

STATE OF INDIANA

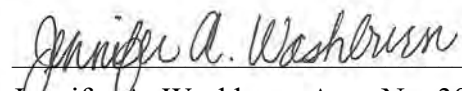
INDIANA UTILITY REGULATORY COMMISSION

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 ASH 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) CAUSE NO. 45700
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.)

SUBMISSION OF CAC DIRECT TESTIMONY

Citizens Action Coalition (“CAC”) respectfully submits the Direct Testimony and
Attachments of Ben Inskeep (“CAC Exhibit 1”) in the above-referenced Cause to the Indiana
Utility Regulatory Commission.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail or U.S.

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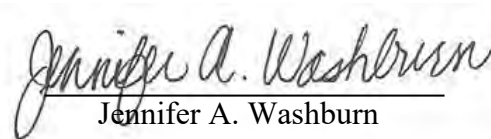
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SERVICE COMPANY LLC FOR (1) APPROVAL OF AND)
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REVIEW OF THE ASH POND COMPLIANCE PROJECT;)
ALL PURSUANT TO IND. CODE § 8-1-8.4-1 ET SEQ., § 8-)
1-2-19, § 8-1-2-23, AND § 8-1-2-42; AND, TO THE EXTENT)
NECESSARY, APPROVAL OF AN ALTERNATIVE)
REGULATORY PLAN PURSUANT TO IND. CODE § 8-1-)
2.5-6.)

DIRECT TESTIMONY OF BENJAMIN INSKEEP ON BEHALF OF
CITIZENS ACTION COALITION OF INDIANA

SEPTEMBER 7, 2022

I. INTRODUCTION

Q. Please state your name, position and business address.

A. My name is Ben Inskeep, and I am the Program Director at Citizens Action Coalition of Indiana, Inc. (“CAC”). My business address is 1915 West 18th Street, Suite C, Indianapolis, Indiana 46202.

Q. Please describe your current responsibilities.

A. I have served as CAC’s Program Director since March 2022. In that role, I work to advance CAC’s policy and programmatic priorities related to energy, utilities, and consumer affordability and protection.

Q. Please briefly summarize your prior employment and educational background.

A. I have more than a decade of experience working on energy and utility issues. My prior employment includes working as a policy analyst at the North Carolina Clean Energy Technology Center at North Carolina State University (2014-2016), where I co-created and served as lead author and editor of *The 50 States of Solar*, a quarterly report series tracking distributed solar policy developments in U.S. states. I also conducted policy research and contributed to the *Database of State Incentives for Renewables and Efficiency (DSIRE)* project and provided technical support, analysis, and workshops for state and local governments through the U.S. Department of Energy’s SunShot Solar Outreach Partnership.

I also worked for EQ Research LLC, a clean energy policy consulting firm, from 2016-2022. I managed EQ Research’s general rate case subscription service, contributed as a researcher and analyst to other policy service offerings, such as a legislative and regulatory tracking services, and performed customized research and analysis for clients.

1 In addition, I helped clients with their participation in state utility regulatory proceedings,
2 including serving as an expert witness on ratemaking and energy policy issues.

3 I earned a Bachelor of Science in Psychology from Indiana University in 2009 and
4 both a Master of Science in Environmental Science and a Master of Public Affairs from
5 the O'Neill School of Public and Environmental Affairs at Indiana University in 2012.

6 **Q. Have you previously filed testimony before the Indiana Utility Regulatory**
7 **Commission (“IURC” or “Commission”)?**

8 **A.** Yes. I previously testified before the IURC in Cause Nos. 45504, 45505, 45506, and 45508
9 addressing the excess distributed generation tariffs of AES Indiana, Northern Indiana
10 Public Service Co., Indiana Michigan Power (“I&M”), and Duke Energy Indiana,
11 respectively, as well as in Cause No. 45701 addressing I&M’s demand-side management
12 plan and Cause No. 45722 regarding CenterPoint’s securitization pilot program.

13 I have also previously testified before the Kentucky Public Service Commission in
14 Case Nos. 2020-00174 (Kentucky Power’s 2020 rate case), 2020-00349 (Kentucky
15 Utilities’ 2020 rate case), and 2020-00350 (Louisville Gas & Electric’s 2020 rate case).

16 **Q. On whose behalf are you testifying?**

17 **A.** I am testifying on behalf of CAC.

18 **Q. What is the purpose of your testimony in this proceeding?**

19 **A.** The purpose of my testimony is to highlight CAC’s concerns with Northern Indiana Public
20 Service Company’s (“NIPSCO”) proposal, including:

- 21 1. NIPSCO is proposing to clean up only a fraction of the coal ash that it has
22 disposed of at its Michigan City site, meaning the site will continue to pose a
23 risk to public health and the environment after the completion of the Ash Pond

1 Compliance Project, contrary to NIPSCO's obligation to provide electric
2 service to customers that is safe.

3 2. NIPSCO is requesting cost recovery for Ash Pond Compliance Project costs
4 incurred prior to Commission approval in this Cause, which is contrary to the
5 Indiana's statutory prohibitions on retroactive ratemaking.

6 3. NIPSCO's Ash Pond Compliance Project includes costs that are not federally
7 mandated and therefore cannot be recovered under the Federal Mandates
8 Statute.

9 a. Specifically, "RCRA pond" closure costs are not federally mandated
10 costs.

11 b. In addition, the RCRA ponds very likely held and continue to hold
12 accumulations of CCR and liquids even after they were filled with boiler
13 slag, so they likely have continued to meet the CCR Rule's definition of
14 a "CCR surface impoundment" and are therefore still subject to the CCR
15 Rule. Accordingly, there is reason to believe that NIPSCO has not been,
16 and continues to plan to not be, in full compliance with the federal law
17 since October 2015 by not complying with the CCR Rule with respect
18 to these "RCRA ponds."

19 4. NIPSCO's cleanup of its CCR ponds does not comply with the plain language
20 requirements in the CCR Rule.

21 a. NIPSCO is asking that ratepayers pay to cap the underlying
22 contamination in place, even though it knows or should know that it will

likely have to engage in corrective measures at additional costs to address this contamination in the near future.

b. NIPSCO's plan both fails to comply with the CCR Rule's closure-by-removal standard and improperly delays compliance with the CCR Rule's corrective action provisions.

c. Even if it were assumed for the sake of argument that IDEM's approval of NIPSCO's closure plan renders it compliant with the CCR Rule, it would not be sufficient to absolve NIPSCO of responsibility for decontaminating the areas affected by the Michigan City coal ash ponds and ensuring that the groundwater is cleaned up.

5. NIPSCO's proposed cost allocation produces unjust and unreasonable rates by shifting millions of dollars in coal ash costs associated with the usage of large industrial customers onto residential customers and other customer classes. Residential customers, who are already struggling to afford high energy bills, should not be required to pay for cleanup costs associated with coal ash that was created as a byproduct of generating electricity for industrial customers.

6. NIPSCO ratepayers strongly oppose NIPSCO's proposal in this proceeding. Ratepayers and residents testifying at the Field Hearing spoke in unison asking the Commission to require NIPSCO to clean up all of its coal ash at the Michigan City site (not just the coal ash ponds at issue in the case) and require NIPSCO shareholders to help pay the cost. No testimony offered at the Field Hearing supported NIPSCO's proposal.

1 **Q. How is your testimony organized?**

2 **A. My testimony is organized as follows:**

- 3 • **Section II** addresses overarching concerns with NIPSCO's plans for coal ash
4 at its Michigan City site.
- 5 • **Section III** addresses Indiana's statutory prohibitions on retroactive ratemaking
6 and how that applies to this proceeding.
- 7 • **Section IV** details why certain Ash Pond Compliance Project costs related to
8 the RCRA ponds are not federally mandated. It also addresses why NIPSCO's
9 proposal related to its CCR ponds is not in compliance with the plain language
10 requirements of the CCR Rule.
- 11 • **Section V** addresses cost allocation of the Ash Pond Compliance Project and
12 explains why using an energy allocator instead of the 4CP demand allocator is
13 appropriate.
- 14 • **Section VI** summarizes testimony provided by ratepayers and residents at the
15 Field Hearing in this case.
- 16 • **Section VII** provides my recommendations.

II. OVERARCHING CONCERNS WITH NIPSCO'S PROPOSAL

Q. Please describe your overarching concerns with NIPSCO's coal ash cleanup plan for Michigan City.

A. NIPSCO is requesting cost recovery for cleaning up only a fraction of the coal ash that has been disposed of at the Michigan City site during the many decades of its coal plant's operations. In particular, large quantities of coal ash were used as fill at the Michigan City site, including to create "made land" on steel sheet piling extending onto Lake Michigan. The steel sheet pile walls along Trail Creek and the Lake Michigan shore were created beginning in the 1930s, with NIPSCO filling in behind the sheet pile a mix of coal ash, soil, and sand. Steel sheet pile walls are susceptible to corrosion over time. For instance, the environmental consulting firm Kirk Engineering estimated that the Michigan City site sheet piling holds back approximately two million cubic yards of fill containing CCR that is at risk of catastrophic release to surface water if the piling were to fail from continued deterioration or flooding.¹ There is no liner under the ash or any structure to prevent contact between the coal ash and water. Recent inspections show that the walls are in fair or satisfactory condition, but are corroding and some segments are starting to lean. Engineering firm Burgess Environmental reviewed the inspections and data on the sheet

¹ Kirk Engineering & Natural Resources, Inc., "Coal Combustion Residual Closure Analysis: Cost And Jobs Associated With Different Closure Alternatives," July 2021, p. 13, <https://earthjustice.org/sites/default/files/feature/2021/report-coalash/KirK-Report-compiled-7-21-2021.pdf>.

1 pile walls and concluded that “[u]ltimately, the steel sheet pile wall will corrode and fail if
2 it is left in place.”²

3 In this case, NIPSCO is only proposing to remove 170,600 cubic yards of coal ash
4 that has been disposed in five impoundments at the site.³ NIPSCO has not put forth any
5 plan to fully clean up this facility in the future that would mitigate the significant risk to
6 human health and the environment by leaving the large quantity of CCR fill at the site in
7 place. This is particularly problematic because the facility is located on the shore of Lake
8 Michigan—the source of drinking water for more than 10 million Americans.⁴

9 Coal ash at the site has already resulted in the release of hazardous constituents into
10 the environment that has contaminated groundwater. NIPSCO admitted in response to a
11 data request that “Based on information gathered by IDEM, there is or has been a release
12 of hazardous wastes and/or hazardous constituents into the environment from [NIPSCO’s
13 Michigan City] Facility.”⁵ NIPSCO has also recently detected statistically significant
14 levels of arsenic and selenium above the groundwater protection standards at the Primary
15 Settling Pond #2 CCR unit,⁶ as well as statistically significant levels of arsenic at the Boiler

² Burgess Environmental (June, 2022). Michigan City – CCR Management Area – Review of Sheet Pile Wall Assessments, https://earthjustice.org/sites/default/files/files/final_sheet_pile_letter_report.pdf (included as Attachment BI-2).

³ Petitioner’s Exhibit No. 3, p. 13.

⁴ Illinois Environmental Protection Agency, “Lake Michigan,” retrieved on August 21, 2022, <https://www2.illinois.gov/epa/topics/water-quality/monitoring/Pages/lake-michigan.aspx#:~:text=However%2C%20despite%20its%20small%20size,10%20million%20lake%20wide.>

⁵ NIPSCO Response to Industrial Group Data Request 3-4(a) (included in Attachment BI-1).

⁶ NIPSCO, “Michigan City Generating Station Notice of SSL,” August 18, 2022, https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/ccr/michigan-city-generating-station/groundwater-monitoring-and-corrective-action/michigan-city-generating-station-notice-of-ssl.pdf?sfvrsn=debfl251_3 (included as Attachment BI-3).

Slag Pond CCR unit.⁷ Coal ash and contaminated materials that will remain at the site after the completion of the Ash Pond Compliance Project create an unacceptable risk to public health and the environment and is contrary to NIPSCO's obligation to provide service that is safe to the public.

III. RETROACTIVE RATEMAKING

Q. What is Indiana's statutory prohibition against retroactive ratemaking?

A. Ind. Code § 8-1-2-68 provides that, "Whenever ... the commission shall find any rates ... to be unjust, unreasonable, [or] insufficient ..., the commission shall determine and by order fix just and reasonable rates ... to be imposed, observed, and followed **in the future**" (emphasis added).

Likewise, other applicable statutes pertaining to utility ratemaking, such as the Federal Mandates Statute that is at issue in the instant proceeding, use future-tense phrasing, the plain language of which would suggest cost recovery under the statute pertains to future costs incurred by the utility and that retroactive ratemaking is not allowed.

Q. Please identify which provisions of the Federal Mandates Statute include future tense phrasing.

A. Indiana Code Sections 8-1-8.4-6(a), 6(b), 6(b)(1), 7(b)(1), and 7(b)(2) all use future-tense phrasing. For instance, I.C. § 8-1-8.4-6(a) provides that:

⁷ NIPSCO, "2019 Annual Groundwater Monitoring and Corrective Action Report – Boiler Slag Pond," January 31, 2020, https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/ccr/michigan-city-generating-station/groundwater-monitoring-and-corrective-action/michigan-city-generating-station-boiler-slag-pond-2019-annual-groundwater-monitoring-and-corrective-action-report/e409bd43-d8a8-440c-b1ab-67766c5b8c89.pdf?sfvrsn=b6691351_1 (included as Attachment BI-4).

1 Except as provided in subsection (c), or unless an energy utility has elected
2 to file for: (1) a certificate of public convenience and necessity; or (2) the
3 recovery of costs; under another statute, an energy utility that seeks to
4 recover federally mandated costs under section 7(c) of this chapter must
5 obtain from the commission a certificate that states that public convenience
6 and necessity **will be served** by a compliance project proposed by the
7 energy utility.

8 (Emphasis added.) Although I am not an attorney, the plain language of the future-tense
9 usage indicates to me that the federally mandated projects are to provide future benefits.

10 In addition, I.C. § 8-1-8.4-6(b) says, in pertinent part, that, “The commission shall
11 issue a certificate of public convenience and necessity under section 7(b) of this chapter if
12 the commission finds that the proposed compliance project **will allow** the energy utility to
13 comply directly or indirectly with one (1) or more federally mandated requirements,”
14 (emphasis added). The statute does not say “has allowed.”

15 Finally, I.C. § 8-1-8.4-6(b)(1)(B) requires that the Commission examine “[a]
16 description of the **projected** federally mandated costs associated with the proposed
17 compliance project, including costs that are allocated to the energy utility...” (emphasis
18 added). Projected costs are the estimated or forecasted costs in the future. In contrast, past
19 costs incurred would be known, actual amounts that would not need to be “projected.”

20 **Q. Do you see any language in the Federal Mandates Statute that authorizes a utility to**
21 **recover past costs incurred that were not previously approved by the Commission?**

22 **A.** No.

23 **Q. Please summarize the Supreme Court of Indiana’s recent decision on retroactive**
24 **ratemaking.**

1 A. In a recent case, the Indiana Supreme Court issued an opinion addressing Duke Energy
 2 Indiana’s coal ash cost recovery.⁸ In its 2019 rate case, Duke Energy Indiana requested
 3 cost recovery for \$212 million for coal ash closure, remediation, and financing costs that it
 4 had incurred during the 2010-2018 period and expected to incur during 2019 and 2020.
 5 The Court held that the Commission’s order that granted Duke Energy Indiana permission
 6 to recover past costs violated the statutory prohibition against retroactive ratemaking. The
 7 Court’s order pertains only to coal ash costs incurred prior to the Commission’s June 2020
 8 order.

9 **Q. Did the Indiana Supreme Court interpret the Federal Mandates Statute?**

10 A. While the Court did not interpret the Federal Mandates Statute in the case, it did suggest
 11 that the Federal Mandate Statute’s use of future tense also likely implied that it barred
 12 retroactive ratemaking:

13 For instance, had Duke properly sought recourse under Indiana’s federal
 14 mandate statute, I.C. ch. 8-1-8.4, the result may have been different, at least
 15 for the costs Duke incurred to comply with the EPA’s 2015 rulemaking.
 16 This statute permits utilities to recover costs incurred due to changes in
 17 federal regulations. Although we have not yet interpreted the statute, we
 18 note it is framed in the future tense and speaks of “projected” costs for
 19 “proposed” projects, see id. §§ 8-1-8.4-6(a), 6(b), 6(b)(1), 7(b)(1), 7(b)(2),
 20 which would seem to require commission approval **before** a utility incurs
 21 the cost. [emphasis original]

22 **Q. What do you recommend?**

23 A. I recommend that the Commission deny cost recovery for any costs incurred prior to the
 24 Commission’s final order in this proceeding to avoid retroactive ratemaking.

⁸ *Indiana Office of Utility Consumer Counselor v. Duke Energy Indiana, LLC, et al.*, 183 N.E.3d 266 (2022).

IV. COMPLIANCE WITH THE CCR RULE**A. Closure Costs for “RCRA Ponds”**

1 **Q. Please describe the ponds that are at issue in this proceeding.**

2 **A.** As described in the direct testimony of NIPSCO witness Turman,⁹ NIPSCO seeks recovery
3 for the costs of closing all five coal ash impoundments, or ponds, at Michigan City: West
4 Primary Fly Ash Basin (Primary #1 Pond), Primary Fly Ash Basin East (Primary #2 Pond),
5 West Secondary Fly Ash Basin East (Secondary #1 Pond), Secondary Fly Ash Basin
6 (Secundary #2 Pond), and Bottom Ash Settling Pond and Storage Area (Boiler Slag Pond).

7 **Q. Please describe the “federally mandated requirements” that NIPSCO contends are at**
8 **issue.**

9 **A.** NIPSCO witness Turman testifies that the federal Resource Conservation and Recovery
10 Act (“RCRA”) applies to all five Michigan City ponds, but that EPA regulations of Coal
11 Combustion Residuals (known as the “CCR Rule,” 40 C.F.R. Part 257) only apply to two
12 of the ponds (the Primary #2 Pond and the Boiler Slag Pond). NIPSCO refers to the latter
13 two ponds as “CCR ponds” and the other three ponds as “RCRA ponds.”

14 **Q. Does the CCR Rule require NIPSCO to close all Michigan City ponds that are subject**
15 **to the CCR Rule?**

16 **A.** Yes. Because all of Michigan City’s ponds are unlined, the CCR Rule requires any of the
17 ponds that are subject to the CCR Rule to close in accordance with the requirements of 40
18 C.F.R. § 257.102.

⁹ Petitioner’s Exhibit No. 2.

1 **Q. Do you agree that any of NIPSCO's proposed project costs that are necessary to**
2 **comply with the CCR Rule are "federally mandated requirements," as defined in Ind.**
3 **Code § 8-1-8.4-5?**

4 **A.** Yes, I do, with the exception that past costs incurred by NIPSCO prior to Commission
5 approval would not be recoverable based on my understanding of Indiana's prohibition on
6 retroactive ratemaking, as described in Section II of my testimony. The EPA promulgated
7 the CCR Rule to comply with its requirements under RCRA to protect human health and
8 the environment from potential adverse effects of coal ash disposal. Based on my reading
9 of the plain language of the statute, compliance with the CCR Rule constitutes compliance
10 with "a requirement that . . . is imposed by the federal government" under RCRA, within
11 the meaning of Ind. Code § 8-1-8.4-5.

