost-justified, a theory the Commission has not previously endorsed and one that would encourage utilities to pad TDSIC Plans with improvident projects. NIPSCO criticizes evaluating projects based on cost per unit of risk reduction, instead advocating reliance on utility judgment and discretion. NIPSCO terminated the prior Plan prematurely to avoid the agreed cost caps, but argues what it agreed to be reasonable previously is irrelevant to the issue of reasonableness now. NIPSCO asks the Commission to ignore the excessive contingencies in its estimates, as well as the duplicative recovery retained in its partial netting proposal for asset replacements. NIPSCO relies on an economic impact analysis that treats costs imposed on ratepayers as a form of stimulus spending.

In short, NIPSCO proposes a major increase in annual spending to achieve what are clearly diminishing benefits to ratepayers. There has been no showing of need for aggressive spending on intensified system work, where the highest priority projects have already been completed. The Commission should reject NIPSCO's effort to institute a cycle of more and more expensive Plans fueling a rapid rise in rate base value, while identifiable ratepayer benefits become increasingly attenuated and elusive. The proposed Plan is not cost-justified, is unreasonable, and should not be approved.

II. ANALYSIS

A. NIPSCO Proposes a Massive Increase in TDSIC Spending, with Enormous and Long-Lasting Impact on Rates

The TDSIC Statute was enacted in 2013 to address concerns about aging infrastructure and regulatory lag in recovering the costs of necessary improvements. NIPSCO has already substantially completed its first Electric TDSIC Plan, covering the period from 2016 through May 2021. In that prior Plan, NIPSCO prioritized projects based on risk and consequence, in order to ensure that the highest priority system work would be included in the planned scope. See July 12, 2016 Order in Cause No. 44733 at 18 ("In short, the approach is used to allocate capital spending towards the assets with the highest risk scores."); id. at 33 ("In developing the 7-Year Electric Plan, NIPSCO carefully prioritized the list of planned investments to optimize the benefits of the investments to the extent possible.").

NIPSCO is now proposing a second Electric TDSIC Plan, which necessarily moves down into a secondary tier of priority projects. Even though the most pressing needs have already been addressed in the work completed under the prior Plan, NIPSCO is proposing a substantial increase in spending levels to address projects of lesser priority. See NIPSCO Ex. 2 at 25 (explaining lower degree of risk reduction under the second Plan; "the initial assets addressed in Electric Plan 1 were of higher impact, because they were the highest risk assets of the whole NIPSCO asset population").

Pursuant to settlements approved by the Commission in Cause Nos. 44733 and 44733-TDSIC-4, recoverable investment under the prior Plan was capped at $1.19 billion. See IG Ex. 1 at 5-6. Through January 2021, NIPSCO had actually spent $781 million under that Plan. See NIPSCO Ex. 2 at 14. Since it was a 7-year Plan, the authorized spending level averaged $170 million per year, and actual expenditures were around $154 million annually. The new Plan

proposed in this case, on the other hand, involves investments totaling $1.635 billion. See NIPSCO Proposed Order at 72. That total with a budget that is $445 million higher than the prior Plan, moreover, is being proposed for a shorter period of 5 years 7 months, increasing the annual average to $293 million. See IG Ex. 1 at 6. The proposed shift from a spending level of $170 million annually to $293 million is greater than a 70% increase. Id.

The advent of TDSIC investment corresponds to a dramatic rise in NIPSCO's rate base. As of the rate case that concluded in 2016, at the outset of the prior Plan, NIPSCO's T&D rate base was valued at $1.2 billion. See IG Ex. 1 at 6 & Att. BCC-2. By the end of the proposed Plan in 2026, NIPSCO projects that its T&D rate base will increase to $4.2 billion. Id. at 6-7 & Att. BCC-3. That is 3-1/2 times what the value was in 2016, an increase of 250% in just one decade. By 2026, the TDSIC rider tracking 80% of the proposed TDSIC costs would add over $100 million to NIPSCO's annual revenue. See NIPSCO Ex. 5 at 22, Table 1. All of that investment will then be rolled into base rates in NIPSCO's next rate case, in addition to the other 20% in deferred costs plus carrying charges. After more than tripling its T&D rate base in ten years and embedding that investment in base rates, NIPSCO will then be in a position to file its next TDSIC Plan.

