

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY LLC PURSUANT TO IND. )  
CODE §§ 8-1-42.7,8-1-2-61 AND IND. CODE § 8-1-2.5-6 )  
FOR (1) AUTHORITY TO MODIFY ITS RATES AND )  
CHARGES FOR ELECTRIC UTILITY SERVICE )  
THROUGH A PHASE IN OF RATES; (2) APPROVAL )  
OF NEW SCHEDULES OF RATES AND CHARGES, )  
GENERAL RULES AND REGULATIONS, AND )  
RIDERS; (3) APPROVAL OF REVISED COMMON )  
AND ELECTRIC DEPRECIATION RATES )  
APPLICABLE TO ITS ELECTRIC PLANT IN )  
SERVICE; (4) APPROVAL OF NECESSARY AND )  
APPROPRIATE ACCOUNTING RELIEF; AND (5) )  
APPROVAL OF A NEW SERVICE STRUCTURE FOR )  
INDUSTRIAL RATES. )

CAUSE NO. 45159

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

REDACTED TESTIMONY OF

PETER M. BOERGER, PH.D. - PUBLIC'S EXHIBIT NO. 1-S2

JUNE 17, 2019

Respectfully submitted,



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**TESTIMONY OF OUCC WITNESS PETER M. BOERGER, PH.D.  
IN RESPONSE TO STIPULATION AND SETTLEMENT AGREEMENT ON  
RATE 831 IMPLEMENTATION  
CAUSE NO. 45159  
NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC**

**I. INTRODUCTION**

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

2 A: My name is Peter M. Boerger, and my business address is 115 West Washington  
3 St., Suite 1500 South, Indianapolis, Indiana 46204. I am employed by the Indiana  
4 Office of Utility Consumer Counselor (“OUCC”) as a senior economist, with the  
5 official job title of Senior Utility Analyst, in the Electric Division.

6 **Q: Are you the same Peter M. Boerger who pre-filed testimony in this case?**

7 A: Yes.

8 **Q: What is the purpose of your additional testimony?**

9 A: The purpose of my testimony is to respond to the Stipulation and Settlement  
10 Agreement on Rate 831 Implementation (“S2 Settlement”<sup>1</sup>) filed by Northern  
11 Indiana Public Service Company LLC (“NIPSCO”), NLMK Indiana, NIPSCO  
12 Industrial Group and United States Steel Corporation (“US Steel”) (“S2 Parties”)  
13 with the Indiana Utility Regulatory Commission (“Commission”) on May 17, 2019.  
14 I also respond to testimony filed in support of the S2 Settlement, relating to issues  
15 pertaining to the Rate 831 proposal filed in NIPSCO’s case-in-chief.

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<sup>1</sup> I refer to this as the “S2 Settlement” to distinguish it from the revenue requirements settlement. NIPSCO, in its testimony supporting the settlements, refers to the revenue requirements settlement with the designation of “S1” and this separate settlement pertaining to its proposed Rate 831 with the designation of “S2.”

1 **Q: Have you reviewed the documents filed by the S2 Parties?**

2 A: Yes. I have also reviewed answers provided by NIPSCO in response to OUCC

3 discovery questions.

## II. S2 SETTLEMENT ISSUES

4 **Q: What is the substance of the S2 Settlement?**

5 A: Aside from relatively minor tariff changes, the proposed S2 Settlement presents a

6 number of substantive changes to the Rate 831 Proposal originally included in

7 NIPSCO's case-in-chief. These changes include:

8 1) S2 Parties commit to the same cost allocation to the 831 rate class (based upon

9 the 194.556<sup>2</sup> MW of firm demand) assumed by NIPSCO in its original

10 proposal. Along with this overall commitment, each individual 831 customer

11 commits in this agreement to take a specified amount of firm capacity. While

12 these individual commitments do not add up to 194.556 MW, the customers

13 agree in this settlement to have rates designed to recover costs from Rate 831

14 customers as though they had committed to that amount;

15 2) The S2 Settlement is designed in such a way that the 831 customers'

16 commitments to take firm load are predicated on the use of a 4CP cost allocation

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<sup>2</sup> While NIPSCO had originally had used approximately 184 MW in its proposal, the addition of a sixth 831 customer after NIPSCO filed that testimony raised the amount to 194.556 MW.