12 CAC also supports NIPSCO's proposed amortization of any Ash Pond Compliance
13 Project costs that are approved in this Cause through 2032 to limit the bill impact to
14 ratepayers and to align cost recovery with the period over which the retiring coal-fired
15 generating fleet's net book value will be recovered through rates.

16 **Q. For the "RCRA ponds" that NIPSCO contends are not subject to the CCR Rule, are**
17 **there RCRA requirements other than the CCR Rule that require those ponds to**
18 **close?**

19 **A.** No, there are not. As NIPSCO noted in its responses to CAC's discovery, the applicable
20 provision is RCRA Section 3004(u), which requires corrective action for any "releases of
21 hazardous waste or constituents from any solid waste management unit."¹⁰ NIPSCO has
22 not conceded that any of the "RCRA ponds" have released hazardous waste or constituents

¹⁰ NIPSCO Response to CAC Data Request 2-001(e) (included in Attachment BI-1).

1 to the environment that require corrective action, let alone submitted a plan for approval to
 2 remedy those releases, as it stated in discovery.¹¹ Rather, NIPSCO appears to be assuming
 3 that it should be able to recover costs for closing those ponds according to CCR Rule
 4 requirements, even though it contends that those ponds are not subject to the CCR Rule. In
 5 fact, in the amendment to the Agreed Order with IDEM, the cited provisions for NIPSCO
 6 to follow to close the “RCRA ponds” are solely state law provisions.¹²

7 **Q. Do you agree that the proposed closure costs for the “RCRA ponds” are necessary to**
 8 **comply with “federally mandated requirements,” as defined in Ind. Code § 8-1-8.4-**
 9 **5?**

10 **A.** No. The mere fact that IDEM approved the closure plans for the “RCRA ponds” does not
 11 make the closure of those ponds “a requirement that . . . is imposed by the federal
 12 government” under RCRA, within the meaning of Ind. Code § 8-1-8.4-5. As noted above,
 13 RCRA requires NIPSCO to engage in corrective action to remedy any releases of
 14 hazardous waste or constituents from those ponds, yet despite evidence that there is or has
 15 been a release of hazardous wastes and/or hazardous constituents into the environment at
 16 the site,¹³ NIPSCO has not conceded that there have been any releases from the “RCRA

¹¹ In response to discovery from the Industrial Group, NIPSCO noted that IDEM had previously found that the Michigan City facility as a whole was subject to the RCRA corrective action requirement, but that this general finding was not specific to any of the ash ponds. NIPSCO Response to IG Data Request 3-004(a) (included in Attachment BI-1). Moreover, NIPSCO confirmed that “[n]o corrective actions were required” at any of the ash ponds, and that no costs relating to RCRA corrective action are included in the compliance project costs at issue in this proceeding. NIPSCO Response to IG Data Request 3-004(b) (included in Attachment BI-1).

¹² See Attachment 2-A to Petitioner’s Exhibit No. 2, paragraph 2, citing to 329 IAC 10-3-1(9), 10-29, 10-30, 10-31 and 10-39.

¹³ NIPSCO Response to Industrial Group Data Request 3-4(a) (included in Attachment BI-1).

ponds” that require corrective action, let alone demonstrated that the proposed closure of the ponds will remedy those releases.

Q. Is the proposed closure of the “RCRA ponds” a “compliance project” to achieve direct or indirect compliance with any federally mandated requirements, as defined in Ind. Code § 8-1-8.4-2?

A. No, it is not. If NIPSCO truly believes that the corrective action mandate in RCRA Section 3004(u) requires the ponds to be closed by removal, it should present to the Commission and to IDEM a comprehensive corrective action plan that (a) identifies the releases of hazardous waste or constituents that NIPSCO believes to have occurred, (b) explains in detail how closure by removal of the “RCRA ponds” will remedy those releases, and (c) provides a detailed analysis of what other corrective measures are needed to remedy those releases. NIPSCO’s closure plan for the “RCRA ponds” does not address these critical elements, and therefore it is not necessary to achieve compliance with RCRA Section 3004(u) and cannot be considered a “compliance project” as defined in Ind. Code § 8-1-8.4-2.

Q. In your opinion, should the Commission deny NIPSCO cost recovery under Chapter 8.4 for any costs relating to the closure of the “RCRA ponds”?

A. Yes. The “RCRA pond” closure costs are not federally mandated costs within the meaning of Chapter 8.4, and therefore NIPSCO’s petition should be denied with respect to recovery of any of those costs. The Commission should direct NIPSCO to eliminate any costs attributable to the closure of the “RCRA ponds” from the amounts that it will seek to recover through Rider 887 or any future rate case if its petition in this Cause is approved.

1 **Q. Is there anything else you would like to note about the proposed closure of the “RCRA**
 2 **ponds”?**

3 **A.** Yes, there is. I believe that by seeking cost recovery for closure of the “RCRA ponds” in
 4 this Cause in the manner that the CCR Rule would require, NIPSCO is trying to have its
 5 cake and eat it too. The basis for NIPSCO’s contention that the “RCRA ponds” are not
 6 subject to the CCR Rule is that, prior to the CCR Rule’s October 2015 effective date,
 7 NIPSCO filled those ponds with boiler slag – which is itself a form of CCR – despite the
 8 fact that NIPSCO has acknowledged that the “RCRA ponds” still contained standing water
 9 at the time that they were filled, no dewatering was conducted, and CCR disposed at the
 10 “RCRA ponds” was, and continues to be, in contact with underlying groundwater.¹⁴ **Given**
 11 **that these ponds would have very likely continued to hold accumulations of CCR and**
 12 **liquids even after they were filled with boiler slag, the ponds likely have continued to**
 13 **meet the CCR Rule’s definition of a “CCR surface impoundment” and are therefore**
 14 **are still subject to the CCR Rule.**¹⁵ **Accordingly, there is reason to believe that**

¹⁴ See NIPSCO Response to CAC Data Request 2-004 & Attachment A (included in Attachment BI-1).

¹⁵ See 40 C.F.R. § 257.53 (defining “CCR surface impoundment” as “a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR”). **Even after NIPSCO filled the “RCRA ponds” with boiler slag (i.e., additional CCR), NIPSCO knew or should have known that the ponds would have continued to impound liquids and dispose of CCR.** Under similar circumstances, EPA recently found that CCR units at Duke Energy’s Gallagher Station are “CCR surface impoundments” subject to the CCR Rule, despite Duke’s contention that they had been closed before the CCR Rule’s effective date and were not subject to the Rule, stating, “Accordingly, an impoundment ‘contains’ liquid if there is liquid in the impoundment, even if the impoundment does not prevent the liquid from migrating out of the impoundment. This means that if a CCR surface impoundment contains liquid because its base (or any part of its base) is in contact with groundwater, it would meet the definition of an inactive CCR surface impoundment. Under both the regulatory and dictionary definitions of the term, groundwater (or water) falls within the plain meaning of a ‘liquid.’ See 40 C.F.R. 257.53.”) (included as Attachment BI-5).

1 **NIPSCO has been failing to comply with the plain language of the CCR Rule since**
 2 **October 2015 with respect to these “RCRA ponds.”** As explained later in testimony, the
 3 fact that IDEM has approved NIPSCO’s proposal does not safeguard NIPSCO from EPA
 4 compliance actions.

B. NIPSCO’s Closure-By-Removal Plan and the Federal CCR Rule

5 **Q. Please describe the allowable methods of pond closure under the CCR Rule.**

6 **A.** As noted in the direct testimony of NIPSCO witness Turman, the CCR Rule allows utilities
 7 to opt for one of two methods of closure for a CCR unit: (1) closure by removal or (2)
 8 closure in place.¹⁶ The CCR Rule establishes separate requirements for each method.
 9 Closure by removal is governed by 40 C.F.R. § 257.102(c). Closure in place is governed
 10 by 40 C.F.R. § 257.102(d). **The plain language of the CCR Rule does not allow for**
 11 **utilities to blend the two CCR unit closure methods; they are to choose either one or**
 12 **the other.**

13 **Q. Does NIPSCO identify which of the two allowable methods of pond closure it has**
 14 **elected to use for the Michigan City coal ash ponds?**

15 **A.** Yes, in its direct testimony, NIPSCO states that it has elected to use closure by removal to
 16 close the Michigan City ponds. See, for example, the direct testimony of witness Becker
 17 at page 12, lines 11-12: “Petitioner has selected the closure by removal option for its Ash
 18 Pond Compliance Project.” See also the direct testimony of witness Turman at page 14,
 19 lines 2-3: “NIPSCO determined that CBR [Closure By Removal] was the most appropriate
 20 closure method.”

¹⁶ Petitioner’s Exhibit No. 2, page 12, lines 3-4.

1 **Q. Is NIPSCO's plan for closing the coal ash ponds that are at issue in this proceeding**
 2 **consistent with the plain language of the CCR Rule standards for closure by removal?**

3 **A. No, it is not, as NIPSCO itself acknowledged in response to CAC's discovery.¹⁷ The CCR**
 4 **Rule's standard for closure by removal is 40 C.F.R. § 257.102(c), which requires that,**
 5 **in addition to removing the ash disposed of in the CCR unit, a utility must also**
 6 **"decontaminat[e] all areas affected by releases from the unit."** Section 257.102(c)
 7 further provides that, in order to complete a closure-by-removal, **the utility must remove**
 8 **CCR constituents from "any areas affected by releases from the CCR unit" and must**
 9 **further demonstrate that groundwater monitoring does not indicate any exceedance**
 10 **of groundwater protection standards (i.e., the groundwater is no longer**
 11 **contaminated).** **NIPSCO's closure plan does not meet any of these requirements.**

12 NIPSCO does not have a plan to decontaminate all areas affected by releases from the
 13 Michigan City coal ash ponds. NIPSCO is removing CCR from the ponds themselves, but
 14 it is not removing CCR constituents from any other areas affected by releases from the
 15 ponds. Nor does NIPSCO have a plan to address the contaminated groundwater affected
 16 by releases from the ponds.

17 **Q. You mentioned that NIPSCO has acknowledged that its closure plan does not comply**
 18 **with CCR Rule requirements for closure by removal. Please explain.**

19 **A. In response to CAC's discovery, NIPSCO states that, "[d]ue to the presence of impacted**
 20 **groundwater beneath the ash ponds it is not possible to demonstrate the 257.102(c) criteria**
 21 **required for clean closure (i.e., decontaminating all areas affected by releases from the**

¹⁷ NIPSCO Response to CAC Data Requests 2-002 & 2-003 (included in Attachment BI-1).

CCR unit).”¹⁸ NIPSCO further states that, “because groundwater beneath the units is impacted [and] it is not possible to meet the criteria required for a clean closure (i.e., decontaminate the underlying materials beneath the unit)[,] IDEM therefore mandated that a cap be placed on top of the unit after its contents have been excavated and backfilled with clean fill.”¹⁹

Q. Does this mean that NIPSCO has instead chosen to close the Michigan City ponds by capping CCR in place rather than closing them by removal, notwithstanding the contrary statements in its own testimony?

A. Apparently not. NIPSCO witness Turman explicitly states that the Company is not proposing to cap CCR in place, because this would require additional controls to be installed to prevent CCR from coming into contact with underlying groundwater.²⁰ Rather, the Company appears to be attempting to make up its own hybrid approach to closure of a CCR unit that goes outside of the two allowable options provided for in the plain language of federal regulations. Under NIPSCO’s proposed approach, the CCR from Michigan City’s ponds would be excavated, but instead of complying with the CCR Rule’s requirements that closure-by-removal include decontamination of affected areas and cleanup of affected groundwater, NIPSCO (apparently with IDEM’s blessing, although not EPA’s) appears to be proposing to simply cap the contaminated areas underlying the Michigan City ponds and declare them closed. This does not comply with the plain language of the closure-by-removal provision of the CCR Rule, nor is it a closure-in-place as contemplated by the CCR Rule.

¹⁸ NIPSCO Response to CAC Data Request 2-002 (included in Attachment BI-1).

¹⁹ NIPSCO Response to CAC Data Request 2-003(a) (included in Attachment BI-1).

²⁰ See Direct Testimony of NIPSCO Witness Turman, page 13, lines 4-8.

1 **Q. Does IDEM’s approval of NIPSCO’s closure plan for the Michigan City ash ponds**
2 **render it compliant with the CCR Rule, notwithstanding the fact that it does not**
3 **comply with the plain language of the federal regulations?**

4 **A.** Although I am not an attorney, I have been informed by counsel that IDEM as a state
5 agency does not have the authority to rewrite federal regulatory requirements. Further, it is
6 my understanding that the CCR Rule is enforceable by EPA and citizens (through federal
7 court citizen suits); either the EPA or citizens could challenge the legal validity of
8 NIPSCO’s chosen closure method, notwithstanding IDEM’s approval of it.

9 **Q. Even assuming *arguendo* that IDEM’s approval of NIPSCO’s closure plan renders it**
10 **compliant with the CCR Rule, would this be sufficient to absolve NIPSCO of**
11 **responsibility for decontaminating the areas affected by the Michigan City ponds and**
12 **ensuring that the groundwater is cleaned up?**

13 **A.** No. Separate provisions of the CCR Rule, 40 C.F.R. §§ 257.90-257.98, require utilities to
14 monitor groundwater and take corrective action to clean up releases of contaminants from
15 CCR units. These requirements apply at Michigan City independent of the method of
16 closure NIPSCO chooses for the coal ash ponds there. NIPSCO itself has acknowledged
17 this in its public CCR Rule filings, stating that it intends to move forward with the
18 corrective action process (including selecting a remedy for cleaning up the contamination)

1 at some point after closure of the ash ponds is completed.²¹ However, this delay in remedy
 2 selection is contrary to the plain language of the CCR Rule’s corrective action provisions,
 3 which requires utilities to move forward with remedies for contamination “as soon as
 4 feasible.”²² NIPSCO appears to be hoping that, by delaying selection of a remedy for the
 5 contamination until after the CCR is removed and closure is completed, it will be able to
 6 justify a lesser remedy than if it were required to move forward now. **At the same time,**
 7 **NIPSCO is asking that ratepayers pay to cap the underlying contamination in place,**
 8 **even though it knows or should know that it is likely to have to engage in corrective**
 9 **measures to address this contamination in the near future.** Capping the Michigan City
 10 ash ponds’ underlying contaminated soils and groundwater after removing CCR from those
 11 units, without also removing CCR constituents from and decontaminating all areas affected
 12 by releases from them, would only contribute to NIPSCO’s delay in taking corrective
 13 action as required by the CCR Rule. This would result in additional costs to ratepayers,
 14 without absolving NIPSCO of responsibility for corrective action.

15 **Q. Do you agree that the proposed costs relating to capping the contaminated soils and**
 16 **groundwater underlying the ponds, without removing CCR constituents from and**

²¹ See, e.g., Memo from Russell Johnson, Wood Env’t & Infrastructure Solutions, Inc., to Jeff Loewe, NIPSCO, Re: Michigan City Generating Station – Boiler Slag Pond, Corrective Measures Selection of Remedy, Semi-Annual Progress Report #21-04, available at https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/ccr/michigan-city-generating-station/groundwater-monitoring-and-corrective-action/michigan-city-generating-station---bsp-corrective-measures-selection-of-remedy-semi-annual-report--summer-2022.pdf?sfvrsn=4d3e1351_5 (included as Attachment BI-6)(referencing proposal to IDEM of a two-year additional groundwater monitoring period after closure is completed before a corrective action remedy is selected).

²² 40 C.F.R. § 257.97(a).

1 **decontaminating all areas affected by releases from them, are necessary to comply**
2 **with “federally mandated requirements,” as defined in Ind. Code § 8-1-8.4-5?**

3 A. No. The capping of underlying contaminated soils and groundwater is inconsistent with
4 the CCR Rule’s closure-by-removal standard at 40 C.F.R. § 257.102(c), which requires
5 NIPSCO to decontaminate *all areas* affected by releases from the CCR unit and to ensure
6 that affected groundwater meets federal groundwater protection standards. The cap is also
7 not required by the closure-in-place provision at 40 C.F.R. § 257.102(d), which only
8 applies when the CCR itself is being capped in place (which is not the case here).

9 Q. **Is the proposed capping of the contaminated soils and groundwater underlying the**
10 **ponds a “compliance project” to achieve direct or indirect compliance with any**
11 **federally mandated requirements, as defined in Ind. Code § 8-1-8.4-2?**

12 A. No. Ratepayers should not be required to pay for capping contaminated soils and
13 groundwater in place when the CCR Rule’s closure-by-removal standard, 40 C.F.R. §
14 257.102(c), and its corrective action provisions, 40 C.F.R. §§ 257.90-257.98, require
15 NIPSCO to clean them up. In this respect, NIPSCO’s plan does not achieve compliance
16 with the CCR Rule. **Rather, NIPSCO’s plan both fails to comply with the closure-by-**
17 **removal standard and improperly delays compliance with the CCR Rule’s corrective**
18 **action provisions.**

19 Q. **In your opinion, should the Commission deny NIPSCO cost recovery under Chapter**
20 **8.4 for any costs relating to the capping of the ponds without decontaminating all**
21 **areas affected by releases from them?**

22 A. Yes. The costs of capping the contaminated soils and groundwater underlying the Michigan
23 City coal ash ponds are not federally mandated costs within the meaning of Chapter 8.4,

1 and therefore NIPSCO's petition should be denied with respect to recovery of any of those
 2 costs. The Commission should direct NIPSCO to eliminate any costs attributable to the
 3 capping of underlying contaminated soils and groundwater from the amounts that it will
 4 seek to recover through Rider 887 or any future rate case if its petition in this Cause is
 5 approved.

V. COST ALLOCATION

6 **Q. What is NIPSCO's proposal for allocating the costs of its Ash Pond Compliance**
 7 **Project?**

8 **A.** NIPSCO summarized its cost allocation proposal as follows:²³

9 NIPSCO proposes that all federally mandated costs associated with the Ash
 10 Pond Compliance Project be allocated based on the demand allocators set
 11 forth in the Cost of Service Study from NIPSCO's most recent electric base
 12 rate case in Cause No. 45159. Additionally, NIPSCO proposes to continue
 13 to adjust its allocation percentages to reflect the significant migration of
 14 customers amongst the various rates to prevent any unintended
 15 consequences of the migration of customers between rates and to properly
 16 allocate their share of the revenue requirement in its FMCA semi-annual
 17 tracker filings.

18 NIPSCO's demand allocators are based on each customer class's contribution to coincident
 19 peak ("CP") demand during the four summer months of June-September, referred to as the
 20 4CP [coincident peak] methodology.²⁴

21 **Q. Do you have any concerns with NIPSCO's proposed allocation of cost recovery among**
 22 **ratepayers?**

²³ Petitioner's Exhibit No. 5, p. 11, lines 1-8 (footnotes omitted).

²⁴ NIPSCO Response to CAC Data Request 1-2(a) (included in Attachment BI-1).