The benefits to NiSource shareholders are expansive and clear – preapproval means that $1.635 billion in rate base investment will be subject to recovery through "automatic" rate adjustments every six months (see Ind. Code §8-1-39-9(a)), and even the deferred portion will be recoverable with carrying charges from the point of investment (id. §9(c)). NIPSCO has every incentive to propose successively larger TDSIC Plans, as a preapproved method of continuing the steep increase in rate base value. The benefits for ratepayers, by contrast, are sloping in the

other direction, with much higher annual spending proposed here for system work of declining priority and diminishing significance to service quality.

B. NIPSCO Has Not Shown that the Proposed Plan Satisfies the Statutory Cost-Justification and Reasonableness Requirements

A proposed TDSIC Plan cannot be approved unless the utility demonstrates that "the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan." See Ind. Code §8-1-39-10(b)(3). In addition, a Plan is subject to approval only if the Commission determines it is "reasonable." Id. §10(b). Here, NIPSCO's proposed Plan is comprised of three categories of projects: (1) Aging Infrastructure (54% of the planned expenditures); (2) System Deliverability (20% of the Plan); and (3) Grid Modernization (the remaining 26%). See NIPSCO Ex. 2 at 8-10. NIPSCO presented a "monetization" analysis only for the Modernization portion, but did not put any dollar value on the asserted ratepayer benefits arising from the other two categories (three fourths of the Plan). Id. at 33; IG Ex. 1 at 5 & Att. BCC-1. For the Aging Infrastructure category in particular, accounting for the majority of Plan costs, NIPSCO instead relies on a risk reduction rationale. See NIPSCO Ex. 2 at 23-24, 32-33. In all respects, NIPSCO has failed to establish that the proposed Plan satisfies the statutory cost-justification and reasonableness requirements.

1. Aging Infrastructure

According to NIPSCO, the prior Plan that was terminated as of May 2021 resulted in a reduction of system risk calculated at 21%, "when compared to a 'break/fix' replacement strategy." See NIPSCO Ex. 2 at 14.[1] When the prior Plan was approved in 2016, NIPSCO projected a risk reduction of 30% (see July 12, 2016 Order in Cause No. 44733 at 33), though

[1] NIPSCO also contends that, absent the TDSIC work under the prior Plan, system risk would have increased by 19%, "assuming no other work was performed during that period." Id.

that Plan was terminated a year and seven months early. For the proposed Plan, NIPSCO states risk will be reduced by a projected 16%, but that projection is relative to a 2021 starting point. See NIPSCO Ex. 2 at 24; IG Ex. 1 at 8-9 & Att. BCC-4. NIPSCO's computation is erroneous in two key respects: first, it fails to show incremental improvement that accounts for the TDSIC work already completed; and second, it exaggerates risk reduction by comparing the Plan to a fictional "break/fix" alternative that differs materially from NIPSCO's actual practice.

If, as NIPSCO contends, the prior Plan led to a 21% reduction in risk, then the proposed Plan is starting with only 79% of that system risk remaining. See IG Ex. 1 at 9. From a 2016 starting point, then, the incremental risk reduction that NIPSCO projects from the new Plan is actually 12.64% rather than 16%. Id. The two Plans combined will yield a projected 33.64% reduction in system risk, not 37%.

Computing system risk from the commencement of TDSIC investment in 2016 is the more meaningful measure, because it shows the progressive impact of continued system work. On the other hand, NIPSCO's approach of starting over with a universe of system risk set at 100% with each Plan will always yield a much larger number despite decreasing increments of improvement. For example, if the system started with 99.9% reliability and, say, half the risk was eliminated with the first Plan, the benefit would be 0.05% in improved reliability. Then, if a second Plan were to cut the remaining risk in half again, by NIPSCO's theory that would be another 50% reduction, even though it would take the system reliability only from 99.95% to 99.975% for a 0.025% improvement. In that example, NIPSCO would assert both Plans were equally effective in achieving a 50% risk reduction, despite the fact that the second Plan involved only one half of the reliability improvement of the first.

