

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

SUBDOCKET FOR REVIEW OF NORTHERN)
INDIANA PUBLIC SERVICE COMPANY) CAUSE NO. 38706 FAC 130 S1
LLC'S R.M. SCHAHFER GENERATING)
STATION FIRE AND RELATED IMPACT ON)
FUEL PROCUREMENT AND FUEL COSTS.)

**CONSUMER PARTIES' SURREPLY CONCERNING
UNFOUNDED ASSERTIONS IN NIPSCO'S REPLY**

NIPSCO Industrial Group and Indiana Office of Utility Consumer Counselor (together “Consumer Parties”) jointly submit this surreply to address allegations in NIPSCO’s April 4, 2022 Reply, to the effect that points made by the Consumer Parties are misrepresentations or are otherwise misleading. See NIPSCO Reply at 3 (“outright misrepresenting,” “improper liberties”); id. at 19 (“deceptive”); id. at 25 (“not a benign error”); id. at 28 (“misleading,” “mislead”, “significant ‘liberties’”).

NIPSCO admits some of the challenged statements are “*technically* true” (id. at 18, 30), or in other words true. NIPSCO further claims the Consumer Parties ignored NIPSCO positions that in fact were addressed explicitly. Id. at 16 (“ignoring,” “ignored,” “almost wholly ignored”)¹; id. at 17 (“disregard,” “ignoring”)²; id. at 30 (“from the Consumer Parties’ post-hearing filings, this would not be known”)³; id. at 34 (“the other facts they ignore”)⁴. Nevertheless, NIPSCO makes the boldfaced assertion: “The Consumer Parties attempt to distract

¹ See Consumer Parties’ Post-Hearing Brief at 17-23.

² Id.

³ Id. at 35-36.

⁴ Id. at 2, 25 n.5.

from their lackluster case by ignoring important record evidence and repeatedly misconstruing and misrepresenting record evidence.” Id. at 16.

The Consumer Parties recognize that such rhetoric detracts from the presentation of the merits to the Commission, and do not wish to belabor it. Nevertheless, the Consumer Parties submit that the NIPSCO Reply lacks the civility expected in a Commission proceeding, and the unfounded insinuations of deceptiveness warrant this response.

A. NIPSCO’s Post-Fire Retirement Decision

NIPSCO’s primary criticism is that the Consumer Parties supposedly disregarded the economic analysis conducted by NIPSCO post-fire in support of the retirement decision. See NIPSCO Reply at 16-18. NIPSCO states: “It is hard to fathom that this would not be discussed by the Consumer Parties, but that is what happened.” Id. at 17.

To the contrary, the Consumer Parties explained at length that the planned retirement date was May 31, 2023 and the loss of Units 14 and 15 prior to that time is attributable to the fire, and specifically why the post-fire analysis did not break the causal connection. See Consumer Parties’ Post-Hearing Brief at 17-23. The evidence NIPSCO wants to emphasize does not alter the clear record that the retirement date was accelerated to October 1, 2021 because of the fire. The Consumer Parties expressly contested NIPSCO’s premise that the decision to retire assets that were badly damaged by fire terminates NIPSCO’s responsibility for the continuing FAC impacts. There is nothing misleading in that.

NIPSCO agrees that its 2018 IRP identified six transmission upgrades required for the planned May 2023 Schahfer retirement and only four had been completed when Units 14 and 15 were actually retired. See NIPSCO Reply at 18. NIPSCO perceives a cloud on reliability, while noting that issue “is not mentioned” by the Consumer Parties. Id. It is not mentioned because

the Consumer Parties did not challenge system reliability, and instead the relevant point is that the timeline of planned transmission work and replacement capacity projects was oriented on the May 2023 retirement, not October 2021. See Consumer Parties' Post-Hearing Brief at 18-19.

B. Other Alleged Misstatements

NIPSCO devotes a sizable portion of its Reply, some 18 pages, to the general premise that the Consumer Parties' post-hearing submission was misleading. See Section C, pp. 16-34, esp. C(3), pp. 28-34 (list of alleged instances). Much of the accusatory rhetoric does not dispute the facts, but rather suggests the Consumer Parties seek to foster misimpressions. NIPSCO points to its witnesses' testimony as though it were dispositive on every disputed inference, while undeniably the Consumer Parties rely on the assessment and conclusions of NIPSCO's own internal fire investigation. As to the particulars, briefly:

- Dissolved Gas Analysis (Reply pp. 26-27). NIPSCO contends the Consumer Parties promoted a misimpression that the April 2020 DGA revealed a "new and troubling" problem and NIPSCO did "nothing in response." To the contrary, the Consumer Parties emphasized NIPSCO had long known about the elevated levels of combustible gases, and recited NIPSCO's response accurately but challenged its adequacy, where NIPSCO moderately increased monitoring but made no effort to rectify the poor condition of the transformer. See Post-Hearing Brief at 8-12.

NIPSCO further claims it definitively proved the excessive dissolved gas levels were not a contributing factor to the fire, because its witness stated the gas levels did not cause the breakdown of the cooling system or the overheating of the oil. Reply at 27. NIPSCO's internal fire investigation undeniably focused on the April 2020 DGA, ultimately identifying "Oil degradation" as one of two root causes for the fire. See IG Ex.1, Att. MPG-4 at 14, Att. MPG-7. The reason is not, as NIPSCO presents it, because the gas levels caused the mechanical problem with the cooling system, but rather because the elevated levels were of *combustible* gases and the fire started when that oil was ignited by arcing electricity. See Consumer Parties' Post-Hearing Brief at 10-11.