1 A. Yes. CAC is extremely concerned about NIPSCO's proposed cost allocation for its Ash
2 Pond Compliance Project, in which costs would be allocated based on demand allocators
3 despite these clearly being energy-related costs. Coal ash is produced from burning coal to
4 generate electricity. In other words, coal ash is generated as a function of energy
5 generation: the more coal that is burned to generate electricity, the more coal ash that is
6 created, which in turn results in additional coal ash disposal costs. In contrast, the quantity
7 of coal ash generated, and therefore the costs associated with its disposal, is neither related
8 to capacity nor for meeting NIPSCO's capacity obligations. The use of demand allocators
9 is appropriate for capacity-based investments, like the power plant's initial construction
10 costs, and not the cleanup of coal ash that was created as a function of burning coal to
11 generate electricity. With respect to cost allocation, coal ash costs should therefore be
12 treated similarly to fuel costs, rather than the capital costs to construct a coal power plant
13 that is used to meet the utility's peak demand.

14 The 4CP methodology is particularly egregious and inappropriate in this instance
15 because coal ash is generated in all months of the year in proportion to the amount of
16 electricity that is generated by the plant. The 4CP methodology, however, only considers
17 a customer class's contribution to the peak demand in four summer months when allocating
18 costs to customer classes. So in addition to allocating costs based on the wrong metric
19 (contribution to peak demand), the 4CP methodology completely ignores which customer
20 class "caused" coal ash costs in eight non-summer months in the year. It also fails to
21 account for the fact that the coal ash at issue in this proceeding was generated over a period
22 of decades in the past. As described below, under demand allocators using the 4CP
23 methodology, industrial customers that have migrated onto Rate 831 would be able to avoid

1 paying their fair share of the costs to clean up legacy coal ash sites. This impact would be
2 further exacerbated in the future to the extent industrial customers are allowed to decrease
3 their collective Tier 1 contracted demand quantity under Rate 831. **The 4CP methodology**
4 **for this proposal produces unjust and unreasonable rates that harm some customer**
5 **classes, including residential customers, and create windfall rate subsidies to other**
6 **customer classes.**

7 **Q. What is the impact to customer classes of using demand allocators instead of energy**
8 **allocators?**

9 **A.** As quantified below, the use of demand allocators instead of energy allocators would create
10 a large, undesirable cross-subsidy in rates primarily benefitting large industrial customers
11 and resulting in higher rates to certain other customer classes, including residential
12 customers who are already struggling to afford high bills.

13 **Q. Please describe how you calculated the customer class impacts of using demand**
14 **allocators compared to using energy allocators.**

15 **A.** To calculate the impact to customer classes of allocating Ash Pond Compliance Project
16 costs based on NIPSCO's proposed cost allocation (adjusted demand allocators) compared
17 to CAC's proposed cost allocation (adjusted energy allocators), I used NIPSCO's estimated
18 total revenue requirement of the Ash Pond Compliance Project costs (\$40,044,000)²⁵ and
19 allocated these costs to each customer class based on the demand and energy allocators,
20 respectively, provided by NIPSCO in response to a data request, which included
21 adjustments made and approved in Cause No. 44156-RTO-21 that became effective in May

²⁵ Petitioner's Exhibit No. 3, p. 15, line 8.

2022.²⁶ I note that my results based on these figures are estimates, as the final Ash Pond Compliance Project costs incurred could vary from the initial estimate provided by NIPSCO, and NIPSCO has also represented that it will update its allocator in FMCA filings in the future to address changes such as the migration of customers to different rates.

Q. What are the results of your analysis?

A. Figure 1 summarizes the results of my analysis, which focused particularly on examining the impacts to residential (Rate 811) and industrial (Rate 831) customer classes. The full results for all customer classes are presented in Table 1. **Under NIPSCO's proposal to use adjusted demand allocators, Rate 831 industrial customers would receive a windfall cross-subsidy of \$8.6 million in reduced revenue requirements—the costs of which would be shifted to other rate classes—compared to using NIPSCO's adjusted energy allocators.**²⁷ Residential customers would have a revenue requirement that is \$4.6 million higher under the adjusted demand allocator relative to the adjusted energy allocator, and all remaining rate classes would collectively have a revenue requirement that is approximately \$4.0 million higher. To state the results in another way, NIPSCO's cost proposal would unfairly allocate approximately \$14.2 million (35.34%) of the total \$40.0 million in costs to residential customers, when these customers should have only been allocated \$9.6 million (23.92%) of the costs based on the proportion of energy used (and, by extension, the proportion of coal ash created).

The unfair benefit to Rate 831 customers in NIPSCO's proposal is clearly seen by comparing the costs allocated for these industrial customers for their Tier 2 usage. Using

²⁶ NIPSCO Response to CAC Data Request 1-2.

²⁷ NIPSCO provided its current and adjusted demand and energy allocators in NIPSCO's Response to CAC Data Request 1-2, Attachment A (included in Attachment BI-1).

1 the current or adjusted demand allocator would result in industrial customers being
2 allocated \$0 (zero dollars) for their Tier 2 usage. In contrast, using the adjusted energy
3 allocator would result in industrial customers being allocated 19.40% of costs, or
4 approximately \$7.8 million, for their Tier 2 usage.

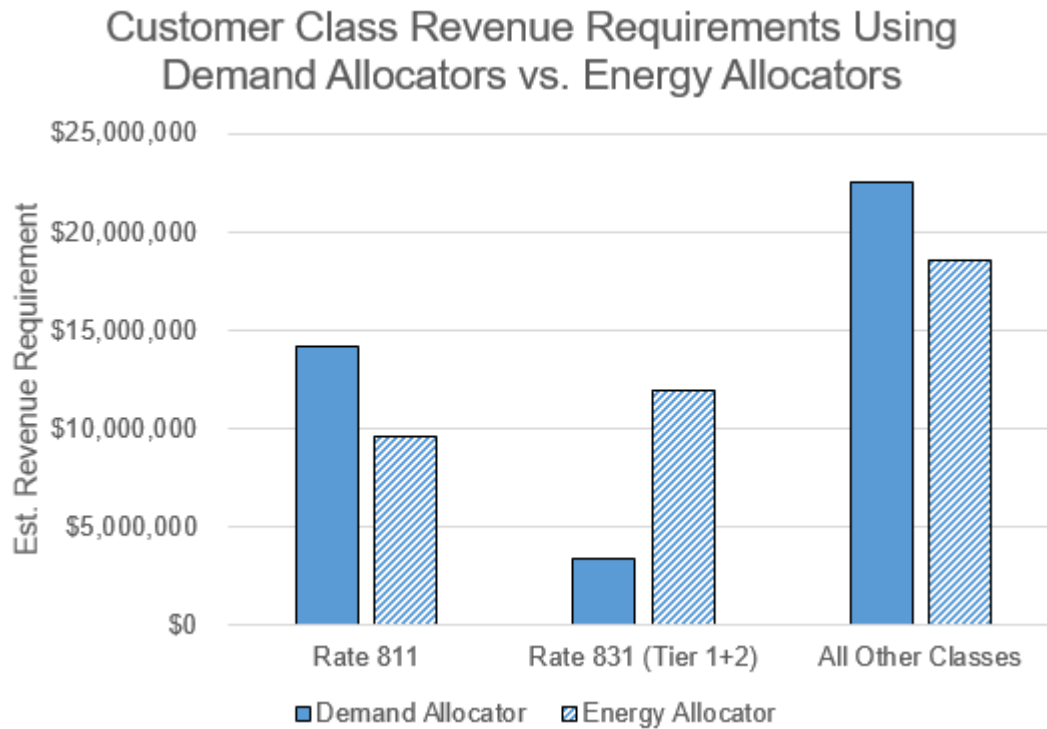


Figure 1

Rate	Adjusted Demand Allocator		Adjusted Energy Allocator	
	Allocator	Revenue Requirement	Allocator	Revenue Requirement
Rate 811	35.34%	\$14,150,326	23.92%	\$9,580,210
Rate 820	0.06%	\$25,443	0.07%	\$29,265
Rate 821	17.63%	\$7,058,247	11.32%	\$4,532,761
Rate 822	0.08%	\$33,711	0.08%	\$32,922
Rate 823	11.52%	\$4,612,105	8.87%	\$3,549,986
Rate 824	13.71%	\$5,490,543	12.24%	\$4,900,607
Rate 825	0.51%	\$202,431	0.65%	\$260,591
Rate 826	8.94%	\$3,579,863	9.34%	\$3,739,028
Rate 831 - Tier 1	8.45%	\$3,384,323	10.41%	\$4,167,176
Rate 831 - Tier 2	0.00%	\$0	19.40%	\$7,767,355
Rate 832	0.89%	\$356,008	1.02%	\$408,696
Rate 833	1.34%	\$535,129	1.73%	\$692,146
Rate 841	0.24%	\$97,442	0.20%	\$79,551
Rate 842	0.01%	\$3,093	0.00%	\$951
Rate 844	0.15%	\$59,738	0.15%	\$58,717
Rate 850	0.55%	\$219,773	0.29%	\$114,841
Rate 855	0.06%	\$25,344	0.04%	\$17,509
Rate 860	0.18%	\$72,799	0.10%	\$40,987
Interdepartmental	0.34%	\$137,682	0.18%	\$70,701
Total	100.00%	\$40,044,000	100.00%	\$40,044,000

Table 1: Customer Class Revenue Requirements Under Demand vs. Energy Allocators

I would further note that the Ash Pond Compliance Project costs are not the only coal ash cleanup costs NIPSCO plans to pass on to its customers:

Similar work [to Michigan City] is required at Schahfer and NIPSCO's Bailly Generating Station ("Bailly"). Additionally, there is a separate scope of work at Michigan City, Schahfer, and Bailly related to post-closure "remediation measures" and groundwater monitoring, in addition to long term compliance monitoring of the surface impoundment caps that will be constructed as part of the pond closures. None of this work is included within the Ash Pond Compliance Project, but are "federally mandated requirements" and must be implemented by NIPSCO.²⁸

If NIPSCO allocates the costs from these future anticipated projects in the same manner as its proposes to allocate costs for its Ash Pond Compliance Project, then the negative impact

²⁸ Petitioner's Exhibit No. 2, p. 14, lines 10-17.

1 of its 4CP demand allocator to residential customers and other customers classes relative
2 to Rate 831 industrial customers will be substantially magnified.

3 **Q. What do you recommend?**

4 **A.** I recommend that, to the extent the Commission grants cost recovery for all or a portion of
5 the requested Ash Pond Compliance Projects, these costs be allocated using NIPSCO's
6 adjusted energy allocator. The Commission should reject the use of the 4CP methodology
7 for allocating costs of the Ash Pond Compliance Projects.

VI. FIELD HEARING TESTIMONY

8 **Q. Did representatives for CAC attend the field hearing conducted in this proceeding?**

9 **A.** Yes. CAC attended the field hearing held on August 1, 2022, at the City Hall Chamber in
10 Michigan City, Indiana. I personally attended the field hearing.

11 **Q. Is there any testimony that should be highlighted for the Commission?**

12 **A.** I found all the testimony compelling. The customers that spoke included local leaders such
13 as a city councilman, the President of the Michigan City Common Council, and a
14 spokesperson on behalf of a state representative; local residents and ratepayers; a resident
15 and ratepayer residing near the Schahfer plant who is opposed to the relocation of coal ash
16 to her community; representatives of various organizations including the League of
17 Women Voters, NAACP, Just Transition NWI, and Hoosier Environmental Council; local
18 health professionals; and other concerned citizens, some of whom cited existing health
19 concerns from NIPSCO's handling of coal ash in their community. The Michigan City
20 Common Council representative provided a copy of the resolution it would be considering

1 the following day, which states Michigan City’s opposition “to the proposed increase to
 2 NIPSCO rates due to the adverse impact it would have on families struggling to pay
 3 existing bills” and “[t]hat NIPSCO should revise their proposed closure plan to include the
 4 full removal of all 2 million cubic yards of historic fill containing coal ash along the
 5 lakefront at their Michigan City Generating Station.”²⁹ All nine members of the Council
 6 are sponsors of the resolution.³⁰

7 The voices spoke in unison and asked the Commission to require NIPSCO to clean
 8 up all of its coal ash at the Michigan City Generating Station (not just the coal ash at issue
 9 in the case) and require NIPSCO shareholders to help pick up the cost of the toxic mess
 10 that the Company—not ratepayers—created. Many expressed concerns about the potential
 11 for the large quantity of coal ash that would be kept indefinitely at the site and its potential
 12 for polluting Lake Michigan and Trail Creek. Individuals also spoke to the cost allocation
 13 issue that I raised in a prior section of my testimony. In short, no one spoke in favor of
 14 NIPSCO’s proposal, and all felt the proposal fell short of the community’s needs.

15 I would encourage everyone who was unable to attend the field hearing to review
 16 the attached transcripts,³¹ especially those individuals at the Commission working on this
 17 case. The Commission’s website states:

18 The Indiana Utility Regulatory Commission (Commission) is an
 19 administrative agency that hears evidence in cases filed before it and makes
 20 decisions based on the evidence presented in those cases. An advocate of
 21 neither the public nor the utilities, the Commission is required by state

²⁹ Cause No. 45700, Field Hearing Exhibit, page 3 (Attachment BI-7).

³⁰ Doug Ross, “Michigan City Council Opposes NIPSCO Rate Hike,” *The Times of Northwest Indiana*, August 15, 2022, https://www.nwitimes.com/news/local/laporte/michigan-city/michigan-city-council-opposes-nipso-rate-hike/article_837d7973-5368-528d-a67a-5c68b82b6996.html

³¹ Cause No. 45700, August 1, 2022 Field Hearing Transcript (Attachment BI-8).

1 statute to make decisions in the public interest to ensure the utilities provide
 2 safe and reliable service at just and reasonable rates.³²

3 I present these transcripts from the public field hearing as evidence for the Commission to
 4 consider in deciding this case, as they reflect the voices of the ratepaying public. These
 5 voices represent a party who has a substantial interest in this case—a party whose interests
 6 should be balanced with those of the utility, the large customers, and other intervenors in
 7 this proceeding, all of whom have an interest in achieving a fair and balanced outcome.

VII. CONCLUSION

8 **Q. What are your recommendations?**

9 **A.** I recommend that the Commission:

- 10 1. Encourage NIPSCO to fully clean up its Michigan City site of coal ash and
 11 constituents, including coal ash used as fill, as requested by NIPSCO's
 12 customers at the Field Hearing and as is necessary for NIPSCO to provide safe
 13 electricity service to its customers and to best situate itself to meet federal
 14 requirements.
- 15 2. Deny cost recovery for all Ash Pond Compliance Project costs previously
 16 incurred that would contravene Indiana's statutory prohibitions on retroactive
 17 ratemaking.
- 18 3. Deny cost recovery for all Ash Pond Compliance Project costs that are not
 19 federally mandated and therefore cannot be recovered under the Federal
 20 Mandates Statute.

³² Indiana Utility Regulatory Commission, Section on Mission Statement, History & Responsibility, <http://www.in.gov/iurc/2451.htm> (last visited Aug. 23, 2022).

1 4. Deny cost recovery for all Ash Pond Compliance Project costs associated with
2 NIPSCO's cleanup of its CCR ponds that does not comply with the plain
3 language requirements in the CCR Rule.

4 a. NIPSCO's plan both fails to comply with the closure-by-removal
5 standard and improperly delays compliance with the CCR Rule's
6 corrective action provisions.

7 b. Ratepayers should not have to pay to cap the underlying contamination
8 in place, given that NIPSCO knows or should know that it is likely to
9 have to engage in corrective measures to address this contamination in
10 the near future.

11 5. Deny NIPSCO's proposed cost allocation using adjusted demand allocators and
12 instead approve cost allocation based on NIPSCO's adjusted energy allocators
13 for any Ash Pond Compliance Project costs approved in this proceeding (and
14 future proceeding proposals for coal ash project cost recovery).

15 **Q. Does this conclude your testimony?**

16 **A. Yes.**

VERIFICATION

I, Ben Inskeep, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.



Ben Inskeep

September 7, 2022

ATTACHMENT BI-1

Cause No. 45700
Northern Indiana Public Service Company LLC's
Objections and Responses to
Citizens Action Coalition of Indiana, Inc.'s First Set of Data Requests

CAC Request 1-002:

Please refer to the direct testimony of Kevin Blissmer, page 11, lines 1-8.

- a. Please admit or deny with complete explanation that the underlying methodology proposed by NIPSCO used to allocate the costs of its Ash Pond Compliance Project is the 4CP methodology and that this methodology is based on the respective share of NIPSCO's peak demand for each customer class during each of the four summer months June - September.
- b. Please identify and explain how industrial customer load taking service under Rate 831 is calculated or determined for purposes of determining cost allocation to these customers for NIPSCO's Ash Pond Compliance Project.
- c. Please admit or deny with complete explanation that the "demand allocators" NIPSCO is proposing to use to allocate Ash Pond Compliance Project costs are identical to the demand allocators identified in the Commission's December 4, 2019, Final Order in Cause 45159 at pages 158- 159.
- d. If the response to part (c) is not an unqualified admission, please identify the demand allocators for each rate class that NIPSCO is proposing to use to allocate costs in the instant proceeding.
- e. Please identify the annual revenue requirement for each rate class associated with the Ash Pond Compliance Project. Please provide any supporting workpapers in Excel with links and formulas intact.
- f. Please provide updated demand allocators to reflect changes that have occurred since NIPSCO's last general rate case filing based on the most recent available data and taking into account customer migration across rate schedules. Please clarify whether NIPSCO is proposing to implement updated demand allocators in the instant proceeding and, if not, the earliest date on which NIPSCO would file with the Commission a proposal to update the demand allocators.
- g. Please describe in detail the process, frequency, data, and calculations that NIPSCO proposes to use to adjust its allocation percentages to reflect migration of customers amongst the various rates.

Objections:

Cause No. 45700
Northern Indiana Public Service Company LLC's
Objections and Responses to
Citizens Action Coalition of Indiana, Inc.'s First Set of Data Requests

NIPSCO objects to sub-part (e) of this Request on the grounds and to the extent that this Request solicits an analysis, calculation, or compilation which has not already been performed and which NIPSCO objects to performing.

Response:

Subject to and without waiver of the foregoing general and specific objections, NIPSCO is providing the following response:

- a. Admit. The proposal by NIPSCO in this proceeding is to use the same allocation methodology approved in Cause No. 45159
- b. Customers taking service under rate 831 Tier 1 will receive an allocation of the revenue requirement associated with the Ash Pond Compliance Project costs as further described below.
- c. Admit. The allocators are the same as those that have been approved in Cause No 45159 and adjusted to reflect the migration of customers amongst Rates 821, 823, 824, 826, 831 Tier 1, 832 and 833, and for current contractual agreements under Rate 831 Tier 1. These adjustments are appropriate in order to prevent any unintended consequences of the migration of customers to different rate classes and to properly allocate their share of charges/credits. Please also see the response for sub-part f. below.
- d. Please see NIPSCO's response to sub-part c. above.
- e. The Ash Pond Compliance Project has not been completed. As such, a revenue requirement by customer class has not yet been developed but should be available in NIPSCO's first tracker filing following approval by the Commission.
- f. Please see CAC Request 1-002 Attachment A for the demand allocators as adjusted and approved in NIPSCO recent Cause No. 44156-RTO-21 which became effective in May 2022. NIPSCO will provide any subsequent updates, as necessary, with each FMCA tracker filing.
- g. Prior to each tracker filing utilizing the demand allocators, NIPSCO evaluates whether there have been any significant migrations equal to or greater than one megawatt of demand for which to adjust the allocators. Customer billing data used to make the necessary adjustments includes revenue for the demand allocation and energy sales grossed up at the generator for the energy allocation. The results are removed from the rate class that the customer was being served under and added to the rate class that the customer migrated to.

NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC
Estimates for Six Month Period of May through October 2022
Demand and Energy Allocators
(Includes Customer Migrations and Other Adjustments)

Cause No. 44156-RTO-21
Attachment B

Demand Allocation					
Rate	% Allocation on Revenue*	Demand - Total Revenue	Customer Migration or Other Adjustments	Adjusted Demand - Total Revenue	Adjusted % Allocation on Total Revenue
Rate 811	35.05%	\$ 508,397,289	\$ -	\$ 508,397,289	35.34%
Rate 820	0.06%	914,117	-	914,117	0.06%
Rate 821	17.50%	253,812,406	(221,528)	253,590,878	17.63%
Rate 822	0.08%	1,211,193	-	1,211,193	0.08%
Rate 823	11.42%	165,705,139	-	165,705,139	11.52%
Rate 824	14.33%	207,833,587	(10,567,641)	197,265,946	13.71%
Rate 825	0.50%	7,273,007	-	7,273,007	0.51%
Rate 826	8.34%	121,033,845	7,584,578	128,618,423	8.94%
Rate 831 - Tier 1	8.32%	120,638,720	954,287	121,593,007	8.45%
Rate 831 - Tier 2	0.00%	-	-	-	0.00%
Rate 832	0.88%	12,790,750	-	12,790,750	0.89%
Rate 833	1.99%	28,801,612	(9,575,313)	19,226,299	1.34%
Rate 841	0.24%	3,500,918	-	3,500,918	0.24%
Rate 842	0.01%	111,123	-	111,123	0.01%
Rate 844	0.15%	2,146,284	-	2,146,284	0.15%
Rate 850	0.54%	7,896,064	-	7,896,064	0.55%
Rate 855	0.06%	910,582	-	910,582	0.06%
Rate 860	0.18%	2,615,562	-	2,615,562	0.18%
Interdepartmental	0.34%	4,946,681	-	4,946,681	0.34%
Total	100.00%	\$ 1,450,538,879	\$ (11,825,617)	\$ 1,438,713,262	100.00%

*Demand Allocation per Cause No. 45159

Energy Allocation					
Rate Code	% Allocation on Energy Sales*	Energy Sales at the Generator (MWh)*	Customer Migration or Other Adjustments	Adjusted Energy Sales at Generator (MWh)	Adjusted % Allocation on Total Sales
Rate 811	28.86%	3,574,056	-	3,574,056	23.92%
Rate 820	0.09%	10,918	-	10,918	0.07%
Rate 821	13.67%	1,692,423	(1,401)	1,691,022	11.32%
Rate 822	0.10%	12,282	-	12,282	0.08%
Rate 823	10.69%	1,324,381	-	1,324,381	8.87%
Rate 824	15.54%	1,925,038	(96,786)	1,828,253	12.24%
Rate 825	0.78%	97,218	-	97,218	0.65%
Rate 826	10.72%	1,327,574	67,332	1,394,906	9.34%
Rate 831 - Tier 1	13.86%	1,716,774	(162,140)	1,554,634	10.41%
Rate 831 - Tier 2	0.00%		2,897,740	2,897,740	19.40%
Rate 832	1.23%	152,471	-	152,471	1.02%
Rate 833	3.30%	408,867	(150,650)	258,217	1.73%
Rate 841	0.24%	29,678	-	29,678	0.20%
Rate 842	0.00%	355	-	355	0.00%
Rate 844	0.18%	21,905	-	21,905	0.15%
Rate 850	0.35%	42,843	-	42,843	0.29%
Rate 855	0.05%	6,532	-	6,532	0.04%
Rate 860	0.12%	15,291	-	15,291	0.10%
Interdepartmental	0.21%	26,376	-	26,376	0.18%
Total	100.00%	12,384,981	2,554,095	14,939,077	100.00%

*Energy Allocation per Cause No. 45159

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CAC Request 2-001:

Please refer to the direct testimony of NIPSCO witness Maureen Turman, page 10, lines 10-14, which states that three of the ash ponds at Michigan City are now closing but are not regulated by the federal CCR Rule.

- a. Please explain in detail why the closure costs for these ash ponds are "federally mandated costs" under the FMCA.
- b. Is it the Company's position that the federal RCRA requires closure of these three ash ponds? Please explain in detail why or why not.
- c. Did the 2015 Amendment to the Agreed Order, Attachment 2-A to the Turman testimony, authorize the filling of "RCRA ash ponds" with boiler slag (a form of CCR), so that they would no longer be "impoundments" as defined by the federal CCR Rule? Please explain in detail why or why not.
- d. If the answer to (c) is yes, please explain in detail why closure costs for the three ash ponds that were filled with CCR in 2015 to avoid being treated as "impoundments" under the federal CCR Rule should nonetheless be "federally mandated costs" under the FMCA.
- e. Please identify which specific provisions of the federal RCRA the three "RCRA ash ponds" are subject to and explain in detail why they are subject to those provisions.

Objections:

Response:

- a. As recognized by the 2013 RCRA Agreed Order with IDEM, the ponds are recognized as RCRA Solid Waste Management Units in the 2013 Agreed Order with IDEM. Regardless of whether the ponds in question are regulated by the CCR Rule, as Solid Waste Management Units they are regulated under RCRA, and they are required to undergo RCRA corrective action. Both RCRA generally and the CCR Rule specifically would qualify as "federally mandated requirements" under Ind. Code 8-1-8.4-5. See also NIPSCO's response to Industrials Request 3-013.

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- b. Yes, RCRA corrective action is required for these ponds because they are recognized as Solid Waste Management Units and subject to the 2013 RCRA Agreed Order. See Part A.6 of the 2013 RCRA Agreed Order with IDEM.
- c. The 2015 Amendment to the 2-13 RCRA Agreed Order allowed the filling of the East and West Secondary Fly Ash Settling Basins of the Solid Waste Management Unit 1 with boiler slag, in a manner to support a cover system and prevent the migration of wastes and release of hazardous constituents. Following filling of the East and West Secondary Fly Ash Settling Basins of the Solid Waste Management Unit 1 with boiler slag, the units were closed and maintained in a manner that they were not subject to any requirements of the CCR Rule. See 80 Fed. Reg. 21302 at 21343 (April 17, 2015). The result of filling of these two basins with boiler slag is that they are no longer regulated by the CCR Rule.
- d. The ponds are recognized as Solid Waste Management Units and are subject to the 2013 RCRA Agreed Order. The 2015 enactment of the CCR Rule did not lessen NIPSCO's obligations under the earlier 2013 RCRA Agreed Order. Costs NIPSCO incurs to address its obligations under the 2013 RCRA Agreed Order, as amended, are federally mandated costs under Ind. Code 8-1-8.4-5, as they relate to direct or indirect compliance with the CCR Rule and/or RCRA.
- e. In relevant part, RCRA Section 3004(u) requires "corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit." As recognized by the 2013 RCRA Agreed Order with IDEM, the three ponds at issue have been designated as Solid Waste Management Units and Michigan City submitted a revised RCRA permit application in 1991. Corrective action is thus necessary to address releases from those Solid Waste Management Units regardless of the date of the releases.

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CAC Request 2-002:

Please refer to the direct testimony of NIPSCO witness Maureen Turman, pages 12 and 13. Does NIPSCO believe that the "closure by removal" method described in this testimony complies with 40 C.F.R. § 257.102(c), which provides that (emphasis added):

"[a]n owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to § 257.95(h) for constituents listed in appendix IV to this part"?

Please explain in detail why or why not, including explaining specifically how the Ash Pond Compliance Project will ensure that "any areas affected by releases from the CCR unit[s] have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard" for the CCR units.

Objections:

Response:

The Ash Pond Compliance Project is one, but not the sole, aspect of NIPSCO's plan for compliance with 40 C.F.R. § 257.102(c).

Due to the presence of impacted groundwater beneath the ash ponds it is not possible to demonstrate the 257.102(c) criteria required for a clean closure (i.e., decontaminating all areas affected by releases from the CCR unit). The contents of the unit will be excavated and will assist in reducing the groundwater impact from the ponds into the underlying groundwater.

Following completion of the Ash Pond Compliance Project, it is anticipated that NIPSCO will implement a corrective measures study and selection of remedy as specified in the rule. Please note that IDEM indicated in a March 10, 2021, Approval of Closure/Post-Closure Plan correspondence that NIPSCO's CCR surface impoundment

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closure and post-closure plan for the Michigan City Generating Station was approved under 329 IAC 10-3-1(9) and 329 IAC 10-9-1(c), which incorporates portions of 40 CFR 257, Subpart D.

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CAC Request 2-003:

Please refer to the direct testimony of NIPSCO witness Maureen Turman, page 12, footnote 8.

- a. Does this testimony indicate that NIPSCO is proposing to both close the ash ponds by removal and cap underlying CCR in place? Please explain in detail why or why not.
- b. Does NIPSCO's proposed Ash Pond Compliance Project in this cause include both closure of the ash ponds by removal and construction of a cap, as appears to be described in the testimony? If yes, do the costs of the construction of the cap appear in the cost estimates provided in Attachment 3-D to the Ridge testimony? Please explain in detail why or why not.
- c. Is NIPSCO intending its closure-by-removal method to comply fully with 40 C.F.R. § 257.102(c) (quoted in CAC DR 2.2 above)?
- d. If the answer to (c) is yes, please explain why a cap would be needed for underlying CCR if the closure-by-removal option would comply with the requirements in 40 C.F.R. § 257.102(c) to decontaminate all areas affected by releases from the CCR unit and to attain groundwater protection standards in areas affected by the unit.
- e. If the answer to (c) is no, please explain in detail why not.

Objections:

Response:

- a. Yes, because groundwater beneath the units is impacted, it is not possible to meet the criteria required for a clean closure (i.e., decontaminate the underlying materials beneath the unit). IDEM therefore mandated that a cap be placed on top of the unit after its contents have been excavated and backfilled with clean fill.
- b. Yes, the estimated cost of the project includes excavation of the CCR material and installation of the cap, and these costs are reflected in Attachment 3-D to Mr. Ridge's direct testimony.
- c. See NIPSCO's response to CAC Request 2-002.

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d. N/A.

e. See NIPSCO's response to sub-part b. above.

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CAC Request 2-004:

Please refer to the direct testimony of NIPSCO witness Maureen Turman, Attachment 2-A.

- a. Please describe in detail the dates in which the filling of the East and West Secondary Fly Ash Settling Basins, described in paragraph 1 of the September 2015 Amendment to the Agreed Order, occurred.
- b. Please provide any documents maintained by the company of the filling of the East and West Secondary Fly Ash Settling Basins.
- c. Please provide copies of the closure and post-closure plans for the East and West Secondary Fly Ash Settling Basins, and the West Primary Fly Ash Settling Basin, that are referenced in paragraph 2 of the September 2015 Amendment to the Agreed Order.
- d. At the time that the Amendment to the Agreed Order was executed in September 2015, did the East and West Secondary Fly Ash Settling Basins contain liquids?
- e. In connection with the filling of the East and West Secondary Fly Ash Settling Basins, did the company dewater the units and/or remove any free liquids? If yes, please describe in detail what was done and provide any documentation of those activities.
- f. At the time that the Amendment to the Agreed Order was executed in September 2015, was CCR in either the East or West Secondary Fly Ash Settling Basins in contact with underlying groundwater? Please explain in detail the basis for the answer, and please provide any documents in the company's possession that support the answer.
- g. Subsequent to the filling of the East and West Secondary Fly Ash Settling Basins pursuant to paragraph 1 of the September 2015 Amendment to the Agreed Order, has there been any ongoing contact between CCR in those units and underlying groundwater? Please explain in detail the basis for your answer, and please provide any documents in the company's possession that support the answer.

Objections:

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Response:

- a. The East and West Secondary Fly Ash Settling Basins were both filled prior to the CCR rule effective date of October 19, 2015. The majority of the work occurred in September 2015, with final grading in early October 2015.
- b. Following a reasonable review of Company records, NIPSCO has located only one document regarding filling of the East and West Secondary Fly Ash Settling Basins, which is attached as CAC Request 2-004 Attachment A. To the extent any additional documents are discovered during the pendency of this proceeding, NIPSCO will supplement this response.
- c. A copy of the closure and post-closure plans for the East and West Secondary Fly Ash Settling Basins, and the West Primary Fly Ash Settling Basin are attached in CAC Request 2-004 Attachment B.
- d. There was a static level of visible water in the ponds at the time that they were filled.
- e. No dewatering was conducted related to the filling of the East and West Secondary Fly Ash Settling Basins.
- f. The fact that standing water was visible in the East and West Secondary Fly Ash Settling Basins and the Basins contained CCR, indicates CCR was in contact with underlying groundwater at the time the Amendment to the Agreed Order was executed. Also, NIPSCO has monitored the groundwater elevation in monitoring wells in close proximity to both basins for a number of years. The groundwater elevation (based on groundwater elevations measured in well GMMW-2 located approximately 150 feet (ft) from the basin) near the East Secondary Basin was 587.87 ft mean sea level (msl) in September 2015 and 586.98 ft msl in July 2022. A soil boring advanced in the East Secondary Basin indicates CCR extends to 580 ft msl, which indicates CCR is in contact with groundwater in the East Secondary Basin. The groundwater elevation (based on groundwater elevations measured in well GAMW-02 located less than 50 ft from the basin) near the West Secondary Basin ranges from 591.74 ft msl in September 2015 to 587.58 ft msl in July 2022. A soil boring advanced in the West Secondary Basin indicates CCR extended to 575.7 ft msl, which indicates CCR is in contact with groundwater in the West Secondary Basin. Boring logs depicting CCR

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elevations and documentation of data from groundwater elevations are attached as CAC Request 2-004 Attachment C.

g. Please see NIPSCO's response to sub-part f. above.



Intercompany Communication

Date: January 19, 2016
From: Joe Kutch
Subject: Inactive surface impoundments
at Michigan City Generating
Station
Dept.: Environmental
To: CCR Team

The **Primary Settling Pond #1** is located at the Michigan City Generating Station facility, and began operating in 1973. It consists of approximately 2.5 acres and was used as a temporary holding area for wet-sluiced fly ash from Unit 12. Once the capacity of the area was filled with fly ash, approximately 58,000 cubic yards, the unit was mechanically excavated and the material was disposed of at the R. M. Schahfer Generating Station landfill. It continued to be an active impoundment until sometime in late 2013. **As of October 18, 2015, NIPSCO has maintained and is currently maintaining the unit such that it can no longer impound liquid.**

As seen in *Figures 1 & 2*, taken on November 4, 2015, the unit has been filled, graded, compacted, and maintained in a manner that will make it impossible to retain or impound liquids. As of October 18, 2015, efforts were undertaken to account for storm water runoff and appropriate grading, where necessary. Retirement of legacy sluicing infrastructure was completed as of fall 2013, along with a formal survey completed.

Ongoing maintenance activities will include monthly visual inspections (to assess differential settlement, erosion, and any possible ponded water), and also visual inspections after relatively heavy rainfall events. If any issues are discovered to be in need of repair, they will be addressed in a timely manner to ensure that there is no water retention within the unit.

The **Secondary Settling Pond #1** is located at the Michigan City Generating Station facility, and began operating in 1973. It consists of approximately 0.2 acres and was used as a temporary holding area for overflow from Primary Settling Pond #1, for wet-sluiced fly ash from Unit 12. Once the capacity of the area was filled with fly ash, the unit was mechanically excavated and the material was disposed of at the R. M. Schahfer Generating Station landfill. It continued to be an active impoundment until sometime in late 2013. **As of October 18, 2015, NIPSCO has maintained and is currently maintaining the unit such that it can no longer impound liquid.**

As seen in *Figures 3 and 4*, taken on October 1, 2015 and October 2, 2015 respectively, the unit has been filled, graded, compacted, and maintained in a manner

that will make it impossible to retain or impound liquids. As of October 18, 2015, efforts were undertaken to account for storm water runoff and appropriate grading, where necessary. Retirement of legacy sluicing infrastructure was completed as of fall 2013, along with a formal survey completed.

Ongoing maintenance activities will include monthly visual inspections (to assess differential settlement, erosion, and any possible ponded water), and also visual inspections after relatively heavy rainfall events. If any issues are discovered to be in need of repair, they will be addressed in a timely manner to ensure that there is no water retention within the unit.

The **Secondary Settling Pond #2** is located at the Michigan City Generating Station facility, and began operating in 1973. It consists of approximately 0.2 acres and was used as a temporary holding area for overflow from Primary Settling Pond #2, for wet-sluiced fly ash from Unit 12. Once the capacity of the area was filled with fly ash, the unit was mechanically excavated and the material was disposed of at the R. M. Schahfer Generating Station landfill. It continued to be an active impoundment until summer 2015. As of October 18, 2015 NIPSCO has maintained and is currently maintaining the unit such that it can no longer impound liquid.

As seen in *Figures 5 & 6*, taken on **November 4, 2015**, the unit has been filled, graded, compacted, and maintained in a manner that will make it impossible to retain or impound liquids. As of October 18, 2015, efforts were undertaken to account for storm water runoff and appropriate grading, where necessary. Legacy sluicing infrastructure was retired as of summer 2015, along with a formal survey completed.

Ongoing maintenance activities will include monthly visual inspections (to assess differential settlement, erosion, and any possible ponded water), and also visual inspections after relatively heavy rainfall events. If any issues are discovered to be in need of repair, they will be addressed in a timely manner to ensure that there is no water retention within the unit.



Figure 1 – Approximate area where Primary Settling Pond #1 was located, as displayed by yellow lines



Figure 2



Figure 3



Figure 4



Figure 5 – Approximate area where Secondary Settling Pond #2 was located, as displayed by yellow lines



Figure 6

Cause No. 45700
Northern Indiana Public Service Company LLC's Objections and
Responses to
NIPSCO Industrial Group's Third Set of Data Requests

Industrials Request 3-004:

Please provide the following information:

- a. Has NIPSCO ever been cited by the EPA or any other governmental agency for failure to follow any federal or state rule, law, or other requirement for the operation of its coal ash ponds? If so, describe all violations or citations, when the violations or citations occurred, as well as all remedies and corrective actions required of NIPSCO.
- b. Regarding the above response, how much do the required corrective actions cost? Has any of this cost been included in the \$40 million coal ash pond project cost by NIPSCO?
- c. Have any NIPSCO past violations described above directly or indirectly caused any \$40 million of the coal ash pond project to be incurred? Please explain your response. Identify and quantify these costs.

Objections:

NIPSCO objects to this Request on the grounds and to the extent that this Request is vague and ambiguous as the term "failure to follow any federal or state rule, law, or other requirement for the operation of its coal ash ponds" is undefined.

