STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC FOR 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) AND EXTENSIONS TO RURAL AREAS PURSUANT TO IND. CODE § 8-1-39-11, FOR AUTHORITY TO DEFER COSTS FOR FUTURE RECOVERY AND APPROVING 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.	)	**CAUSE NO. 45330**

INDIANA OFFICE OF THE UTILITY CONSUMER COUNSELOR'S BRIEF IN SUPPORT OF PROPOSED ORDER

Comes now, the Indiana Office of Utility Consumer Counselor ("OUCC"), by counsel, hereby submits this Brief in Support of its Proposed Order:

I. INTRODUCTION

The Office of Utility Consumer Counselor ("OUCC") recommends that Northern Indiana Public Service Company LLC's ("NIPSCO") proposal for its transmission, distribution, and storage system improvement charge ("TDSIC") natural gas plan be denied, as it does not meet all elements required under the TDSIC statute, Ind. Code ch. 8-1-39. Specifically, Ind. Code § 8-1-39-10(b)(3) requires that the Commission make a "determination whether the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan." NIPSCO merely provides conclusory testimony on this issue that does not provide sufficient information to support a determination that the costs of the plan are justified by the benefits. Additionally, should the Commission approve NIPSCO's proposal, NIPSCO incorrectly uses a 3% escalator to calculate future cost estimates, which should be adjusted to 2% based on pricing information from the U.S. Bureau of Labor Statistics. Finally, the OUCC reserves the right the present other information in future TDSIC proceedings to allow the Commission to explore reasonable adjustment to NIPSCO's weighted average cost of capital ("WACC").

II. BACKGROUND AND STATUTORY CRITERIA

NIPSCO had a previous TDSIC gas plan approved in Cause No. 44403 ("TDSIC Gas Plan 1"). On October 28, 2019, NIPSCO gave notice that Gas Plan 1 would terminate on December 31, 2019. On December 31, 2019, NIPSCO filed its proposed TDSIC gas plan ("TDSIC Gas Plan 2"), which is at issue in this proceeding. The Commission is required to make a determination of TDSIC Gas Plan 2 under Ind. Code § 8-1-39-10(b), which states:

> (b) Following notice and hearing, and not more than two hundred ten (210) days after the public utility petitions the commission under subsection (a), the commission shall issue an order on the petition. The order must include the following:
>
> (1) A finding of the best estimate of the cost of the eligible improvements included in the plan.
>
> (2) A determination whether public convenience and necessity require or will require the eligible improvements included in the plan.
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> (3) A determination whether the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan.
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> If the commission determines that the public utility's TDSIC plan is reasonable, the commission shall approve the plan and authorize TDSIC treatment for the eligible transmission, distribution, and storage improvements included in the plan.

III. NIPSCO'S FAILURE TO MEET STATUTORY CRITERIA

NIPSCO failed to submit sufficient information under Ind. Code § 8-1-39-10(b)(3) to allow the Commission to make a determination that the estimated costs of TDSIC Gas Plan 2 justify the incremental benefits. The word "justify" is defined as "to prove or show to be just, right, or reasonable."[1] NIPSCO provided no testimony showing that the costs are "justified" by the incremental benefits as required in the statute. As noted by OUCC witness Brien Krieger, NIPSCO provides no testimony "that links or supports how or why these costs justify the anticipated benefits."[2]

While NIPSCO witness Donald Bull provides testimony that the projects provide incremental benefit to customers, he merely provides a conclusory response that the incremental benefits of TDSIC Gas Plan 2 justify the costs.[3] In failing to provide any justification in his direct testimony as required under the statute, Mr. Bull did not provide any explanation to prove or show how the benefits are just, right, or reasonable to support the costs. Instead, NIPSCO simply offers the conclusory opinion that because the plan provides a benefit, it therefore provides sufficient justification of the cost. However, simply because the plan provides a benefit does not automatically confer the goal of justifying the costs of that plan.

NIPSCO attempts to provide further justification in the direct testimony of Alison Becker and Mr. Bull's rebuttal testimony. Ms. Becker notes that it "is essential in considering the incremental benefit of the Plan …be compared against the potential for service deterioration and capacity restraint that would occur if these investments were not made."[4] Mr. Bull testifies that "the Plan provides incremental benefits compared to how the future may otherwise unfold."[5] Mr. Bull does not describe what he means by "how the future may otherwise unfold," although it would not be unreasonable to assume he means it in the same way that Ms. Becker states "if these

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[1] Merriam-Webster, https://www.merriam-webster.com/dictionary/justify, visited on May 15, 2020
[2] Public's Exhibit No. 2, Testimony of OUCC Witness Brien R. Krieger, p. 3, l. 3-4.
[3] NIPSCO Exhibit No. 2, Direct Testimony of Donald L. Bull, p. 112, l. 15 – p. 113, l. 5
[4] NIPSCO Exhibit No. 1, Direct Testimony of Alison Becker, p. 12, l. 13-17.
[5] NIPSCO Exhibit No. 2-R, Rebuttal Testimony of Donald L. Bull, p. 2, l. 14-15.

investments were not made." Nevertheless, this proposition also fails to show any support for why the incremental benefits would justify the plan costs.