Not surprisingly, then, having completed the highest priority work in its first Plan and now moving to address lower priority projects, NIPSCO is undeniably projecting considerably less ratepayer benefit from the proposed scope of the second Plan. By NIPSCO's computation, it is a 21% risk reduction from the prior Plan and 16% projected from the proposed Plan. More accurately, from a common baseline of 2016, the projected reduction from the new Plan is 12.64%. See IG Ex. 1 at 9. That is about 40% less risk reduction than NIPSCO says it achieved through the first Plan. At the same time, the level of annual expenditures is rising steeply, from $170 million to $293 million, an increase of over 70%. Id. at 6. By any measure, NIPSCO is proposing to impose considerably higher costs on ratepayers, in order to achieve considerably less benefit in service reliability.

Furthermore, all of NIPSCO's risk reduction computations are greatly inflated by a false assumption. NIPSCO bases its calculations on a comparison between the proposed Plan and a hypothetical "break/fix" approach to system maintenance, under which no effort would be made to address the condition of system assets until they break down and require replacement. See NIPSCO Ex. 2 at 8 & n.3; id. at 14, 23-24. However, "break/fix" is *not* the status quo and is *not* NIPSCO's actual practice. As consistently explained by NIPSCO in its last three rate cases, NIPSCO's longstanding approach has involved an array of proactive measures and preventative maintenance initiatives to keep the system in sound working condition. See IG Ex. 1 at 9 & Atts. BCC-5, BCC-6, BCC-7, BCC-8. See also NIPSCO Proposed Order at 78 ("there is no disagreement among the parties that *NIPSCO does not utilize a 'break/fix' approach for its maintenance practices*, but utilizes a proactive maintenance program") (emphasis added).

The "break/fix" scenario is therefore a fiction, because NIPSCO's actual proactive maintenance program would remain in place even in the absence of TDSIC funding. The

panoply of proactive measures that NIPSCO regularly performs to preserve system condition and prevent asset failures have been standard practice for many years, dating back well before the TDSIC Statute was enacted. See IG Ex. 1 at Att. BCC-5 (testimony from 2010); compare Atts. BCC-6, BCC-7 (essentially the same proactive program as of 2015 and 2018). The costs of those longstanding proactive maintenance efforts, furthermore, are embedded in base rates and are being funded by ratepayers, independent of any TDSIC investments. See IG Ex. 1 at 10. If the proposed Plan is not approved, NIPSCO would not revert to a "break/fix" mode, but would continue with its longstanding proactive maintenance program. *That* is the relevant comparison: what does TDSIC spending add to the existing maintenance practices already reflected in base rates? Those are the only ratepayer benefits that are "incremental" within the meaning of Section 10(b)(3). On that point, however, NIPSCO has offered no evidence whatsoever.

Despite presenting its TDSIC proposals as enhancements to reliability, NIPSCO did not support its position with the established and routinely monitored standards that the Commission has used for decades to measure system reliability. NIPSCO regularly compiles the data for, and submits to the Commission, an Annual Reliability Reporting Form. See IG Ex. 1 at Att. BCC-10. The annual report requires data for three specified "electric reliability measures," computed both with and without major events: System Average Interruption Duration Index ("SAIDI"), Customer Average Interruption Duration Index ("CAIDI"), and System Average Interruption Frequency Index ("SAIFI"). Id. NIPSCO's reported results from 2016, at the outset of TDSIC investments, through the most recent 2020 data, do not reflect any discernible reliability improvements notwithstanding the hundreds of millions spent annually on TDSIC projects over that period. See IG Ex. 1 at 11 & Table 1.

NIPSCO's case-in-chief did not include any SAIDI, CAIDI or SAIFI projections through the end of the new Plan in 2026, and NIPSCO declined to provide any such projections in discovery. See IG Ex. 1 at 11-12 & Att. BCC-11. There is no record to support any assumption that the proposed Plan will improve system reliability, as measured by the established reliability indices that the Commission, in order to monitor reliability, requires NIPSCO to report every year. Instead, NIPSCO exaggerates the asserted risk reduction by basing the computation on comparison to a fictional "break/fix" alternative, without showing benefits incremental to the non-TDSIC maintenance practices supported in base rates, and overstates even that by failing to account for the impact of the TDSIC work already completed. Despite all that, NIPSCO still ends up with a number that shows the new Plan yielding materially less risk reduction (16%) than the prior Plan (21%), despite a 70%-plus increase in annual TDSIC spending.

The statute requires a TDSIC Plan to be cost-justified and reasonable. NIPSCO has failed to demonstrate any system reliability improvements that would justify a steep escalation of investment for what are undisputedly diminishing benefits.