Response:

Subject to and without waiver of the foregoing general and specific objections, NIPSCO is providing the following response:

- a. To the best of NIPSCO's information and belief, NIPSCO has never "been cited by the EPA or any other governmental agency for failure to follow any federal or state rule, law, or other requirement for the operation of its coal ash ponds." However, NIPSCO notes that section E.6 of the Corrective Action Agreed Order (Attachment 2-A to Mr. Turman's direct testimony) states as follows: "Based on information gathered by IDEM, there is or has been a release of hazardous wastes and/or hazardous constituents into the environment from Respondent's Facility, which violates IC 13-30-2-1(4)." There are twenty-one (21) SWMUs and two (2) AOCs addressed in the Corrective Action Agreed Order, and the sentence quoted above is not directly attributed to the five (5) ponds NIPSCO is addressing in this proceeding.

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- | |
|---|
| <p>b. No corrective actions were required, and no costs associated with information identified in sub-part a. above has been included in the \$40 million estimate for the Ash Pond Compliance Project.</p> <p>c. No.</p> |
|---|

ATTACHMENT BI-2

June 21, 2022

Project #: EART-01

Earthjustice
21 Ocean Avenue
Marblehead, Maine, 01945

Attn: Lisa Evans
Senior Counsel

Dear Ms. Evans:

Subject: Michigan City – CCR Management Area – Review of Sheet Pile Wall Assessments

Privileged and Confidential

INTRODUCTION

Background

Northern Indiana Public Service Company (NIPSCO) operates the Michigan City Generating Station (MCGS) in Michigan City, Indiana. This power generating station is located on 123 acres of land along the south shore of Lake Michigan at the west edge of Michigan City (Site, see Figures 1 and 2). NIPSCO historically used coal combustion residuals (CCR) and general fill to reclaim land (create made lands) along the shore of Lake Michigan.

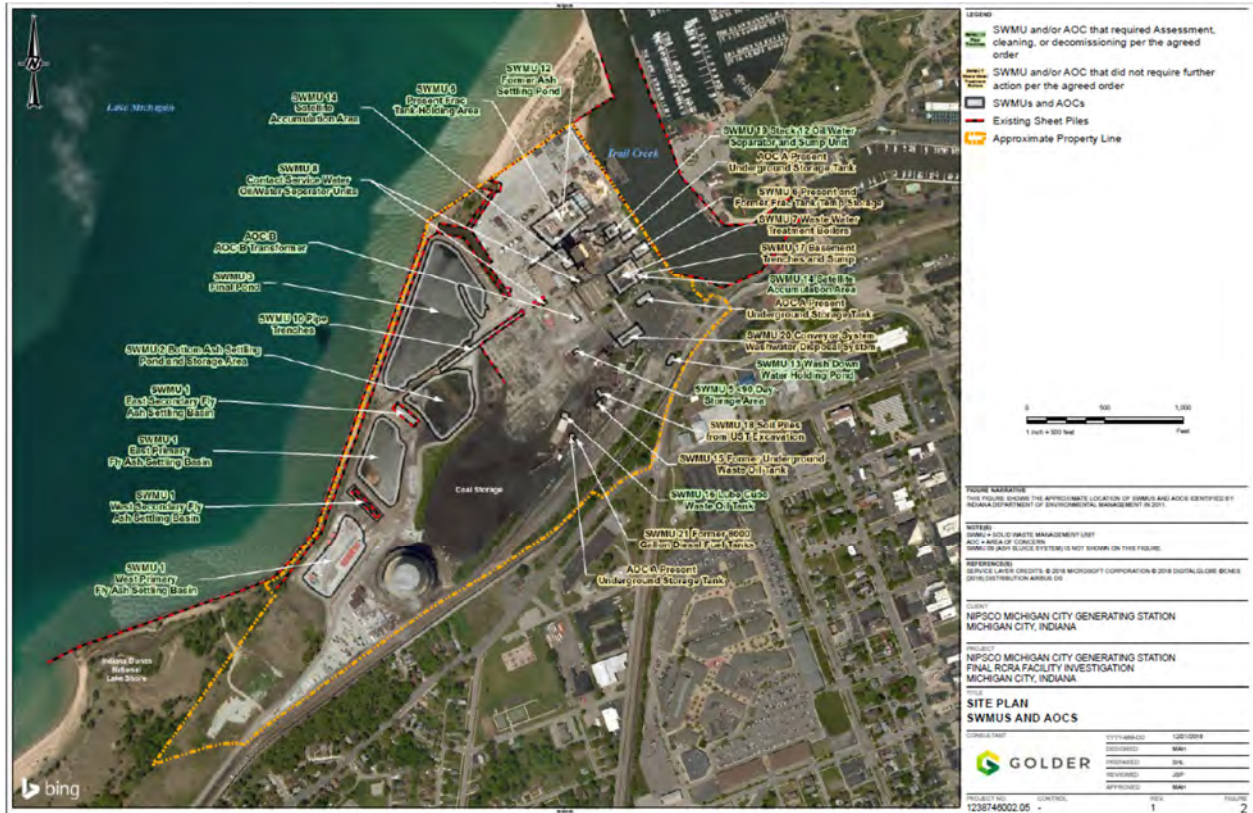
A unique aspect of the Michigan City CCR Management Area is that it includes numerous sheet pile retention structures that were constructed partly to assist in reclaiming land and partly to contain CCR wastes in the CCR Management Area. This included the installation of sheet pile barriers along waterside property boundaries to the east (Trail Creek) and north (Lake Michigan). The earliest barriers were reportedly constructed in the 1930s and additional sheet pile walls were added by NIPSCO to accommodate expansion of the generating station and creation and reconfiguration of waste management units. These additional barrier structures were installed along both the Lake Michigan shoreline and at various locations within the Site, particularly in the central and northwestern portions (see Figure 2).

The sheet pile barriers facilitated the creation of 'made land' (alternatively referred to as 'reclaimed land') by filling behind the sheet pile barriers using soil fill and/or wastes and CCR generated by the MCGS. Historical records (e.g., aerial photographs) and Site data indicate that made land expanded sequentially away from the generating station main buildings and toward the lake, creating areas that were used to expand Site operations, ponds, and waste management units. NIPSCO has recently commissioned various consulting groups to assess the stability and integrity of the sheet pile structures. Earthjustice engaged Burgess Environmental Ltd. (Burgess) to review these assessments, which is the subject of this letter.

Figure 1: Site Location (Source: Wood, 2018)



Figure 2: Plan View of Site (Source: Golder, 2018)



Basis of Review

The following documents form the basis of this review:

Sheet Pile Assessments

- Waterfront Facilities Inspections and Assessments, Northern Indiana Public Service Company. July 12, 2018 (Marine Solutions, 2018).
- Steel Pile Bulkhead Investigation Report, Northern Indiana Public Service Company, Michigan City, Indiana. December 15, 2020 (Marine Solutions, 2020).
- Request for Additional Information Michigan City Generating Station LaPorte County SW Program ID 46-010 U.S. EPA ID No. IND000715375. Letter dated November 3, 2021 (IDEM, 2021).
- Trail Creek Bulkhead Investigations and Assessments Summary, Waterfront Facilities Inspections and Assessments, and Risk-Based Evaluation of the Michigan City Generating Station. NIPSCO Responses to IDEM Request for Additional Information. March 3, 2022.
- Technical Review of Waterfront Facilities Inspections and Assessments Northern Indiana Public Service Company (NIPSCO) Michigan City Generating Station. Letter dated April 22, 2022 (Mabbett, 2022).

General Reports

- RCRA Facility Investigation Report, Northern Indiana Public Service Company, Michigan City Generating Station, Michigan City, Indiana, EPA ID NO.: IND000715375 (Golder, 2018).
- Surface Impoundment Closures (CCR Final Rule and RCRA Regulated) Closure Application, Michigan City Generating Station, Northern Indiana Public Service Company, Merrillville, Indiana (Wood, 2018).
- Supplemental Addendum Closure Application for Surface Impoundments, Michigan City Generating Station, Michigan City, Indiana (Wood, 2019).

Previous Comments Regarding Sheet Pile Wall

On behalf of Earthjustice, Burgess completed an initial review of the closure plan for the Michigan City CCR Management Area in December 2019. Concerns were raised regarding the following aspects of the sheet pile wall in the context of the containment of CCR waste and the associated closure plan (Burgess, 2019, Page 16):

1. the permeability of the sheet pile barrier and whether these barriers could be relied upon to contain contaminated groundwater
2. steel sheets corrosion and its effect on integrity of the sheet pile barrier over time
3. the effect the sheet pile corrosion will have on the strength and stability of the sheet pile barrier

The permeability of an unsealed sheet pile wall is difficult to predict as it is dependent on soil conditions, pile type, water pressures, and the quality of the installation. The concept of “joint resistance” to leakage was developed by GeoDelft (ArcelorMittal, 2016), which correlates joint resistance to water flow and

pressure drop across the sheet pile. Implied in the GeoDelft method is that the equivalent permeability of a normal sheet pile wall is on the order of 10^{-7} m/s, which is approximately 2 orders of magnitude higher than the equivalent permeability of a compacted clay soil liner and more than 3 orders of magnitude higher than the equivalent permeability of an intact geomembrane liner.

Steel sheet pile walls are susceptible to corrosion, and increased corrosion rates should be anticipated when the sheet pile is in contact with fills due to oxygen replenishment (U.S. Army Corps, 1994). The pore spaces of fills typically contain higher concentrations of oxygen than native soil, which increases corrosion rates. Accelerated corrosion can occur in the presence of inorganic contaminants, such as CCR, because of increased electrical conductivity (salinity) of the pore water. The resulting loss of thickness at the joints of the sheet pile wall increases the overall permeability of the structure, and corrosion at the face of the steel sheet reduces the strength and bending resistance of the barrier.

The underlying corrosion estimates over 75 and 125 years were obtained from Table NA1, EC 3: Design of Steel Structures, Part 5: Piling of the UK National Annex (see Table 1). These estimates for corrosion are significant when considering the thickness of the steel sheet at the NIPSCO Michigan City facility, which is reported to be 0.375 inches (9.5 mm).

Table 1: Loss of Thickness of Sheet Pile due to Corrosion

Description of Contact Material	Loss of thickness (mm) per face, 75 years	Loss of thickness (mm) per face, 125 years
Undisturbed Nature Soils	0.9	1.5
Polluted natural soils and industrial sites	2.25	3.75
Non-compacted and non-aggressive fills	1.7	2.7
Non-compacted and aggressive fills (CCR waste)	4.5	7
Common fresh water (at water line)	1.15	1.65

Corrosion will result in increased seepage and CCR leakage through the sheet pile joints and will ultimately lead to buckling failure of the sheet pile barriers, which would likely, in turn, result in the release of CCR waste to the adjacent water bodies. This could be exacerbated by any flooding and associated erosion that may occur as the integrity of the sheet pile diminishes with corrosion.

DOCUMENT REVIEW COMMENTS

2018 Assessment

The issue of steel sheet pile degradation and potential for loss of integrity has been a concern that dates back to at least 2013 (Mabbett, 2022, Page 2). Each of the performance concerns outlined in the Burgess (2019) letter have been reinforced by the recent assessments that have been completed by NIPSCO's consultants. For example, the three primary issues of concern were validated by the 2018 assessment of

the steel sheet pile wall, as is evidenced by the following quotes extracted from the Marine Solutions (2018) report.

1. **Permeability of the Steel Sheet Pile.** *"Water seepage is evident through the interlocks" (Section 3.1, 1st paragraph). "Remove vegetation growing through the weep holes" (Section 2, Table 2-1). The visible seepage between interlocks and the seepage through weep-holes in some steel sheets is evidence that the sheet pile wall is much more permeable than the equivalent permeability of a normal sheet pile wall of 10^{-7} m/s developed by GeoDelft (ArcelorMittal, 2016) and referenced in the Burgess (2019) letter. NIPSCO stated in its responses to IDEM that this cannot be fixed (NIPSCO, 2022, Response to Comment 3, Bulkhead Assessment).*
2. **Corrosion.** *"the surfaces below water typically exhibit minor to moderate corrosion over 100% of the surface area . . . pitting up to 1/16-inch deep. . . . Additionally, isolated areas of Microbial Induced Corrosion (MIC) are present on the sheeting. . . . Greater than 25 percent loss of section was measured at the mudline" (Section 3.1, 1st and 2nd paragraphs). This amount of corrosion is significant because it will weaken the steel sheets at key locations, such as at the waterline and mudline. The highest levels of corrosion were measured where the backfill of the sheet pile wall is washed out (Mooring Cell Inspection Report Form, page 2 of 5). The rate of measured corrosion is consistent with that predicted for non-aggressive soils backfill and freshwater application (UK National Annex), as outlined in Burgess (2019).*
3. **Strength Loss and Movement.** *"The bulkhead is leaning outward and/or out of plumb. . . the backfill is washed out to varying degrees" (Section 3.1, 3rd paragraph). This movement could be related to poor initial design, sheet pile corrosion and degradation as noted above, or both. For example, Marine Solutions (2018) was unable to verify the presence of tie-backs, which are an industry-standard method of enhancing the stability of steel sheets and do not appear to have been used at Michigan City (Mabbett, 2022, Page 2).*

2020 Assessment

In response to these findings, *"NIPSCO undertook further investigation of the bulkhead misalignment condition, including geotechnical soil borings, topographic surveying, hydrographic surveying, excavating test pits, and additional above and below water inspection, plus a subsequent stability analysis of the bulkhead" (IDEM, 2021). This assessment, which was also completed by Marine Solutions (2020), involved remeasuring the sheet pile wall deformations and hydrographic survey, drilling two geotechnical borings, and stability analysis of the sheet pile wall.*

The movements of the sheet pile wall segments measured in 2020 (from 2015 to 2020) were concluded to be less than those measured between 2013 and 2015; however, recent movements of an additional 0.59 and 1.03 inches were measured for Targets A and B, respectively. While less than the previous measurements (1.72 and 1.63 inches at those targets, respectively), the recent movements remain significant. Marine Solutions (2020) identified a number of potential causes of the movement, including dredging to deepen the water depth along the sheet pile wall, high equipment loading adjacent to the wall, and possibly fluctuations in the level of Lake Michigan. The identifications of these root causes were speculative, and no detailed analyses were completed to verify or refute these potential causes. Marine Solutions concluded that, *"the documented movement in the vicinity of Targets A and B . . . raise concerns for either localized stability issues, history of extreme surface loading, or deformations due to previous construction evolutions" (Section 3.1).*

The stability analyses concluded that the steel sheet pile wall has sufficient remaining capacity. These analyses were completed assuming soil strength properties that, in my opinion, are quite aggressive. Sensitivity analyses should have been completed to determine the effect that adopting more conservative soil properties would have on the outcomes of the stability analyses. The stability analyses also assumed key parameters for the sheet pile wall, such as the depth of embedment of the steel sheets, because the design and construction of the sheet pile wall were not known. Accordingly, the results of these analyses are as reliable as the assumptions on which they are based, as was acknowledged on Page 9 of the summary, which states, *“the results presented are accurate only to the extent of the assumptions documented herein to develop the analysis models used”*. More in-depth investigations were also recommended.

A letter issued by IDEM (2021), which appears to have issued in response to the Marine Solutions (2020) assessment, indicates that the regulator is concerned not only with the physical integrity of the sheet pile, but also with the contamination risks associated with the CCR waste at the Michigan City facility.

2022 Third Party Review

The third party review completed by Mabbett (2022) did not include any additional field studies or investigations; however, insight into the 2020 stability assessment completed by Marine Solutions can be inferred from Mabbett’s report. A key focus of this assessment appears to have been on estimating the rate of deformation. Mabbett agreed with Marine Solutions’ conclusion that, *“in general, there appears to have been more movement of the bulkhead between 2013 and 2015 than between 2015 and 2020”* (Page 2). This statement indicates that movement of the sheet pile wall continues to occur. The reduction in the rate of movement was attributed to reducing loads on the sheet pile wall, (*“This suggests that keeping the load away from the edge is helping to stabilize the bulkhead”* (Page 3)). The Mabbett Report also concludes that there are no tie-backs and that *“it should be assumed to be a cantilevered bulkhead”* (Page 2). This is a significant conclusion because cantilevered sheet pile walls are more susceptible to movement and failure than walls that include tie-backs.

Mabbett also reviewed the stability assessment for the wall and commented that aggressive soil strength parameters had been used to evaluate wall stability. They concluded that *“unusually heavy loads should be avoided within 30 feet of the wall”* (Page 3). NIPSCO and its consultants appear to be considering significant reparations for the wall, as is evidenced by the following: *“If further outward movement was observed during the monitoring program, it is likely that there is an issue with the stability of the wall and further corrective action would need to be taken. We agree with the recommendations from Marine Solutions that two suitable alternatives for corrective action would be to place riprap in front of the existing structure or to drive new sheet pile in front of the bulkhead”* (Page 3). This last statement indicates a lack of confidence in the current and future integrity of the steel sheet pile walls along the waterfront.

CONCLUSIONS AND RECOMMENDATIONS

The following concerns raised in the Burgess (2019) letter have been validated by the recent assessments completed by Marine Solutions (2018 and 2020):

- the steel sheets do not retard the seepage of contaminated pore water into Lake Michigan
- corrosion has and continues to undermine the integrity of the steel sheet pile walls
- documented movement of the sheet pile walls continues and is significant

Seepage of contaminated water into Lake Michigan and into groundwater was not a focus of the assessments completed by NIPSCO's contractors, who were concerned primarily with the structural integrity of the sheet pile wall. However, IDEM raised contamination concerns in their 2021 letter to NIPSCO regarding the CCR waste area and steel sheet pile walls at the Michigan City facility.

Corrosion of up to 25% of the steel sheet thickness has been measured. The pile modulus and moment of inertia, which are properties that represent the pile's ability to resist bending, are each dependent on wall thickness. In general, the sheet pile bending resistance will diminish at least in proportion to the reduction in wall thickness resulting from corrosion. Steel yield stress will also be affected negatively by corrosion, which will further reduce the sheet pile bending resistance over and above that associated with reduction in thickness. Ultimately, the steel sheet pile wall will corrode and fail if it is left in place.

The primary mitigation recommended to slow wall movement was to avoid stressing the wall any further. For example, it was recommended that large mobile equipment not be operated in close proximity to the wall. Bolstering the wall with riprap and/or replacing the steel sheet pile wall have also been suggested as more significant mitigations. Capping the CCR wastes adjacent to the steel pile sheet wall will increase the destabilizing loads on the wall and will require heavy equipment to operate next to the sheet pile wall.

Absent in any of the assessments and analyses was an evaluation and determination as to whether this is an appropriate application of steel sheet piles. To this point, the steel sheet piles are not permanent, and they are not reducing the flow of contamination into Lake Michigan. Accordingly, their application in this case, and the efforts being considered by NIPSCO's contractors to prolong their functionality, are misdirected. NIPSCO indicates that areas of CCR waste will be excavated and removed from five of the SWMUs (Response to Comment 2 on Risk-Based Evaluation), but appears to continue to rely on the steel sheet pile walls for containment for the SWMUs that will be closed in place.

If the CCR waste is to remain in place, then the steel sheet pile walls should be replaced by permanent retention structures. A permanent retention structure will not prevent the seepage of contaminated pore-water into Lake Michigan and/or Trail Creek, and the CCR waste will remain in direct contact with groundwater. Hence, the preferred solution is to remove the CCR waste and disposed of that waste in an appropriately engineered landfill.