First, this premise incorrectly assumes that a correct standard for comparison of a justification is the status quo. This argument relies on the assumption that if a project produces any improvement over the status quo, the benefit provides a justification for the cost, since this situation is better than "compared to how the future may unfold" or "if these investments were not made." The standard NIPSCO is relying upon is essentially no standard at all, since a utility can likely demonstrate that any proposed project will show an improvement, thus justifying the project, no matter how large the cost or how small the benefit it generates. Rather, in order to provide sufficient evidence that the "estimated costs of the eligible improvements included in the plan are justified by incremental benefits," NIPSCO must offer an analysis or comparison of the costs to the benefits, which would provide sufficient support for its assertion of justification. Merely showing the projects generate benefits does not show that the benefits "justify" the costs. Mr. Krieger suggested two different options to show sufficient justification, which are discussed in further detail below, and are either through a comparative analysis of alternative projects to show the best "bang for the buck," or through a quantification of the benefits, which NIPSCO admits it will not do.[6] The OUCC recognizes that there may be different alternatives to show the necessary justification, but the underlying issue is that NIPSCO did not provide any analysis that demonstrates or shows the costs are justified by the incremental benefits in order to allow the Commission to make its determination as required by the statute.

Second, based on NIPSCO's own testimony, it is unrealistic to assume that NIPSCO will not make any system improvements in the absence of the TDSIC projects and that the baseline

[6] Bull Direct, p. 113, l. 13-14.

comparison should be "if these investments were not made." Mr. Bull discusses that additional work may be needed to comply with the remaining as-yet unpublished components of the Mega Rule.[7] Mr. Bull also describes the implementation of the Safety Management System ("SMS"), which establishes a set of standards and best practices "to provide an objective framework to pursue a goal of zero incidents."[8] Mr. Bull describes that risks identified through the SMS may lead to changing projects in or adding new projects to TDSIC Gas Plan 2.[9] However, NIPSCO's SMS exists outside of the TDSIC Gas Plan 2, NIPSCO must decide how to address any risks raised through SMS regardless of the projects included in the Plan. Again, this shows how NIPSCO would address improvements to its system regardless of the TDSIC Gas Plan 2 and shows that this is not an appropriate baseline for comparing the benefits to justify the costs.

While Mr. Bull is "confused" by the OUCC's position, the OUCC's argument is uncomplicated. The OUCC does not dispute both that NIPSCO provided the "best estimates" (as required by the statute and further clarified in prior IURC Orders) for the eligible projects and that NIPSCO demonstrates the benefits of the plan through the reduction of risk.[10] What the OUCC does argue is that NIPSCO provided insufficient evidence linking the benefits to the costs and demonstrating that the incremental benefits "justify" (i.e. to prove or show to be just, right, or reasonable) the TDSIC Gas Plan 2 costs. Rather, as explained above, NIPSCO merely provides conclusory testimony that because the TDSIC Gas Plan 2 provides <u>any</u> benefit, its costs are justified, which is insufficient support for the Commission to make a determination under Inc. Code § 8-1-39-10(b)(3). Mr. Bull also cites several previous Commission decisions in which the

[7] Bull Direct, p. 17, l. 15-17.
[8] Bull Direct, p. 18, l. 1 – p. 19, l. 9.
[9] Bull Direct, p. 19, l. 12-16.
[10] Kreiger Direct, p. 3, l. 2-3, 7-8.

Commission did not require additional information to demonstrate the necessary justification.[11] However, in none of those proceedings was this issue raised or disputed by the OUCC or any intervenors. Therefore, the Commission has not addressed this issue in those proceedings.

As discussed by Mr. Krieger, NIPSCO had different options to demonstrate the project costs justify incremental benefits. First, Mr. Krieger proposes that "NIPSCO should have provided project information quantifying the value of individual avoided risks for all selected projects."[12] This option would allow an "apples-to-apples" comparison by monetizing the benefits and then comparing this amount to the estimated costs, and showing whether the incremental benefits justify the costs. Recently, in Cause No. 45264, Indianapolis Power and Light ("IPL") applied for approval of its TDSIC plan. As part of its application, IPL provided a monetization analysis for several of its projects. The Commission noted on page 24 of its Final Order dated March 4, 2020:

> IPL's analysis did not attempt to quantify all project benefits, but rather focused on projects that lend themselves to monetization. This supplemental monetization analysis showed that the projects analyzed, when viewed as part of a total portfolio, will provide a net benefit that exceeds the cost of the eligible improvements whether considered on a nominal or a present value basis.

In response to the Commission's decision, Mr. Bull does not even attempt to provide a monetization analysis for any of the TDSIC Gas Plan 2 projects, instead conjecturing on the difficulty to do so, and only relies on the level of detail provided in previous decisions.[13] The second option offered by Mr. Krieger is:

> Additionally, Petitioner should submit a comprehensive list of included projects, alternative projects it considered, but excluded, with reasons for exclusion, the alternative projects' potential costs, and the incremental value of reduced risk of the alternative projects. From this comprehensive list, a determination could be made whether NIPSCO had chosen the best of competing projects which provide the lowest cost for the highest risk reduction.[14]

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[11] Bull Rebuttal, p. 7, fn. 4.
[12] Krieger Direct, p. 18, l. 3-4.
[13] Bull Rebuttal, p. 8, l. 10-18.
[14] Krieger Direct, p. 18, l. 11-17.