2. System Deliverability

The projects in the System Deliverability category are being driven by load growth and increasing demand on NIPSCO's system. See NIPSCO Ex. 2 at 10 ("increasing customer demand"); id. at 15 ("NIPSCO has realized an unexpected, sudden increase in electric demand"). Added sales, of course, yield incremental revenues between rate cases, which NIPSCO proposes to retain while ratepayers cover all of the associated system costs. See IG Ex. 1 at 12-13. By contrast, NIPSCO's *Gas* TDSIC Plan has long incorporated an offset under parallel circumstances. An element of the Gas Plan involves rural extensions, which require system investments but also result in customer growth and added load. In that corresponding situation,

and at NIPSCO's instigation, the TDSIC costs for rural extensions are offset by 80% of the incremental revenues from new rural customers. See 1/28/15 Order in Cause No. 44403-TDSIC-1 at 19. In this case, however, NIPSCO is not proposing any kind of ratemaking recognition of the added rate revenue supported by the TDSIC-funded system work. See IG Ex. 1 at 13.

NIPSCO does not deny any of that, and instead argues the Commission lacks authority to require an offset. See NIPSCO Proposed Order at 85 ("There is nothing in the TDSIC Statute that requires such an offset"). That was NIPSCO's position in the Gas TDSIC context, too. See 44403-TDSIC-1 Order at 15 ("margin credits are not required by the TDSIC Statute"). The question here does not concern the limits of Commission authority. The issue is whether NIPSCO's proposed Plan is cost-justified and reasonable. The treatment of rural extensions in NIPSCO's Gas TDSIC is certainly reasonable, balancing cost responsibility with the added rate revenue it supports. NIPSCO's proposal here – to recover investment and return through the TDSIC tracker for System Deliverability projects arising from increased demand, while also retaining the entirety of the added rate revenue from that same load growth – is not reasonable.

3. Grid Modernization

NIPSCO's proposal for the Grid Modernization category raises a corresponding issue. NIPSCO has not accounted for the cost savings that arise from the proposed investments, and expects to retain all the financial benefit for itself between rate cases while ratepayers fund all of the deployment expenditures through rates. See IG Ex. 1 at 13-14. The AMI initiative in particular, as well as other automation projects, will reduce costs associated with meter reading and other operational expenses that are currently reflected in NIPSCO's base rates. Id.; OUCC Ex. 1 at 11-12. Until the next rate case, NIPSCO customers will continue to pay base rates

designed to recover costs that NIPSCO is no longer incurring, while also funding, through the TDSIC mechanism, the capital projects that result in those savings.

NIPSCO's response, again, is not to deny that account of the circumstances, but rather to question the statutory basis for requiring an offset. See NIPSCO Proposed Order at 85. According to NIPSCO, any financial benefit it realizes will last only until the next rate case and hence will be "only for a short duration." Id. But that is the same "short duration" in which ratepayers will be required to pay TDSIC costs on top of base rates. NIPSCO seeks to recover new investments between rate cases, but is unwilling to provide rate recognition for the resulting cost savings over that same interval. That position is unbalanced and unreasonable.

NIPSCO's proposal for AMI in particular, the largest component of the Modernization category, is problematic in further respects. NIPSCO's cost estimates for AMI are presented at a high level of generality, without supporting detail for the basic cost components. See OUCC Ex. 1 at 6-10. At the same time, compared to two peer Indiana utilities engaged in AMI deployment, NIPSCO's estimated cost per unit is considerably more expensive, $339 as opposed to $257 or $222. Id. at 9, Table 2. In its monetization analysis, NIPSCO projects that ratepayers will not see a net benefit until the year 2033, with the computed benefits arising predominately from the last 2.5 years of the 15-year study period. Id. at 12-13. In short, the cost estimates are unreliable and excessive, and the computed benefits are remote and uncertain. On top of that, NIPSCO ratepayers paid for a $30 million investment in AMR deployment only recently, and now NIPSCO proposes to replace those expensive AMR meters with a new set of even more expensive AMI meters, before the anticipated benefits of AMR technology can be realized by ratepayers. Id. at 3-4, 13-14. For those additional reasons, the AMI proposal does not satisfy the Section 10(b) requirements.