LETTER CLOSURE

We trust that this letter provides the information that you require at this time. If you require further information or if you have any additional questions, please contact me. We appreciate having the opportunity to be of service to Earthjustice.

Yours sincerely,



Gordon J. Johnson, M.Sc., P.Eng. (AB)

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ATTACHMENT BI-3



Date: August 18, 2022

From: Joe Kutch

Subject: Michigan City Generating
Station Notice of SSL

Dept.: Environmental

To: Michigan City Generating
Station

As of July 19, 2022 the NIPSCO Michigan City Generating Station CCR unit referred to as the Primary 2, has detections of one or more constituents at statistically significant levels above the groundwater protection standards as prescribed in §257.95. These constituent(s) include:

- Arsenic
- Selenium

ATTACHMENT BI-4



2019 Annual Groundwater Monitoring and Corrective Action Report - Boiler Slag Pond

NIPSCO LLC Michigan City Generating Station

Prepared Pursuant to 40 CFR §257.90(e) and Corresponding Regulations under 329 Indiana Administrative Code 10-9-1

Submitted to:

Northern Indiana Public Service Company LLC

Michigan City Generating Station
Michigan City, Indiana

Submitted by:

Golder Associates Inc.

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Manchester, NH 03101
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191-21568

January 31, 2020

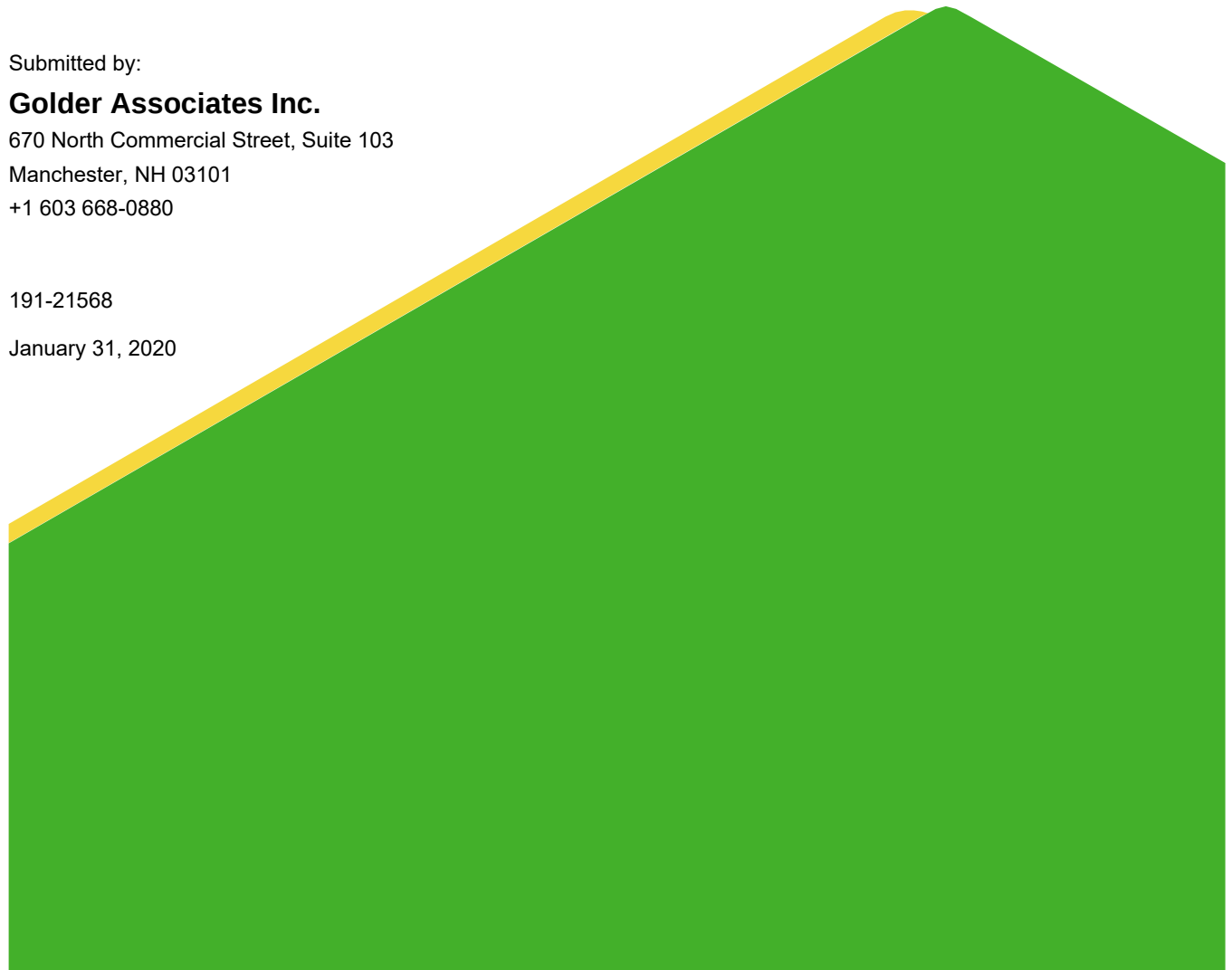


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APPENDICES

APPENDIX A	Extension of 60 Days to Complete Assessment of Corrective Measures
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1.0 INTRODUCTION

On behalf of Northern Indiana Public Service Company LLC (NIPSCO LLC), Golder Associates Inc. (Golder) prepared this 2019 Annual Groundwater Monitoring and Corrective Action Report (2019 Annual Report) for the Michigan City Generating Station (MCGS) Boiler Slag Pond (BSP, the CCR Unit) located at 101 Wabash Street, Michigan City, LaPorte County, Indiana (Latitude 41° 43' 15" N and Longitude 86° 54' 30" W, see Figure 1). The BSP is an approximately 2.5-acre unlined impoundment/materials dewatering area, as shown in Figure 2. Golder prepared the 2019 Annual Report in accordance with 40 Code of Federal Regulations (CFR) Parts 257 and 261, "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities; Final Rule" (CCR Rule), as amended, and corresponding regulations under 329 Indiana Administrative Code (IAC) 10-9-1.

Routine monitoring activities performed during the reporting period include inspection of wells for integrity and security, measurement of groundwater levels prior to sample collection to assess groundwater flow direction, and collection of samples for laboratory analysis.

In conformance with the applicable requirements of 40 CFR §257.90(e)(1) through (5) and corresponding State of Indiana requirements, the 2019 Annual Report:

- Documents the status of the groundwater monitoring and corrective action program
- Provides figures showing the CCR Unit and monitoring well locations
- Summarizes key CCR Rule groundwater activities completed during calendar year 2019
- Includes CCR Rule groundwater monitoring data obtained in calendar year 2019
- Describes any problems encountered during the monitoring activities
- Discusses actions taken to resolve the problems, if applicable
- Projects key activities for the upcoming year

2.0 GROUNDWATER MONITORING AND CORRECTIVE MEASURES PROGRAM STATUS

Starting in 2016 following the installation of a groundwater monitoring system and throughout calendar year 2017, Golder collected background groundwater samples and performed the first Detection Monitoring sampling event pursuant to the requirements of 40 CFR §257.94. In April 2018, Golder performed the second Detection Monitoring sampling event. In October 2018, Golder performed the first Assessment Monitoring sampling event pursuant to the requirements of 40 CFR §257.95. Following the first Assessment Monitoring event, including verification sampling in February 2019, NIPSCO LLC posted a notification to the publicly-assessible website that there were detections of Appendix IV parameters downgradient of the BSP above applicable groundwater protection standards (GWPS). Consequently, NIPSCO LLC initiated the assessment of corrective measures process. In 2019, Golder performed the second and third Assessment Monitoring sampling events.

2.1 Key Actions Completed - 2019

NIPSCO LLC completed the following key actions relative to CCR Rule groundwater monitoring at the BSP during calendar year 2019:

- Preparation of the 2018 Groundwater Monitoring and Corrective Action Annual Report in January 2019 (2018 Annual Report, 40 CFR §257.90(e))
- Performance of the first Assessment Monitoring verification sampling event in February 2019 (40 CFR §257.95)
- Performance of the second Assessment Monitoring event in April 2019 (40 CFR §257.95)
- Establishment of GWPS and evaluation of the results of the first Assessment Monitoring verification event in May 2019 (40 CFR §257.95(d))
- Notification that constituents in 40 CFR Part 257 Appendix IV exceeded the GWPS in June 2019 (40 CFR §257.95(g))
- Evaluation of the results of the second Assessment Monitoring event in July 2019 (40 CFR §257.95)
- Notification that constituents in 40 CFR Part 257 Appendix IV exceeded the GWPS in August 2019 (40 CFR §257.95(g))
- Initiation of the Assessment of Corrective Measures in August 2019 (40 CFR §257.96(a))
- Performance of the third Assessment Monitoring event in October 2019 (40 CFR §257.95)
- Completion and certification of the demonstration that an additional 60 days was needed to complete the Assessment of Corrective Measures in November 2019 (40 CFR §257.96(a), Appendix A)

2.2 Monitoring System Modification

The groundwater monitoring system did not require any modifications in 2019 (see Figure 2). Attached Table 1 provides a summary of the well rationale/purpose and date of installation. An overview of the groundwater monitoring network is provided in the embedded table below.

Background Monitoring Wells	Downgradient Monitoring Wells
GAMW-05, GAMW-12, GAMW-18	GAMW-10, GAMW-11, GMMW-2

2.3 Background Monitoring (2016 to 2017)

Per the requirements of 40 CFR §257.94, Golder collected eight independent background groundwater samples from each background and downgradient well between July 2016 and August 2017. Golder used the results of the background monitoring phase to develop appropriate, statistically valid background values for each constituent/monitoring well. Golder submitted the samples to a contract laboratory, in accordance with chain of custody and quality assurance/quality control procedures, for analysis of 40 CFR Part 257 Appendix III and Appendix IV constituents. In addition, Golder personnel measured field water quality parameters including specific conductance, temperature, dissolved oxygen, turbidity, oxidation-reduction potential, and pH. The background data set is included in the 2017 CCR Annual Groundwater Monitoring and Corrective Action Report, dated January 31, 2018 (2017 Annual Report).

2.4 Detection Monitoring

Golder performed the first Detection Monitoring event in October 2017, followed by a statistical evaluation and data analysis in January 2018. Golder collected groundwater samples from the BSP background and downgradient monitoring wells for analysis of Appendix III constituents per 40 CFR §257.94 and included the results in the 2017 Annual Report. Following receipt and validation of laboratory results, Golder evaluated the results of the first Detection Monitoring sampling event to compare the concentration of 40 CFR Part 257 Appendix III constituents relative to facility background concentrations. Using Sanitas™ software, Golder pooled the background data to calculate prediction limits and compared the October 2017 results to the calculated prediction limits to determine statistically significant increases (SSIs). There were no SSIs identified from the October 2017 sampling event.

Golder performed the second Detection Monitoring event in April 2018 and follow-up pH verification sampling in May, June, and July 2018. Golder performed a statistical evaluation and data analysis in July 2018. Based on SSIs identified in the second Detection Monitoring event, NIPSCO LLC established an Assessment Monitoring program in August 2018.

2.5 Assessment Monitoring

Golder performed the first Assessment Monitoring event (i.e. Assessment and Verification sampling) in October 2018 (Assessment) and February 2019 (Verification). Golder collected groundwater samples from each background and downgradient monitoring well for analysis of Appendix III and Appendix IV constituents per 40 CFR §257.95 in October 2018. In February 2019, Golder collected detected Appendix IV constituents per 40 CFR §257.95. Golder developed GWPS to use as a comparison against the Assessment Monitoring results in May 2019. Following receipt and validation of laboratory results, Golder evaluated the Appendix IV constituent results relative to CCR Unit-specific GWPS (see Table 4). At the time of the statistical evaluation the GWPS was the higher value of either the Maximum Contaminant Level (MCL) or the CCR Unit-specific background concentration for each analyte based on a tolerance/prediction limit procedure under 40 CFR §257.95(h)(2). Results from the downgradient monitoring wells were evaluated by comparing the lower confidence limit (LCL) to the CCR Unit-specific GWPS for each Appendix IV analyte at each well. If the LCL exceeds the GWPS, there is statistical evidence of a statistically significant level (SSL). Golder determined that an SSL existed for arsenic at well GAMW-10 in May 2019 and initiated the assessment of corrective measures in August 2019.

Golder performed the second Assessment monitoring event in April 2019 by collecting groundwater samples from each background and downgradient monitoring well for analysis of Appendix III and detected Appendix IV constituents per 40 CFR §257.95. Golder performed the statistical evaluation of the analytical results of the second Assessment Monitoring sampling event in July 2019. The results confirmed the SSL for arsenic at well GAMW-10.

Golder performed the third Assessment Monitoring event in October 2019 by collecting groundwater samples from each background and downgradient monitoring well for analysis of Appendix III and Appendix IV constituents per 40 CFR §257.95. Golder will perform the statistical evaluation of the analytical results of the third Assessment Monitoring sampling event in February 2020.

The sampling dates, number of groundwater samples collected from each background and downgradient well, and the purpose of sampling are provided in Table 2. The analytical results are presented in Table 3.

2.6 Corrective Measures

NIPSCO LLC is evaluating the feasibility and design of potential groundwater remedial alternatives. The evaluation will be presented in the Assessment of Corrective Measures (ACM) report that will be completed in January 2020 and posted to the public website in February 2020.

2.7 Statistical Evaluation

Subsequent to each monitoring event, Golder assessed the analytical data for outliers, anomalies, and trends that may be an indication of a sampling or analytical error. Outliers and anomalies are generally defined as inconsistently large or small values that can occur as a result of sampling, laboratory, transportation, or transcription errors, or even by chance alone. Significant trends may indicate natural geochemical variability, a source of systematic error, influence of an upgradient/off-site source, or an actual occurrence of CCR Unit influence upon groundwater quality. Appropriate statistical methods are used to remove outliers from the database and manage trends with detrending routines, prior to the calculation of statistical limits. To assess the data for outliers, anomalies, and trends, Golder assessed the data using time vs. concentration graphs, and statistical routines included in the Sanitas™ statistical analysis software package.

In addition to the outliers identified in the 2018 Annual Groundwater Monitoring and Corrective Action Report (2018 Annual Report), Golder identified the April 2019 cobalt, field pH, lithium, sulfate, and total dissolved solids results from background monitoring well GAMW-12 as an outlier and removed this datum from the data set for the following reasons:

- Statistical testing, including the Dixon outlier test, identified these results as outliers; and
- Trend charts indicated that these results from the April 2019 monitoring event were inconsistent with other concentrations detected in this monitoring well.

Golder evaluated the background data for trends using Sanitas™ software. Golder will continue to monitor trends and will perform detrending routines before using this data to calculate GWPS. Golder identified the following 40 CFR Part 257 Appendix IV parameter trends in background monitoring wells:

- Cobalt concentrations detected in groundwater samples collected from well GAMW-05 show an increasing trend; however, all results are below the MCL, therefore, the GWPS is equal to the MCL. No detrending routines are required.
- Fluoride concentrations detected in groundwater samples collected from well GAMW-12 show a decreasing trend; however, all results are below the MCL, therefore, the GWPS is equal to the MCL. No detrending routines are required.
- Molybdenum concentrations detected in groundwater samples collected from well GAMW-12 show a decreasing trend with the 95% lower confidence band below the MCL. No detrending routines are required.

2.8 Problems Encountered and Follow-Up Corrective Actions

No problems were encountered in 2019.

3.0 KEY ACTIVITIES PROJECTED FOR 2020

During calendar year 2020, NIPSCO anticipates conducting the following key CCR Rule groundwater monitoring activities for the BSP:

- Prepare and submit the appropriate notifications according to the CCR Rule;
- Continue semi-annual Assessment Monitoring groundwater sampling per CCR Rule requirements;
- Complete the assessment of corrective measures; and
- Inspect and maintain monitoring system including wells, pumps, and equipment.

4.0 REFERENCES

Golder Associates, "2017 Annual Groundwater Monitoring and Corrective Action Report- Boiler Slag Pond NIPSCO Michigan City Generating Station", January 31, 2017.

Golder Associates, "2018 Annual Groundwater Monitoring and Corrective Action Report- Boiler Slag Pond NIPSCO Michigan City Generating Station", January 31, 2018.

Tables

Table 1: Monitoring Well Network
CCR Unit Michigan City Boiler Slag Pond
NIPSCO LLC Michigan City Generating Station
Michigan City, Indiana

CCR Unit	Well Purpose	Monitoring Well ID	Installation Date (If Applicable)	Decommission Date (If Applicable)	Basis For Action
Boiler Slag Pond	Background Monitoring Well	GAMW-05	-	-	Installed for Groundwater Quality Monitoring ⁽¹⁾
		GAMW-12	6/14/2016	-	
		GAMW-18	6/14/2016	-	
	Downgradient Monitoring Well	GAMW-10	6/14/2016	-	
		GAMW-11	6/14/2016	-	
		GMMW-2	-	-	

1) Per 40 CFR §257.93, Golder collected eight rounds of background data prior to October 17, 2017.

Prepared by: KMC
 Checked by: AMH
 Reviewed by: MAH

Table 2: Summary of Sampling Events
CCR Unit Michigan City Boiler Slag Pond
NIPSCO LLC Michigan City Generating Station
Michigan City, Indiana

Well Purpose	Monitoring Well ID	Sample Event #11	Sample Event #12	Sample Event #13	Total Number of Samples
Purpose of Sample		Verification Sampling	Semi-Annual Assessment Monitoring	Annual Assessment Monitoring	
Sample Parameters		Appendix IV	Appendix III and Appendix IV	Appendix III and Appendix IV	
Background Monitoring Well	GAMW-05	NS	4/2/2019	10/22/2019	2
	GAMW-12	NS	4/2/2019	10/23/2019	2
	GAMW-18	NS	4/2/2019	10/18/2019	2
Downgradient Monitoring Well	GAMW-10	2/4/2019	4/2/2019	10/22/2019	3
	GAMW-11	2/4/2019	4/2/2019	10/22/2019	3
	GMMW-2	2/4/2019	4/2/2019	10/15/2019	3
Total Number of Samples		3	6	6	15

Notes:

Sample counts do not include QA/QC samples.

NS= not sampled

(1) Sample events #1-#10 and the first Assessment Monitoring sample event (considered part of Sample Event #11), were completed prior to 2019. The purpose, sample parameters, and sample dates are included in the 2017 and 2018 Annual Reports.