This option would allow NIPSCO to demonstrate the proposed plan provides the greatest benefit through risk reduction for the total cost of the project. In response to this option, Mr. Bull completely disregards the alternative, again relying on previous decisions in refusing to perform the analysis.[15] Ultimately, Mr. Krieger is recommending different options that would allow NIPSCO to make the statutorily required showing that the costs are justified by the incremental benefits. NIPSCO did not provide any analysis to do so, providing insufficient basis to show that the costs are justified by the incremental benefits, and it is ultimately NIPSCO's responsibility to support its case. If NIPSCO will not provide the required information, the Commission cannot make a determination that the estimated costs are justified by the incremental benefits.

IV. NIPSCO'S INCORRECT INFLATION ESCALATOR

The OUCC recommends the Commission authorize a 2% inflation factor apply to base year estimates. As noted by Mr. Krieger, the February 2020 consumer price index from the U.S. Bureau of Labor Statistics is 2.3%. Mr. Krieger notes that applying 3% to NIPSCO's estimates is not in line with this amount and should be adjusted to 2%. Mr. Bull relies on previous labor contracts to support his use of 3%; however, the contracts expire in 2020, and it is unknown what increases will be in the current environment.[16] Additionally, 2% is in the middle of the range for price increases for polyethylene pipe stated by Mr. Bull, while 3% is at the upper end of the range.[17] Finally, the increases noted by Mr. Bull are not set in stone. It would be more appropriate to rely on official statistics in the absence of figures that are more firm. Should the Commission approve NIPSCO's request, the inflation factor should be adjusted to 2%.

V. FUTURE ADJUSTMENT TO WEIGHTED AVERAGE COST OF CAPITAL

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[15] Bull Rebuttal, p. 9, l. 1-5.
[16] Bull Rebuttal, p. 11, l. 9 – p. 12, l. 11.
[17] Bull Rebuttal, p. 12, l. 12-17.

OUCC Witness Mark Grosskopf states in his testimony that the OUCC intends to address adjustments to the WACC based on "other information" in NIPSCO's future TDSIC cost recovery filings, consistent with the direction given by the Commission in the Final Order in Cause No. 45264.[18] In the Final Order in that Cause, the Commission noted:

> …that the TDSIC statute "does not preclude us from increasing or decreasing the allowed return on equity [which is used in determining the utility's weighted average cost of capital], as the Commission is authorized to consider other necessary information in determin[ing] the appropriate pretax return." Based on the passage of time and the experience we have gained implementing the TDSIC statute over the past six years, as well as the OUCC's continued concerns with double recovery and the Industrial Group's concerns with the shifting of risks based on plan approval, we find it appropriate to explore a reasonable adjustment under the statutory provisions.

NIPSCO Witness James Racher discusses the Commission's decisions in previous TDSIC update proceedings.[19] However, nothing in these decisions preclude the OUCC or other intervenors from presenting, or the Commission from considering, "other information," under Ind. Code § 8-1-39-13(a)(5), in determining the WACC, as discussed by the Commission in the Final Order in Cause No. 45264. It also appears from Mr. Racher's rebuttal testimony that he believes the OUCC is recommending that the Commission make a decision on this issue in some way. This assumption is not correct. The OUCC is only indicating that it intends to present "other information" in a future TDSIC update proceeding for the Commission's consideration. It is not proposing any adjustment in this proceeding.

VI. CONCLUSION

NIPSCO failed to meet the statutory requirement of Ind. Code § 8-1-39-10(b)(3) by providing insufficient information to allow the Commission to make a determination that the

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[18] Public's Exhibit No. 1, Testimony of OUCC Witness Mark H. Grosskopf, p. 6, l. 8-17, citing Cause No. 45264, Final Order, p. 27.

[19] NIPSCO Exhibit No. 3-R, Rebuttal Testimony of James F. Racher, p. 1, l. 15 – p. 3. l. 9.

estimated costs are justified by the incremental benefits. NIPSCO provides conclusory testimony and an unrealistic comparison to a "do nothing" scenario in an unsuccessful attempt to provide the required justification under the statute. As NIPSCO did not provide sufficient information, the Commission cannot make a determination that the estimated costs justify the benefits, and NIPSCO's request should be denied. Finally, should the Commission approve NIPSCO's request, the inflation factor should be adjusted to 2%, which is in line with official pricing statistics, and the OUCC intends to offer "other information" for the Commission's consideration in determining the appropriate WACC in future proceedings.

May, 22, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ***OUCC'S*** **BRIEF IN SUPPORT OF PROPOSED ORDER** has been served upon the following counsel of record in the captioned proceeding by electronic service on May 22, 2020.

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