C. NIPSCO's Arguments Fail to Show the Proposed Plan Complies with the Statutory Requirements

Despite all of the shortcomings identified above, NIPSCO asserts that it is entitled to approval of the Plan as proposed. Upon approval, the authorized expenditures would be subject to automatic recovery in rates, without further prudence review and regardless of NIPSCO's success in achieving the projected benefits. See IG Ex. 1 at 21-22. That shift in risk, with immense ratemaking consequences, requires rigorous Commission scrutiny at the time a Plan is tendered for approval. The petitioning utility bears the burden to establish the Section 10(b) requirements, particularly cost-justification and reasonableness. Those prerequisites to Plan approval, however, have not been satisfied here.

According to NIPSCO, the Commission need not examine the reasonableness of Plan costs under Section 10(b) standards, because the Plan does not violate the separate 2% test under Section 14(a). See NIPSCO Proposed Order at 82 (quoting Ind. Code §8-1-39-14(a)). That argument is incorrect as a matter of law. NIPSCO's reading would effectively write Section 10(b) out of the TDSIC Statute, substituting Section 14(a)'s 2% test for the cost-justification and reasonableness requirements. See Cutchin v. Beard, 171 N.E.3d 991, 997 (Ind. 2021) ("Under our surplusage canon, courts should give effect to every word and 'eschew those [interpretations] that treat some words as duplicative or meaningless.'") (quoting Estabrook v. Mazak Corp., 140 N.E.3d 830, 836 (Ind. 2020)). The two provisions serve very different purposes. Section 14(a) sets an outer boundary of rate impact, prohibiting any Plan that results in more than a 2% revenue increase in even a single year. Section 10(b), on the other hand, defines the essential requirements a Plan must meet to be approved. It is an error of law to suggest any Plan that does not violate the 2% test is presumed to be cost-justified and reasonable under Section 10(b).

NIPSCO also takes the position that the cost-justification standard under Section 10(b)(3) applies solely to the overall Plan and need not be satisfied for each individual project. See NIPSCO Proposed Order at 78, 80. NIPSCO does not cite any prior order adopting that theory, which has not been previously endorsed by the Commission. Section 10(b)(3) does not say "overall," "as a whole," "in its entirety" or any similar phrase, and it does not say only the "plan" must be cost-justified. Instead, the requirement applies to "the eligible improvements included in the plan." See Ind. Code §8-1-39-10(b)(3). Accordingly, if it is an eligible improvement and is included in the Plan, it must meet the cost-justification requirement. Otherwise, utilities would be at liberty to treat TDSIC Plans as a repository for unnecessary or excessively costly projects, so long as the overall Plan produces a net benefit. There is no predicate in the statutory language to support NIPSCO's contrary view, that the legislature meant to encourage utilities to pad TDSIC plans with filler projects that are not themselves cost-justified.

The OUCC identified outliers in the cost-benefit continuum by computing a relative cost per unit of risk reduction for each project (see Public Ex. 2 at 6-11), but NIPSCO criticizes that analysis as misguided. See NIPSCO Proposed Order at 78-79. NIPSCO asserts the importance of "human input" and "real-world evaluation," seeking deference to the "operational expertise of the utility in determining high priority projects." Id. at 79. We are assured "NIPSCO kept cost-effectiveness in mind." Id. In essence, NIPSCO argues it was a discretionary judgment call and the burden is on consumer parties to contradict NIPSCO's announced decision. But the statute requires cost-justification (see Ind. Code §8-1-39-10(b)(3)) and the burden of satisfying that prerequisite is on NIPSCO as petitioner. See NIPSCO Industrial Group v. Northern Indiana Public Service Co., 31 N.E.3d 1, 8-9 (Ind. App. 2015) (holding Commission erred by creating a presumption in favor of the utility and shifting the burden to consumer parties).

NIPSCO argues the projects with the worst cost-benefit ratios are in the System Deliverability category, not Aging Infrastructure, as if that resolves the issue. See NIPSCO Proposed Order at 79. Deliverability projects, like Aging Infrastructure, were not supported by any *financial* analysis quantifying the benefits, either. See NIPSCO Ex. 2 at 33; IG Ex. 1 at 5 & Att. BCC-1. If such projects consequently are not cost-justified in terms of either quantified benefits or risk mitigation, NIPSCO is in a poor position to insist on deference to its judgment and discretion. These are the same projects that will yield added rate revenue due to increased demand, which NIPSCO proposes to retain in full between rate cases. See Section B(2), supra. The System Deliverability category accounts for 20% of the $1.635 billion Plan. See NIPSCO Ex. 2 at 18-19. Justification for spending hundreds of millions of dollars cannot be established merely by an assurance that "NIPSCO kept cost-effectiveness in mind." See NIPSCO Proposed Order at 79.