(2) Semi-annual assessment monitoring parameters did not include radium

Prepared by: KMC

Checked by: AMH

Reviewed by: MAH

Table 3: Analytical Data
CCR Unit Michigan City Boiler Slag Pond
NIPSCO LLC Michigan City Generating Station
Michigan City, Indiana

Analyte	Unit	GAMW-05			GAMW-10			GAMW-11			GAMW-12		GAMW-18		GMMW-02		
		2019-04-02	2019-10-22		2019-02-04	2019-04-02	2019-10-22	2019-02-04	2019-04-02	2019-10-22	2019-04-02	2019-10-23	2019-04-02	2019-10-18	2019-02-04	2019-04-02	2019-10-15
		N	FD	N	N	FD	N	N	N	N	N	N	N	N	N	N	N
CCR Appendix III																	
Boron	mg/L	0.47	0.53	0.54		0.67	0.67	0.87		0.35	0.32	1.7	0.68	2.1	3.2	0.67	1.1
Calcium	mg/L	170	200	200		190	200	270		100	89	230	300	230	180	60	73
Chloride	mg/L	280	270	270		140	140	260		85	89	220	160	62	96	63	42
Fluoride	mg/L	0.97	1.5	1.5	0.67	0.58	0.59	0.35	0.61	0.63	0.87	0.13	0.4	0.9	0.77	0.89	0.78
pH	pH units	6.8		7.42	7.97		7.95	8.07	7.02	7.07	7.44	5.7 O	6.04	6.67	7.07	7.31	7.93
Sulfate	mg/L	760	530	540		550	590	950		190	140	1800 O	2500	990	880	81	150
Total Dissolved Solids	mg/L	1600	1300	1200		1200	1200	1800		590	530	2700 O	3100	1500	1600	380	440
CCR Appendix IV																	
Antimony	mg/L	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.00063 J	0.002 U	0.00069 J	0.002 U	0.002 U	0.002 U	0.002 U	0.00058 J	0.002 U
Arsenic	mg/L	0.005 U	0.005 U	0.005 U	0.02	0.015	0.014	0.027	0.0058	0.0018 J	0.0025 J	0.012	0.01	0.0022 J	0.0035 J	0.0096	0.011
Barium	mg/L	0.052	0.031	0.032	0.057	0.09	0.088	0.18	0.025	0.031	0.033	0.051	0.035	0.12	0.1	0.076	0.068
Beryllium	mg/L	0.001 U	0.001 U	0.001 U	0.0008 J	0.001 U	0.002	0.001 U	0.0004 J	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.0015	0.00043 J
Cadmium	mg/L	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.00027 J	0.001 U	0.001 U	0.001 U	0.001 U	0.0016	0.0015	0.001 U	0.001 U	0.0012	0.00099 J
Chromium	mg/L	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U	0.002 U
Cobalt	mg/L	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.00027 J	0.001 U	0.0013	0.0014	0.00044 J	0.084 O	0.056	0.0015	0.00082 J	0.001 U	0.0002 J
Fluoride	mg/L	0.97	1.5	1.5	0.67	0.58	0.59	0.35	0.61	0.63	0.87	0.13	0.4	0.9	0.77	0.89	0.78
Lead	mg/L	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U
Lithium	mg/L	0.041	0.017	0.018	0.038	0.033	0.033	0.12	0.019	0.017	0.02	0.17 O	0.076	0.089	0.077	0.013	0.012
Mercury	mg/L	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U	0.0002 U
Molybdenum	mg/L	0.01 U	0.01 U	0.01 U	0.01	0.0075 J	0.0075 J	0.01 U	0.0069 J	0.0058 J	0.01 U	0.0032 J	0.016	0.02	0.057	0.018	0.013
Radium, Total	pCi/L		0.632	0.514				0.983			0.248		0.43		1.55		0.475 U
Radium-226	pCi/L		0.273	0.155				0.329			0.0733		0.175		0.97		0.18 U
Radium-228	pCi/L		0.359	0.359				0.654			0.175		0.255		0.979		0.475 U
Selenium	mg/L	0.005 U	0.005 U	0.005 U	0.005 U	0.005 U	0.005 U	0.005 U	0.0014 J	0.005 U	0.001 J	0.005 U	0.001 J	0.0026 J	0.0041 J	0.0017 J	0.0016 J
Thallium	mg/L	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.00022 J	0.001 U	0.001 U	0.001 U	0.001 U	0.001 U	0.00025 J	0.001 U	0.001 U	0.0016	0.0015
Sample Parameters																	
DO	mg/L	1.51		0.59	0.33		0.85	0.19	0.72	0.97	0.17	1.4	0.23	1.4	0.65	0.45	1.65
ORP	millivolts	-104.9		-107.9	-103.9		-163.4	-151.8	-126.4	-60.6	-53	29.9	49.1	25.9	-184.1	179.1	-64.9
pH	SU	6.8		7.42	7.97		7.95	8.07	7.02	7.07	7.44 O	5.7	6.04	6.67	7.07	7.31	7.93
SC	uS/cm	1847		1958	1084		1290	2559	946	675	813	2469	3543	1475	1651	756	459
Temperature	deg C	12.8		16.96	12.9		11.3	19.09	9.89	8.9	18.55	12.2	15.42	13.3	17.8	10.4	20.1
Turbidity	NTU	2.52		0.32	4.41		3.82	0.23	2.94	2.7	0.71	0.43	0.25	0.42	1.1	0.83	0.23

Note:
 mg/L = milligrams per liter
 uS/cm = micro Siemens per centimeter
 deg C = degrees Celsius
 NTU = Nephelometric Turbidity Units
 SU = Standard Units
 pCi/L = picocuries per liter
 "U" = Indicates the result was not detected above the method detection limit (MDL) for the sample; the quantitation limit (RL) is provided.
 "J" = Indicates the result is estimated.
 "O" = Indicates the result is an outlier.

Prepared by: AMH
 Checked by: DFS
 Reviewed by: MAH

Table 4: Groundwater Protection Standards
CCR Unit Michigan City Boiler Slag Pond
NIPSCO LLC Michigan City Generating Station
Michigan City, Indiana

Analyte	MCL (mg/L)	GWPS (mg/L)
Antimony	0.006	0.006
Arsenic	0.01	0.014
Barium	2	2
Beryllium	0.004	0.004
Cadmium	0.005	0.005
Chromium	0.1	0.1
Cobalt ⁽¹⁾	0.006	0.006
Fluoride	4	4
Lead ⁽¹⁾	0.015	0.015
Lithium ⁽¹⁾	0.04	0.098
Mercury	0.002	0.002
Molybdenum ⁽¹⁾	0.1	0.15
Radium 226+228	5	5
Selenium	0.05	0.05
Thallium	0.002	0.002

Notes:

MCL= Environmental Protection Agency Maximum Contaminant Level

GWPS= Groundwater Protection Standard, calculated in May 2019

mg/L= milligrams per liter

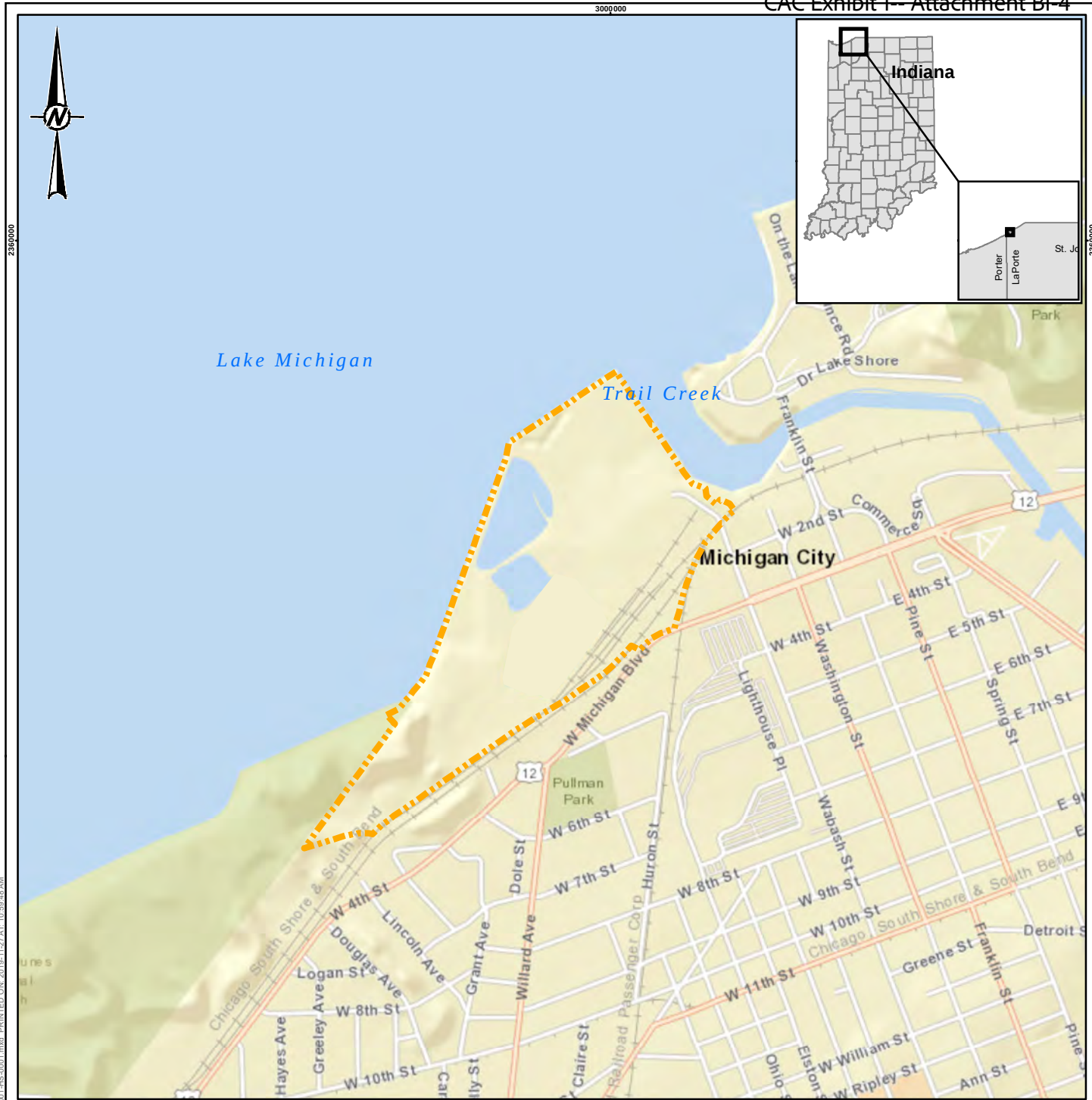
1) As of August 29, 2018, these four constituents have health-based standards that can be used when calculating the GWPS, these health-based standards are not MCLs but are provided in the MCL column.

Prepared by: DFS

Checked by: AMH

Reviewed by: MAH

Figures



LEGEND

Approximate Property Line



REFERENCE(S)

SERVICE LAYER CREDITS: SOURCES: ESRI, HERE, GARMIN, USGS, INTERMAP, INCREMENT P, NRCAN, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), ESRI KOREA, ESRI (THAILAND), NGCC, (C) OPENSTREETMAP CONTRIBUTORS, AND THE GIS USER COMMUNITY

CLIENT

NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC

PROJECT

MICHIGAN CITY GENERATING STATION
MICHIGAN CITY, INDIANA

TITLE

SITE LOCATION MAP

CONSULTANT



YYYY-MM-DD	11/15/2019
DESIGNED	DFS
PREPARED	SHL
REVIEWED	JSP
APPROVED	MAH

PROJECT NO.
164817101

CONTROL
A

REV.
0

FIGURE
1



CAC Exhibit 1-- Attachment BI-4

LEGEND

Background Groundwater Monitoring Well

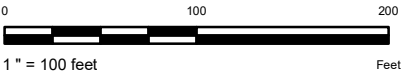
Downgradient Groundwater Monitoring Well

Generalized Groundwater Flow Direction

Existing Sheet Piles

Approximate Property Line

CCR Unit



NOTE(S)

REFERENCE(S)
1. MARBACH, BRADY AND WEAVER, INC. SURVEYED THE BORING LOCATIONS JUNE, 2016
2. SERVICE LAYER CREDITS: © 2020 MICROSOFT CORPORATION © 2019 DIGITALGLOBE ©CNES (2019) DISTRIBUTION AIRBUS DS

CLIENT

NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC

PROJECT
MICHIGAN CITY GENERATING STATION
MICHIGAN CITY, INDIANA

TITLE
WELL LOCATION MAP
BOILER SLAG POND

CONSULTANT

GOLDER

YYYY-MM-DD	1/24/2020
DESIGNED	DFS
PREPARED	SHL
REVIEWED	JSP
APPROVED	MAH

PROJECT NO.

CONTROL

REV.

FIGURE

19121568

A

0

2

APPENDIX A

**Extension of 60 Days to Complete
Assessment of Corrective
Measures**



8 November 2019

Mr. Joseph Kutch
Northern Indiana Public Service Company, LLC
801 E. 86th Avenue
Merrillville, IN 46410

Wood Environment & Infrastructure Solutions, Inc.
11003 Bluegrass Parkway
Suite 690
Louisville, Kentucky 40299
USA
T: 502-267-0700
www.woodplc.com

Re: 60 Day Extension Demonstration – Assessment of Corrective Measures Report
Michigan City Generating Station – Boiler Slag Pond
Michigan City, Indiana
Wood Project No. 7382173270

Dear Mr. Kutch:

Wood Environment & Infrastructure Solutions, Inc. (Wood) is submitting this 60-day demonstration letter for the Assessment of Corrective Measures (ACM) Report at Boiler Slag Pond at Michigan City Generating Station.

Wood is in the process of preparing the referenced ACM report. Additional time to complete the ACM is required because the Boiler Slag Pond is located near groundwater impacts currently being investigated under a RCRA Agreed Order. These impacts, while distinct from releases from the CCR-regulated units, will influence most types of corrective actions being evaluated specifically for the CCR units. For example, non-CCR constituents associated with the RCRA units are co-mingled with CCR-impacts, and the evaluation of groundwater corrective action must be expanded to address all potential constituents of concern. We believe additional time will permit us to more accurately assess potential corrective measures in light of the multiple constituents present in the larger groundwater system. Based on these important considerations, we believe the extension is warranted and the ACM report will be completed and submitted to meet the extension period date of 8 January 2020.

Wood certifies the requested extension demonstration to be accurate.

We appreciate this opportunity to provide environmental services to Northern Indiana Public Service Company, LLC. If you have questions regarding the ACM or associated extension, please contact us at 502-267-0700.

Sincerely
Wood Environment & Infrastructure Solutions, Inc.

A handwritten signature in blue ink, appearing to read "John W. Storm".

John W. Storm PE
Project Manager, Principal Engineer

A handwritten signature in blue ink, appearing to read "Russell A. Johnson".

Russell A Johnson, LEP
Principal





golder.com

ATTACHMENT BI-5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
L-17J

Mr. Owen R. Schwartz
Duke Energy
1000 East Main Street
Plainfield, Indiana 46168

Dear Mr. Schwartz,

This letter provides written confirmation of the discussion between the Environmental Protection Agency (EPA) and Duke Energy Gallagher staff during our conference calls on August 27 and September 17, 2021 regarding the history of the site and the closure of Coal Combustion Residuals (CCR) surface impoundments at Duke Energy's Gallagher Generating Station in New Albany, Indiana. This letter also serves to notify you that, based on the information provided in those telephone conversations, EPA has concluded that the North Ash Pond and the Primary Pond Ash Fill Area are subject to the requirements of 40 C.F.R. Part 257 Subpart D ("the CCR Regulations").

On the August 27 conference call, Duke Energy stated that two impoundments (i.e., North Ash Pond, Primary Pond Ash Fill Area) were removed from service, drained of ponded surface water, and subsequently covered with soil and grass in 1989. Further, EPA's understanding is that Duke has taken no engineering measures to remove any of the groundwater from either unit and both of these unlined units are sitting in approximately 20 feet of groundwater.

As an initial matter, we disagree with Duke Energy's argument that neither of these units are CCR surface impoundments within the meaning of the CCR Regulations. We understand that you interpret the definition of a CCR surface impoundment to exclude units such as the North Ash Pond, where liquid remains in the unit because the base of the unit intersects with groundwater. You argue that such units do not "hold" liquid because groundwater flows through the unit (instead of staying within the unit). EPA disagrees with your interpretation. The definition of a CCR surface impoundment does not require that the unit prevent groundwater from flowing through the unit, but merely requires that the unit be "designed to hold an accumulation of CCR and liquid." 40 C.F.R. § 257.53. Following your interpretation would lead to the incongruous result that impoundments where contaminants can migrate out in the groundwater would not be regulated by the CCR Regulations, while those that prevent that type of migration would be regulated.

Primary Pond Ash Fill Area

The Primary Pond Ash Fill Area is not an existing CCR surface impoundment because (to EPA's knowledge) it has not received CCR after October 19, 2015. However, because it still contains CCR and liquids, it meets the definition of an inactive CCR surface impoundment. An inactive CCR surface impoundment is one "that no longer receives CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015." EPA interprets the word "contains" to mean "to have or hold (someone or something) within" based on the ordinary meaning of the word. (e.g., Oxford English Dictionary, Merriam-Webster). Accordingly, an impoundment "contains" liquid if there is liquid in the impoundment, even if the impoundment does not prevent the liquid from migrating out of the impoundment. This means that if a CCR surface impoundment contains liquid because its base (or any part of its base) is in contact with groundwater, it would meet the definition of an inactive CCR surface impoundment. Under both the regulatory and dictionary definitions of the term, groundwater (or water) falls within the plain meaning of a "liquid." See 40 C.F.R. 257.53. Therefore, because the Primary Pond Ash Fill Area is sitting in approximately 20 feet of groundwater, it holds or contains liquids and is an inactive surface impoundment.

As an inactive CCR surface impoundment, the Primary Pond Ash Fill Area is regulated pursuant to 40 C.F.R. § 257.50(c), which specifies that "[t]his subpart also applies to inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity."

North Ash Pond

On the September call, Duke Energy confirmed that the North Ash Pond has received CCR after the October 19, 2015 effective date of the CCR Rule. Therefore, that pond meets the definition of an existing CCR surface impoundment. An existing CCR surface impoundment is one that "receives CCR both before and after October 19, 2015." 40 C.F.R. § 257.53. Accordingly, the North Ash Pond falls within the ambit of 40 C.F.R. § 257.50(b), which specifies that "[t]his subpart applies to owners and operators of...existing CCR surface impoundments...that dispose or otherwise engage in solid waste management of CCR." Even if the North Ash Pond had not received CCR after October 19, 2015, it would be an inactive CCR surface impoundment for the same reasons that the Primary Pond Ash Fill Area is an inactive CCR surface impoundment and would fall within the ambit of 40 C.F.R. § 257.50(c).

Applicability of the Closure Requirements to these Impoundments

For the reasons set out in the discussion above, the North Ash Pond and Primary Pond Ash Fill Area are regulated under 40 C.F.R. Part 257 Subpart D and Duke Energy will need to take action to bring these ponds into compliance by meeting all the requirements of the regulations. Significant among these is the requirement to close, because the North Ash Pond and the Primary Pond Ash Fill Area are unlined CCR surface impoundments. See, 40 C.F.R. § 257.101(a).

The applicable closure regulations are those that address closing with waste in place (assuming EPA's understanding is correct that Duke Energy's plan is to close both impoundments with waste in place). The Part 257 requirements applicable to impoundments closing with waste in place include general performance standards and specific technical standards that set forth individual engineering requirements related to the drainage and stabilization of the waste and to the final cover system. The general performance standards and the technical standards complement each other, and both must be met at every site. The general performance standards

under 40 C.F.R. § 257.102(d)(1) require that the owner or operator of a CCR unit “ensure that, at a minimum, the CCR unit is closed in a manner that will: (i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere; and (ii) Preclude the probability of future impoundment of water, sediment, or slurry.” The specific technical standards related to the drainage of the waste in the unit require that “free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues” prior to installing the final cover system. 40 C.F.R. § 257.102(d)(2)(i).