1 method—the cost allocation method that NIPSCO proposed and Rate 831  
2 customers supported in this case; and

3 3) Acceptance of the S2 Settlement also requires the Commission to approve a  
4 material change to the Adjacent Affiliate Qualifying Facility Premise  
5 Transmission Charge (“AAQFPTC”) which, for certain customers, would allow  
6 their AAQFPTC to be based on a “netting” of self-generated energy and  
7 metered consumption.<sup>3</sup>

8 **Q: Do these provisions appear to provide a reasonable resolution of issues**  
9 **pertaining to Rate 831?**

10 A: No. Of most importance, the S2 Settlement does not address, even in part, the cost  
11 shift from Rate 831 customers to other rate classes—calculated by NIPSCO and  
12 reported in my direct testimony as \$40.2 million. As such, the S2 Parties are not  
13 proposing to share in NIPSCO’s legacy costs incurred on their behalf for load that  
14 will be served under Tiers 2 and 3 of Rate 831. A reasonable resolution of the Rate  
15 831 issue should have these customers pay all, or at least a significant share, of the  
16 legacy cost burden directly related to their abrupt departure from the system that all  
17 other customer classes will pay.

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<sup>3</sup> See pages 14 and 15 of Attachment 19-S2-A.

1 **Q: Do the S2 Parties provide any justification for ignoring this cost shift in the**  
2 **settlement?**

3 A: No, not in their settlement testimony. However, the settlement agreement itself  
4 refers to the settling parties having filed testimony supporting an allocation  
5 methodology that is “preserving a sizable subsidy for customers on Rate 811.”<sup>4</sup>

6 **Q: Is it clear that customers on Rate 811 have received sizable subsidies?**

7 A: No. Rate 811 customers have benefited from mitigation, but “mitigation” does not  
8 necessarily imply “subsidy.”

9 **Q: What is “mitigation” and how does it relate to the concept of “subsidy”?**

10 A: “Mitigation” is a methodology used to change the amount of revenue requirement  
11 allocated to rate classes from the amounts that were determined under a specific  
12 cost allocation methodology (e.g. 4CP, 12CP, Peak and Average). For a given set  
13 of approved rates, the amount of “mitigation” approved will vary with the cost  
14 allocation method used. The word “subsidy” is usually intended to imply that a  
15 customer class is receiving a reduction in revenue requirement that is  
16 “undeserved”—in that it does not reflect a “true” reflection of cost incurrence. If a  
17 “subsidy” has been implemented, then it will likely have been implemented through  
18 some kind of mitigation; but the fact that a mitigation of revenue has been

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<sup>4</sup> Page 2 of “Stipulation and Settlement Agreement on Rate 831 Implementation.”

1 implemented in a rate design does not necessarily imply that a subsidy has been  
2 provided, as I will next explain.

3 **Q: Why does “mitigation” not necessarily imply “subsidy”?**

4 A: The rate of return earned from a customer class at established rates depends on the  
5 cost allocation methodology chosen. As I describe in more detail below, a cost  
6 allocation methodology different from the one chosen by NIPSCO (and supported  
7 by other S2 Parties) is more reasonable and fair to all rate classes. Using one of the  
8 OUCC's preferred methodologies would reduce the size of the “subsidy” that the  
9 S2 Parties seek to highlight. But even the methodologies preferred by the OUCC  
10 do not reflect the unique aspects of Rate 831 customers that cause the costs fairly  
11 allocable to those customers to be higher than standard cost allocation models  
12 include, as explained well by Bonbright.

13 Bonbright, in his chapter on fully distributed costs, identifies how large-  
14 scale industrial power customers impose risks to the utility that should be reflected  
15 in its cost of service. In discussing the risks of load volatility from such large  
16 customers, Bonbright says:

1           In consequence, the rates of charge for service rendered to a gigantic  
2           user of power, regardless of the formula used in the determination  
3           of his annual demand charges, may well result in less than barely  
4           compensatory rates when measured in the light of hindsight. If  
5           based on advance estimates of cost of service these rates should  
6           therefore incorporate an appropriate allowance for the risk factor –  
7           for a risk factor well in excess of that which would be appropriate in  
8           an estimate of the cost of supplying the more stable residential  
9           service.<sup>5</sup>

10          Bonbright indicates in this passage that the kind of large customers serviced under  
11          NIPSCO's Rate 831 impose risks that should reasonably be accounted for in  
12          determining their cost of service. However, that risk has not been accounted for in  
13          the cost of service methodology presented by NIPSCO in this rate case or in its  
14          previous rate cases. I am not criticizing NIPSCO for not including such risk,  
15          because the OUCC's preferred methodologies also do not incorporate such risk in  
16          allocating costs—including such risk in standard methodology is difficult and,  
17          therefore, is not standard practice. However, the practical difficulty of including  
18          consideration for this kind of risk does not make the effect of that risk any less real.  
19          If such consideration were included, the cost of service for Rate 831 customers  
20          would be higher than calculated by those standard models, resulting in lower cost  
21          allocations to other rate classes. Thus, in the absence of accounting for such risk,  
22          one cannot reasonably conclude, as the S2 Parties have in this case, that the

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<sup>5</sup> Bonbright, James C., Albert L. Danielsen and David R. Kamerschen. *Principles of Public Utility Rates*, Second Edition. Arlington, VA: Public Utilities Report, Inc., 1988, pages 508 and 509.