The prior Plan was subject to an agreed $1.19 billion cap (see IG Ex. 1 at 5-6), but NIPSCO terminated that Plan more than a year and a half before its scheduled completion date (see NIPSCO Ex. 2 at 15-16). NIPSCO contends the early termination did not violate the Commission-approved settlement governing the prior Plan. See NIPSCO Ex. 1-R at 23-24. But NIPSCO asserts the effect of termination is to eliminate the agreed cost caps (id.), concedes fully a third of the new Plan consists of unfinished projects from the first Plan (id. at 7), and does so while advocating a 70%-plus increase in the authorized annual spending level (see IG Ex. 1 at 5-6). When approving the agreed cost caps in 2016, the Commission found that "the compromises embodied in the Settlement are consistent with the applicable statutory provisions and are reasonable and in the public interest." See July 12, 2016 Order in Cause No. 44733 at 61. NIPSCO agreed to the prior Plan scope and budget, the Commission found that settlement to be

reasonable, yet NIPSCO claims that prior determination is irrelevant to the question of reasonableness presented in this case.

NIPSCO insists the contingency factors included in its cost estimates, as well as the proposed depreciation offset for asset replacements, are consistent with Commission orders in other cases, and for that reason ought not be challenged. See NIPSCO Proposed Order at 73, 84-85. However, excessive contingencies in estimates, especially for Class 5 estimates with less than 2% of project scope defined, have the effect of eroding cost discipline and relaxing the "specific justification" standard under Ind. Code §8-1-39-9(g). See IG Ex. 1 at 16-18. NIPSCO, moreover, does not deny its proposal retains a material component of duplicative recovery for asset replacements, where return on removed assets continues to be included in base rates while return on replacement assets would be added through the TDSIC tracker. Id. at 19-20. Section 10(b) requires the Commission to decide if the Plan as tendered is reasonable, and the proposed treatment of contingencies and duplicative recovery is germane to that determination. While NIPSCO castigates the consumer parties for raising issues previously addressed in other cases (see NIPSCO Proposed Order at 71-72), it is notable that NIPSCO is proposing a depreciation credit in connection with asset replacements (id. at 84) after arguing for years that it need not do so. See NIPSCO Industrial Group, 31 N.E.3d at 10-13.

Finally, NIPSCO offered an Economic Impact Report as support for the proposed Plan. See NIPSCO Proposed Order at 77-78. NIPSCO admits it is not a measurement of net economic impact (see NIPSCO Proposed Order at 77), insofar as it only projects ripple effects from the proposed $1.635 billion in utility spending, without any attempt to account for the countervailing economic burden imposed on the rates of NIPSCO customers. See IG Ex. 1 at 14-15. The "incremental benefits" that must be cost-justified under Section 10(b)(3) relate to the utility

services that the TDSIC Statute is designed to improve, for the benefit of the ratepayers who are funding the system work through rates. Cost justification cannot be established by reliance on financial benefits to contractors and equipment vendors, redirecting the purpose of TDSIC investments into a form of economic stimulus.

III. CONCLUSION

NIPSCO cannot deny that the proposed Plan involves a 70%-plus increase in annual TDSIC spending for materially less value to ratepayers. NIPSCO's risk computation greatly exaggerates the impact on system reliability, and NIPSCO's theory has no support in its actual performance under standard reliability indices. NIPSCO seeks to force ratepayers to cover the costs of system upgrades for added customer load and automation investments, while it retains the entirety of the incremental revenue from increased demand as well as the efficiency savings. NIPSCO has provided no good reason why it is important to implement a steep increase in TDSIC spending, to substantially reduced effect, after already completing the highest priority system work in its first Plan and now moving on to projects of lesser priority. The Plan as proposed fails to satisfy the statutory cost-justification and reasonableness requirements, and therefore should not be approved by the Commission.

Respectfully submitted,

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