- Back-to-back 12-hour shifts (Reply pp. 28-29). NIPSCO says the Consumer Parties left a "false impression" the CRO's extended work hours was a contributing factor. However, NIPSCO's internal Root Cause Analysis cited that circumstance as an "Error Precursor" due to "Fatigue." See IG Ex. 1, Conf. Att. MPG-4 at 18. NIPSCO describes the Consumer Parties' position as arguing the CRO was "(quite literally)

falling asleep at the control board.” What they actually said was that fatigue “impairs concentration and adds difficulty to complicated tasks.” See Consumer Parties’ Post-Hearing Brief at 13.

- Completion of rounds (Reply p.29). NIPSCO does not dispute the recurrent lapses in completion of routine operator rounds and submission of rounds sheets, but chides the Consumer Parties for pointing that out since records shortly before the fire did not report any problem with the transformer’s cooling system. However, NIPSCO’s Operations Superintendent certainly considered the deficiencies in completing rounds important both before and after the fire. See IG Ex. 1, Att. MPG-8. NIPSCO has the burden of establishing prudence, yet seeks the benefit of a regulatory presumption of prudence. See Reply at 38-41. NIPSCO knew the transformer was in poor overall condition, continued to run it without any effort to improve that condition, now contends its adequate response was to put it on a “watch list,” yet despite all that, the record shows a recurrent disregard for safe operating procedures including no action to address the elevated levels of combustible gases in the oil, no response to the high temperature alarm, and a breakdown in the completion of routine inspections and safety checks.
- Schahfer costs still in base rates (Reply pp. 29-30). NIPSCO agrees its sunk capital investment and operating costs for Units 14 and 15 remain embedded in base rates, but calls the Consumer Parties “undeniably misleading” for supposedly concealing the anticipated revenue credit for coal unit retirements under the last rate case settlement. But the Consumer Parties *did* address that revenue credit in some detail. See Consumer Parties’ Post-Hearing Brief at 35-36. NIPSCO’s assertion that the revenue credit “addresses *the exact thing* the Consumer Parties complain about” is incorrect. Once implemented, the revenue credit will *not* remove the “return of” capital investment in the depreciation portion of base rates, nor the regular operating costs recovered in base rates, and instead will adjust only part of the “return on” reflected in base rates, in proportion to the decline in the assets’ book value.⁵
- Function of Units 14 and 15 in pre-fire period (Reply at 30-31). NIPSCO describes as “troubling” the assertion that in the 5 years prior to the fire Units 14 and 15 were utilized “solely” for reliability purposes, when in fact on occasion they were economically dispatched in that period. That status was described twice with more precision by the Consumer Parties (see Post-Hearing Brief at 21, 24), before the reference noted by NIPSCO, which in context supports the premise that the historical base period is a fair proxy for a “low end” assumption without economic dispatch.
- Level of MISO purchases (Reply at 32). NIPSCO says the assertion that the loss of Units 14 and 15 led to incrementally greater MISO purchases is “demonstrably false”

⁵ NIPSCO complains the Consumer Parties alleged four proposed offsets when it actually put forward only one as an offset. See Reply at 35-36. The Consumer Parties fairly responded to NIPSCO’s Proposed Order, which criticizes the refund computation because there was no “offset” for those items. See Alternative Section Regarding Amount of Refunds at p.1.

because NIPSCO purchased lower volumes in 2021 than in recent years. The referenced increment, however, is not a time period comparison, but rather is the level of more expensive MISO purchases that would have been displaced if Units 14 and 15 had been available for economic dispatch. In discovery, NIPSCO admitted its MISO purchases in late 2021 “would very likely have been lower had Units 14 and 15 been available.” See IG Ex. 2, Suppl. Response to DR 14-003.

- Recreate the market (Reply at 32-33). According to NIPSCO, the Consumer Parties distorted the NIPSCO testimony that it would be impossible to “recreate the market” by treating it as a NIPSCO argument opposing refunds. While now denying that implication, NIPSCO describes such efforts as “definitively speculative.” It was certainly fair for the Consumer Parties to explain why the risk of market uncertainty should be assigned to NIPSCO rather than to its customers.
- Unit status in 2021 (Reply at 33-34). NIPSCO contends the Consumer Parties misleadingly asserted there was a loss of 900 MW of Schahfer capacity when MISO prices sharply increased in 2021, insofar as Unit 15 was in operation during much but not all of 2021. The Consumer Parties accurately described Unit 15’s status in 2021 at multiple points. See Post-Hearing Brief at 1-2, 25 & n.5. Unambiguously, refunds are sought only for periods when the Units were unavailable due to the fire, which for Unit 15 includes the last quarter but not the rest of 2021 because Unit 15 was in operation through September 2021. There has been no effort at concealing that circumstance, as indeed the Consumer Parties’ “high end” refund is based on Unit 15’s actual operations in 2021, when MISO prices increased significantly. Id. at 25, 29. The Consumer Parties also explained the evidence supporting the conclusion that the advancement of the retirement date for both Units 14 and 15 from May 31, 2023 to October 1, 2021 was attributable to the fire. Id. at 17-23.

C. Conclusion

The temper of the NIPSCO Reply is unfortunate, as such accusations detract from the consideration of the merits. The claims of misrepresentations and efforts to mislead, in any event, are unfounded, as the Consumer Parties fairly addressed the merits and the record consistently supports the assertions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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