1 “mitigation” allocated to some rate classes in this case or in previous rate cases  
2 necessarily represents a “subsidy” for those rate classes.

3 **Q: Does NIPSCO recognize the risks related to serving its large industrial**  
4 **customers that could reasonably be considered in determining their cost of**  
5 **service?**

6 A: Yes. In response to an OUCC data request seeking to understand NIPSCO's view  
7 of the benefits resulting from the elimination of its obligation to serve Tiers 2 and  
8 3 load, NIPSCO responded:

9 “ . . . the industrial load is more volatile and at times can cause  
10 fluctuations in rates as production increases and decreases, as was  
11 evident in NIPSCO's 2008 electric rate case and evident in this case,  
12 which was predicated, in large part on the loss of over 100 MWs of  
13 firm load from one large industrial customer. <sup>6</sup>

14 This admission supports the idea that Rate 831 customers are the kind of customers  
15 that Bonbright refers to in the passage quoted above and that the cost to serve these  
16 customers is higher than would be calculated in the kinds of standard cost of service  
17 models presented in this case.

18 **Q: Are there other reasons why the S2 Settlement presented by the S2 Parties is**  
19 **not a reasonable resolution of the issues pertaining to Rate 831?**

20 A: Yes. The S2 Settlement would have the Commission approve a cost allocation  
21 methodology (4 CP) which has not previously been approved for NIPSCO. As  
22 addressed by OUCC witness Glenn Watkins in his direct testimony, the base-load-  
23 heavy set of production resources currently employed by NIPSCO would not have  
24 been built were it not for the large, high-load-factor customers on NIPSCO's

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<sup>6</sup> Response to OUCC DR 5-13(b).



1 system. Based largely on that understanding, Mr. Watkins found that three methods  
2 (Base-Intermediate-Peak, Peak & Average and 12-CP) “more closely reflect the  
3 manner in which NIPSCO has planned, built, and utilizes its generation resources  
4 and therefore, more closely correlates to cost causation . . . .”<sup>7</sup> Mr. Watkins  
5 identified in his testimony the increased cost burden that should be borne by Rate  
6 831 customers beyond NIPSCO’s proposal and reflected in this settlement ranges  
7 from \$13 million to almost \$24 million.<sup>8</sup> Combining this shift in cost burden with  
8 the \$40.2 million cost shift resulting from the creation of Rate 831 would imply a  
9 total cost shift from Rate 831 to other rate classes in the range of \$53 million to \$64  
10 million.

11 **Q: In his S2 Settlement testimony, US Steel witness Tony M. Georgis presents**  
12 **details of a cogeneration plant that US Steel recently considered building.**  
13 **Would building that plant impose a large cost burden on NIPSCO (and**  
14 **ultimately its customers) in the event that US Steel found the Commission’s**  
15 **resolution of issues in this case to be unsatisfactory?**

16 A: No. Confidential Exhibit C filed with the S2 Settlement shows that US Steel  
17 commits to take only ■ MW above the Rate 831 minimum of 10 MW. While  
18 losing ■ MW of load would cause some additional cost shift to other customers in  
19 NIPSCO’s next base rate case, the effect would be modest in the context of a utility  
20 with a peak load of around 3,000 MW and compared to the effect from the recent  
21 changes involving BP Products North America, Inc. (“BP”).<sup>9</sup>

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<sup>7</sup> Public’s Exhibit No. 9, Page 35.

<sup>8</sup> See pages 28 through 34 of Public’s Exhibit No. 9 in this Cause.

<sup>9</sup> Cause No. 45071.

1 **Q: Does there appear to be a misapprehension of the risks to US Steel in the event**  
2 **the Commission rejects the Rate 831 proposal?**

3 A: Yes. On page 5 of his S2 Settlement testimony, Mr. Georgis states that in the event  
4 of rejection of Rate 831, US Steel's ". . . annual energy costs would also be far  
5 higher than the status quo due to the loss of BP's load occasioned by BP's decision  
6 to serve itself with its Whiting Clean Energy Facility." The reality is that the loss  
7 of BP's load has already been reflected in NIPSCO's cost allocation to Rate 831 in  
8 this Cause. As a result, the cost burden will be shared by other rate classes in the  
9 event the current rate design for industrial customers is maintained. Assuming  
10 those industrial customers received the same across-the-board rate increase that all  
11 other rate classes are receiving in this case, the rate increase for US Steel would be  
12 only 3.25%.<sup>10</sup> While the OUCC does not wish to see any customer's rates increase,  
13 and especially not one as important to Indiana's economy as US Steel, it appears  
14 that Mr. Georgis' analysis may not have reflected the fact that BP's decreased load  
15 was incorporated into NIPSCO's load forecast as part of its original cost of service  
16 study in this case.

17 **Q: In addition to the \$53 to \$64 million cost shift from the Rate 831 rate class to**  
18 **other rate classes built into the S2 Settlement, is there another significant**  
19 **reason to reject the settlement?**

20 A: Yes. Mr. Georgis' testimony regarding US Steel's potential to build additional  
21 cogeneration capacity is a reminder of the importance to properly design the backup  
22 transmission service charge. The OUCC in no way wishes to impede industrial

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<sup>10</sup> This is the system average rate increase shown in Attachment 19-S1-B, attached to the Verified Settlement Testimony of Curt A. Westerhausen.

1 customers from building economic cogeneration facilities through a transmission  
2 charge, but the charge should be designed in such a way the potential builder of that  
3 capacity sees the true and full cost of providing related transmission service. The  
4 S2 Settlement would eliminate the opportunity in the Phase 2 proceeding in this  
5 Cause to ensure the transmission charge fairly and fully reflects the cost of  
6 providing transmission service, as I proposed in my direct testimony in this  
7 proceeding.<sup>11</sup>

8 **Q: Is the change to the AAQFPTC proposed in the S2 Settlement reasonable?**

9 A: No. NIPSCO originally proposed this charge to reflect the cost of connecting  
10 customers' facilities using its transmission system, and the OUCC did not object to  
11 that approach. The revised charge proposed in the S2 Settlement, as shown in the  
12 revised tariff pages<sup>12</sup> attached to Mr. Westerhausen's S2 Settlement testimony, no  
13 longer reflects a cost of service basis for the charge, in that it reflects neither the  
14 level of transmission capacity utilized or the total amount of energy flowed over  
15 NIPSCO's system. Since this charge no longer reflects the cost of providing this  
16 service, the revised language for the AAQFPTC presented by the S2 Parties  
17 provides further basis for rejecting this settlement.

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<sup>11</sup> See Section III. of my direct testimony in this Cause, found on pages 7 through 11.

<sup>12</sup> See pages 14 and 15 of Attachment 19-S2-A.

### **III. CALCULATION OF COST ALLOCATION TRACKER FACTORS FOR DEMAND-RELATED COSTS**

1 **Q: Is there another matter related to cost allocation that came to your attention**  
2 **in reviewing the Rate 831 Implementation Agreement Exhibit A that is cause**  
3 **for concern?**

4 A: Yes. Page .1 of the Rate 831 Implementation Agreement Exhibit A presents the  
5 calculation of Demand Allocation Tracker Allocators. In calculating those demand  
6 allocation percentages, S2 Parties removed from the revenue for Rate 831 an  
7 amount of \$31,546,292, resulting in an 8.32% Rate 831 allocation percentage for  
8 this category of costs. This reduction is analogous to the reduction in the  
9 Transmission, Distribution, and Storage System Improvement Charge (“TDSIC”)  
10 Allocation for Rate 831 shown on Page .5 of that Exhibit, resulting in a similar  
11 allocation to Rate 831 of 8.55%.

12 The reduction to Rate 831 cost responsibility for TDSIC purposes is clear—  
13 it results from the requirements of IC 8-1-39-9(a)(1) limiting TDSIC recovery to  
14 an amount based on the “customer class revenue allocation factor based on firm  
15 load.” However, none of the S2 Parties present evidence of similar statutory  
16 requirements for other trackers. Absent such language, there is no reasonable  
17 explanation made by S2 Parties for an analogous reduction in cost responsibility  
18 for demand allocation outside of NIPSCO’s TDSIC tracker.

19 Mr. Westerhausen’s direct testimony presented the same reduction in Rate  
20 831 tracker cost responsibility (in his Attachment 19-E). What he says in testimony  
21 regarding this methodology is “The Rate 831 allocation was adjusted to reduce the  
22 Allocated Cost of Service Study revenue down to the revenue associated with Tier

1 1.”<sup>13</sup> However, this explanation does not address the specific reasoning for making  
2 the reduction to Rate 831 cost responsibility. Beyond lacking support, there is  
3 evidence that this reduction runs counter to proper cost allocation. First, the  
4 revenue number for Rate 831 already excludes production revenue for Tiers 2 and  
5 3 service. Additionally, customers taking service under Tiers 2 and 3 are explicitly  
6 excluded from paying production-related trackers. Thus, with lack of support for  
7 making the proposed reduction in Rate 831 cost responsibility and no TDSIC-like  
8 statutory provision requiring this reduction, there is no reasonable explanation for  
9 this reduction to Rate 831 Demand Allocation tracker allocation.

10 As a result, under the S2 Parties' proposal (as under NIPSCO's original  
11 proposal), Rate 831 customers will be allocated too little and other rate classes will  
12 be allocated too much revenue requirement in trackers that utilize a demand  
13 allocator under the methodology presented in this settlement (and under the  
14 methodology presented in NIPSCO's case in chief).

15 **Q: What do you recommend regarding this unsupported reduction in demand**  
16 **allocation tracker cost responsibility for the Rate 831 rate class?**

17 **A:** The OUCC recommends NIPSCO be required to recalculate its Demand Allocation  
18 Tracker Allocators to eliminate the Rate 831 Tier 1 Adjustment shown on Page .1  
19 of Rate 831 Implementation Agreement Exhibit A and in Attachment 19-E of Mr.  
20 Westerhausen's pre-filed direct testimony in this case because ...(summarize).

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<sup>13</sup> Lines 18 and 19 of Page 53 of his testimony in Petitioner's Exhibit No. 19.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

1 **Q: What do you conclude regarding the S2 Settlement?**

2 A: In exchange for providing certainty as to the amount of Tier 1 demand that will be  
3 subscribed by Rate 831 customers, S2 Parties seek to tie the Commission's hands  
4 on other matters that must be addressed in order for a fair result to be obtained.  
5 Specifically, S2 Parties seek to:

- 6 • Avoid NIPSCO's legacy cost burden by passing it on to other rate classes;
- 7 • Implement a cost allocation methodology unfair to other rate classes;
- 8 • Eliminate the opportunity to ensure in a Phase 2 proceeding the  
9 transmission charge for backing up self-generation reflects the cost of  
10 service; and
- 11 • Modify NIPSCO's proposed adjacent facilities transmission charge in a  
12 way that causes it to no longer reflect cost of service.

13 The provision of certainty as to Rate 831 service levels afforded by the proposed  
14 S2 Settlement does not provide sufficient benefit to overcome these problems.

15 **Q: Could the Rate 831 service commitments be refiled as an addition to**  
16 **NIPSCO's case in chief rather than as part of a settlement agreement?**

17 A: Yes. The parties could file the service levels presented in the S2 Settlement as an  
18 addition to previously filed testimony in this case. Doing so would allow the  
19 Commission to include consideration of the additional certainty afforded by those  
20 commitments without predetermining the outcome of other matters that the  
21 Commission must consider in deciding the outcome of this case.

1 **Q: In the event the Commission rejects the S2 Settlement and the S2 Parties**  
2 **choose not to file their agreed service levels as an addition to pre-filed direct**  
3 **testimony, would the resulting lack of certainty prove insurmountable to a**  
4 **reasonable resolution of this case?**

5 A: No. The case could reasonably be resolved through a Phase 2 proceeding as  
6 originally proposed by NIPSCO. If the Commission determines the uncertainty of  
7 a Phase 2 proceeding (without customer commitments) overwhelms the benefits  
8 that could be obtained from approving the Rate 831 proposal, it could order  
9 NIPSCO to refile its industrial rates in a manner reflective of its 700 series  
10 industrial rates. This approach to setting industrial rates has worked in the past,  
11 and no party has filed testimony indicating that the 700 series rates could not  
12 continue to function reasonably.

13 **Q: What do you recommend regarding the S2 Settlement?**

14 A: I, on behalf of the OUCC, recommend the Commission:

- 15 1) Deny approval of the S2 Settlement;
- 16 2) Require NIPSCO to recalculate its Demand Allocation Tracker Allocators to  
17 eliminate the Rate 831 Tier 1 Adjustment shown on Page .1 of Rate 831  
18 Implementation Agreement Exhibit A and in Attachment 19-E of Mr.  
19 Westerhausen's pre-filed direct testimony in this case.

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

21 A: Yes.

## CERTIFICATE OF SERVICE

This is to certify that a copy of the *INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S TESTIMONY FILING OF PETER M. BOERGER, PH.D.* has been served upon the following parties of record in the captioned proceeding by electronic service on June 17, 2019.

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