If Duke Energy plans to close with waste in place and the base of the impoundment does, in fact, intersect with groundwater, Duke Energy will need to implement engineering measures to remove groundwater from the unit prior to the start of installing the final cover system, as required by 40 C.F.R. § 257.102(d)(2)(i). This provision applies both to the free-standing liquid in the impoundment and to all separable porewater in the impoundment, whether the porewater was derived from sluiced water or groundwater that intersects the impoundment. The definition of free liquids in 40 C.F.R. § 257.53 encompasses all “liquids that readily separate from the solid portion of a waste under ambient temperature and pressure,” regardless of whether the source of the liquids is from sluiced water or groundwater. The regulation does not differentiate between the sources of the liquid in the impoundment (e.g., surface water infiltration, sluice water intentionally added, groundwater intrusion). Furthermore, the performance standard at 40 C.F.R. § 257.102(d)(2)(i) was modeled on the regulations that apply to interim status hazardous waste surface impoundments, which are codified at 40 C.F.R. § 265.228(a)(2)(i). Guidance on these interim status regulations clarifies that these regulations require both the removal of free-standing liquids in the impoundment as well as sediment dewatering. See US EPA publication titled “Closure of Hazardous Waste Surface Impoundments,” publication number SW-873, September 1982.

Similarly, Duke Energy will need to ensure that the impoundments are closed in a manner that will “control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere.” 40 C.F.R. § 257.102(d)(1). EPA views the word “infiltration” as a general term that refers to any kind of movement of liquids into a CCR unit. That would include, for example, any liquid passing into or through the CCR unit by filtering or permeating from any direction, including the sides and bottom of the unit. This is consistent with the plain meaning of the term. For example, Merriam-Webster defines infiltration to mean “to pass into or through (a substance) by filtering or permeating” or “to cause (something, such as a liquid) to permeate something by penetrating its pores or interstices.” Neither definition limits the source or direction by which the infiltration occurs. In situations where the groundwater intersects the CCR unit, water may infiltrate into the unit from the sides and/or bottom of the unit because the base of the unit is below the water table. This contact between the waste and groundwater provides a potential for waste constituents to be dissolved and to migrate out of (or away from) the closed unit that is similar to infiltration from above. In this case, the performance standard requires the facility to take measures, such as engineering controls that will “control, minimize, or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste” as well as “post-closure releases to the groundwater” from the sides and bottom of the unit.

Finally, because the North Ash Pond and the Primary Pond Ash Fill Area must close pursuant to 40 C.F.R. § 257.101(a), any further receipt of CCR into those units is prohibited. EPA also made this clear in the preamble to the March 15, 2018 proposed rule (83 FR 11605) where EPA stated:

The current CCR rules require that certain units must close for cause, as laid forth in § 257.101(a)–(c). As written, the regulation expressly prohibits “placing CCR” in any units required to close for-cause pursuant to § 257.101....Note that the rule does not distinguish between placement that might be considered beneficial use and placement that might be considered disposal. All further placement of CCR into the unit is prohibited once the provisions of § 257.101 are triggered.

If you have any questions about the information provided in this letter or if you have additional information that you would like EPA to consider, you may contact Angela Mullins at mullins.angela@epa.gov. Alternatively, Duke Energy counsel can contact Laurel Celeste at celeste.laurel@epa.gov in EPA’s Office of General Counsel for any questions on the Agency’s position set forth in the letter.

Sincerely,

Edward Nam
Director
Land, Chemicals and Redevelopment Division

cc: Peggy Dorsey,
Assistant Commissioner
Office of Land Quality
Indiana Department of Environmental Management

ATTACHMENT BI-6



Wood Environment & Infrastructure Solutions, Inc.
 100 Apollo Drive
 Suite 302
 Chelmsford, MA 01824
 USA
 T: (978) 692-9090
www.woodplc.com

Memo

To:	Jeff Loewe / NIPSCO LLC	Reviewer:	John Storm / Wood
From:	Russell Johnson / Wood		
cc:	Marc Okin / NIPSCO LLC Joe Kutch / NIPSCO LLC	Wood File No.:	7382193341.0008
Date	July 5, 2022		
Re:	Northern Indiana Public Service Company LLC Michigan City Generating Station – Boiler Slag Pond Corrective Measures Selection of Remedy, Semi-Annual Progress Report #21-04		

In conformance with 40 Code of Federal Regulations (CFR) §257.97(a), Wood Environment & Infrastructure Solutions, Inc. (Wood) has prepared this semi-annual progress report for the Northern Indiana Public Service Company LLC (NIPSCO LLC) Michigan City Generating Station located at 101 Wabash Street in Michigan City, La Porte County, Indiana (MCGS or Site). The purpose of this report is to summarize progress towards selection of a Corrective Measures remedy for the Boiler Slag Pond (BSP). This semi-annual report covers the 6-month period since filing the Corrective Measures Selection of Remedy, Semi-Annual Progress Report #21-03 for the BSP¹ dated January 7, 2022.

The first Assessment Monitoring event at the BSP was conducted in October 2018 and verified in February 2019. In May 2019 it was determined that arsenic was detected at a statistically significant level (SSL) above its Groundwater Protection Standard (GWPS) based on the site-specific background concentration of 0.014 mg/L. As a result, NIPSCO LLC initiated an assessment of corrective measures for the BSP in August 2019. The Assessment of Corrective Measures (ACM) Report² for the BSP was prepared to address arsenic, which was the only inorganic identified at an SSL above its GWPS. Wood prepared the ACM in conformance with applicable requirements of 40 CFR §257.96, including certification by a qualified Indiana-licensed professional engineer. Subsequently, NIPSCO LLC placed the ACM in the facility operating record, and it was posted to NIPSCO LLC's publicly accessible CCR website. Since that

¹ Wood 2022. Memo - Northern Indiana Public Service Company LLC, Michigan City Generating Station – Boiler Slag Pond, Corrective Measures Selection of Remedy, Semi-annual Progress Report #21-03. Wood Environment and Infrastructure Solutions, Inc. January 7, 2022.

² Assessment of Corrective Measures Boiler Slag Pond Michigan City Generating Station Michigan City, Indiana. Wood Environment and Infrastructure Solutions, Inc. January 8, 2020.



time, the 2019, 2020 and 2021 Annual Groundwater Monitoring and Corrective Action Reports^{3,4,5} were placed in the operating record and posted to the NIPSCO LLC CCR website. Arsenic detections at wells located downgradient of the BSP in 2019, 2020 and 2021 were consistent with the arsenic data through 2018 that were considered in the ACM for the BSP, although a new maximum arsenic detection (0.027 mg/L) was reported for groundwater collected from well GAMW-10 during the October 2019 event, above the prior maximum concentration of 0.023 mg/L. Data from the April and October 2022 groundwater monitoring events will be included in the next annual report for the BSP, which is due in January 2023.

Notifications for arsenic at SSLs downgradient of the BSP were issued in June and August 2019, and April 2020, for the sampling events of October 2018, April 2019, and October 2019, respectively. A new arsenic background value of 0.017 mg/L was established in July 2020 based on data through the April 2020 event. There have been no arsenic SSL notifications for any well downgradient of the BSP for the April and October 2020 events, or the April and October 2021 events. No other constituents were detected at SSLs above the GWPS through October 2021.

Prior to filing the ACM for the BSP in January 2020, a Closure Application⁶ was filed with the Indiana Department of Environmental Management (IDEM) that addressed all five former CCR surface impoundments using closure by removal, including the BSP. A supplemental addendum to the Closure Application⁷ was subsequently filed with IDEM in February 2019. The addendum addressed the post-closure groundwater monitoring network for all five CCR surface impoundments, which includes 24 existing wells and 12 new wells. As stated in the ACM Report (Wood, 2020), during development of the post-closure application and in discussions with IDEM a two-year, post-closure monitoring period was proposed to evaluate the effectiveness of source removal and attenuation before implementing a groundwater corrective action. A virtual public hearing was conducted on April 16, 2020, to present the proposed approach for CCR unit closure at MCGS, after which NIPSCO LLC received several comments from interested stakeholders. IDEM approved the Closure Application on March 10, 2021.

NIPSCO LLC is currently closing all five impoundments by removing source materials pursuant to 40 CFR §257.102(c). Closure has begun in the BSP and will progress west and south towards Primary 1. Components of the closure include dewatering and water treatment prior to and during excavation and capping, and the staging/management of excavated materials for loading and offsite disposal. CCR will be removed plus an additional one foot of material beyond the CCR/soil interface. Removal of the CCR will be verified in the field by the certifying engineer.

Removal of source material is the first step in the corrective measure for the BSP. Therefore, the ACM focused on residuals in groundwater upon closure of the BSP and identified five potential groundwater corrective measure alternatives for possible implementation. The five alternatives include monitored natural attenuation (MNA), groundwater extraction for treatment with three options for discharge (surface water, publicly owned treatment works, and groundwater reinjection), and a permeable reactive barrier (PRB). These five alternatives were also considered viable for the other impoundments slated for closure at the MCGS because of similar contaminants and the proximity of impoundments to one another.

³ Golder, 2020. 2019 Annual Groundwater Monitoring and Corrective Action Report – Boiler Slag Pond, NIPSCO LLC Michigan City Generating Station. Golder Associates, Inc. January 31, 2020.

⁴ Golder, 2021. 2020 Annual Groundwater Monitoring and Corrective Action Report – Boiler Slag Pond, NIPSCO LLC Michigan City Generating Station. Golder Associates, Inc. January 31, 2021.

⁵ Golder, 2022. 2021 Annual Groundwater Monitoring and Corrective Action Report – Boiler Slag Pond, NIPSCO LLC Michigan City Generating Station. Golder Associates, Inc. January 31, 2022

⁶ Wood, 2018. Surface Impoundment Closures (CCR Final Rule and RCRA Regulated) Closure Application, Volume 1 – Closure Plan and Drawings (Appendix A), Michigan City Generating Station, Northern Indiana Public Service Company, Merrillville, Indiana. December 20, 2018.

⁷ Wood, 2019. Supplemental Addendum, Monitoring Well Network, Surface Impoundment Closures (CCR Final Rule and RCRA Regulated) Closure Application, Michigan City Generating Station, Northern Indiana Public Service Company, Merrillville, Indiana. February 28, 2019.

An ACM Report⁸ for Primary Settling Pond #2 (Primary 2) was prepared in December 2020. Primary 2 is located immediately adjacent to the BSP and there may be overlapping arsenic plumes potentially reflecting historic groundwater flow patterns when the two units were still receiving process water. All discharges to Primary 2 were discontinued in October 2018, and to the adjacent Boiler Slag Pond on April 15, 2019. Water-level data from October 6, 2021, indicated a decline in the water table elevations in wells surrounding Primary 2, ranging from 2.57 to 5.43 feet lower than August 6, 2018, which reflects the cessation of discharge to this pond.

Treatability and column studies were conducted in 2019 focusing primarily on arsenic. That study looked at technologies to simulate ex-situ treatment of extracted groundwater. Site groundwater was collected from six wells across the Site, including wells near the BSP and Primary 2. Column studies were also performed to simulate a PRB. The treatability and column studies demonstrated very effective removal of arsenic from groundwater for either the pump and treat or PRB alternatives. Findings were reported in a memorandum⁹ prepared by Wood in February 2020, which was included as Attachment A of the Primary 2 ACM Report.

Wood has also developed a three-dimensional numerical groundwater flow model for the MCGS using the USGS finite-difference code MODFLOW-NWT¹⁰. The flow model will be used to simulate the groundwater flow system at MCGS in preparation for subsequent transport simulations using the code MT3D¹¹. Modeling will be performed to evaluate the effectiveness of each alternative evaluated in the ACM for the BSP, and to assess the estimated times to achieve closure for groundwater. The model will be continually modified as new information is gathered.

NIPSCO LLC anticipates performing additional studies of soil and groundwater in Q2 2023, after impoundment closure, to assess the sorption/desorption of CCR constituents, particularly arsenic. In addition, Wood will continue to provide an updated report semi-annually, in conformance with applicable requirements of 40 CFR §257.97(a), that summarizes NIPSCO LLC's progress towards selection of remedy for groundwater corrective measures at the BSP.

⁸ Wood, 2020. Assessment of Corrective Measures, Primary Settling Pond No. 2, Michigan City Generating Station, Michigan City, Indiana. December 7, 2020.

⁹ Final Test Report – NIPSCO Pump and Treat Test and Column Study REV 1. February 12, 2020. Attachment A to the ACM for Primary 2

¹⁰ Niswonger, R.G., Panday, Sorab, and Ibaraki, Motomu, 2011, MODFLOW-NWT, A Newton formulation for MODFLOW-2005: U.S. Geological Survey Techniques and Methods 6-A37, 44 p.

¹¹ Zheng, Chunmiao, and P. Patrick Wang, 1999, MT3DMS, A modular three-dimensional multi-species transport model for simulation of advection, dispersion and chemical reactions of contaminants in groundwater systems; documentation and users guide, U.S. Army Engineer Research and Development Center Contract Report SERDP-99-1, Vicksburg, MS, 202 p.

ATTACHMENT BI-7

MICHIGAN CITY COMMON COUNCIL

RESOLUTION NO. _____

OPPOSING PROPOSED NIPSCO RATE HIKE

WHEREAS, Northern Indiana Public Service Company (NIPSCO) in Cause Number 45700 is requesting IURC approval to close five ash ponds at its Michigan City generating station and recover the closure and remediation cost of \$40 million through rates.

WHEREAS, the Indiana Utility Regulatory Commission is currently seeking public comments regarding the proposed rate hike; and

WHEREAS, NIPSCO wants residential customers to pay more than their fair share of these costs compared to big commercial and industrial customers; and

WHEREAS, the Common Council passed Resolutions 4781 and 4812 setting forth recommendations and seeking a full environmental cleanup.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of Michigan City, Indiana as follows:

1. That the City of Michigan City, Indiana opposes the proposed increase to NIPSCO rates due to the adverse impact it would have on families struggling to pay existing utility bills.
2. That NIPSCO should revise their proposed closure plan to include the full removal of all 2 million cubic yards of historic fill containing coal ash along the lakefront at their Michigan City Generating Station.
3. The City Clerk is directed to forward a copy of this Resolution to Public Comments of the Indiana Office of Utility Consumer Counselor via email uccinfo@oucc.IN.gov or by mail at Consumer Services Staff, Indiana Office of Utility Consumer Counselor, 115 W. Washington St, suite 1500 South, Indianapolis, IN 46204.

This Resolution shall be in full force and effect after passage by the Michigan City Common Council and approval by the Mayor.

INTRODUCED BY:

Angie Nelson Deutch, President
Michigan City Common Council

INTRODUCED BY:

Don Przybylinski, Vice President
Michigan City Common Council

ATTACHMENT BI-8

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE 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 ASH)
 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) CAUSE NO.
 FEDERALLY-MANDATED COSTS AND) 45700
 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)
 INDIANA CODE SECTION 8-1-8.4-1 ET)
 SEQ., SECTION 8-1-2-19, SECTION)
 8-1-2-23, AND SECTION 8-1-2-42,)
 AND, TO THE EXTENT NECESSARY,)
 APPROVAL OF AN ALTERNATIVE)
 REGULATORY PLAN PURSUANT TO INDIANA)
 CODE SECTION 8-1-2.5-6)

TRANSCRIPT OF FIELD HEARING

Field Hearing commenced to be heard on August 1, 2022 at 6:00 P.M. (CDT) at City Hall Chamber, 100 East Michigan Boulevard, Michigan City, Indiana, before Chairman James F. Huston and Chief Administrative Law Judge Loraine L. Seyfried (Presiding)

Reporter: Lynda A. Ruble

Pages:
FH-A-1 to FH-A-51

INDEX OF WITNESSESFOR THE PUBLIC:

<u>Don Przybylinski:.</u>	.	.FH-A- 4 to FH-A- 6
<u>Angie Nelson Deutch:.</u>	.	.FH-A- 7 to FH,...A-10
<u>Gisele Perry:.</u>		.FH-A-11 to FH-A-13
<u>Paul Kysel:.</u>		.FH-A-14 to FH-A-15
<u>Maria Hoang:</u>		.FH-A-16 to FH-A-18
<u>Jalisa Mauldin:.</u>	.	.FH-A-19 to FH-A-21
<u>Angela Henzman:.</u>	. .	.FH-A-22 to FH-A-23
<u>Dominic Yanke:</u>		.FH-A-24 to FH-A-25
<u>Hannah Kilbourne:.</u>	. .	.FH-A-26 to FH-A-27
<u>Annabelle Kilbourne:</u>	.	FH-A-28
<u>Laura Henderson:</u>		FH-A-29
<u>Donnita Scully:.</u>		.FH-A-30 to FH-A-34
<u>Susan Thomas:.</u>		.FH-A-35 to FH-A-41
<u>Regina Ruddell:.</u>		.FH-A-42 to FH-A-44
<u>Lucy Bruce-Whitaker:</u>	.	FH-A-45
<u>Beverly Mack-Martin:</u>		.FH-A-46 to FH-A-50

1 Michigan City, Indiana
2 August 1, 2022
3 6:00 P.M. (CDT)

4

5 (Reporter marked document for identification as
6 Public's Exhibit No. FH-1)

7

8 CHIEF ADMINISTRATIVE LAW JUDGE LORAIN L.

9 SEYFRIED (THE COURT): This is a Field Hearing before the
10 Indiana Utility Regulatory Commission in a cause docketed
11 before the Commission as Cause No. 45700, captioned as the
12 "Verified Petition of Northern Indiana Public Service
13 Company, LLC for (1) approval of a Certificate of Public
14 Convenience and Necessity for a federally-mandated Ash Pond
15 Compliance Project, (2) authority to recover federally-
16 mandated costs incurred in connection with the Ash Pond
17 Compliance Project, (3) approval of the estimated
18 federally-mandated costs associated with the Ash Pond
19 Compliance Project, (4) authority for the timely recovery
20 of 80 percent of the federally-mandated costs through
21 Rider 887 - adjustment of federally-mandated costs and
22 Appendix I - Federally-Mandated Cost Adjustment Factor
23 ('FMCA Mechanism'), (5) authority to defer 20 percent of
24 the federally-mandated costs for recovery in NIPSCO's next
25 general rate case, (6) approval of specific ratemaking and
accounting treatment, (7) approval to amortize the Ash Pond

1 Compliance Project costs through 2032, (8) approval of
2 ongoing review of the Ash Pond Compliance Project, all
3 pursuant to Indiana Code Sections 8-1-8.4-1 and 8-1-2-19,
4 8-1-2-23 and 8-1-2-42, and, to the extent necessary,
5 approval of an alternative regulatory plan pursuant to
6 Indiana Code Section 8-1-2.5-6".

7 Notice of the time and place of the hearing was
8 given as provided by law by publication in Marion County in
9 The Indianapolis Star on July 9, 2022 and in Lake County in
10 the Post Tribune and the Northwest Indiana Times both on
11 July 8, 2022 [verbatim] and in LaPorte County in the
12 LaPorte County News Dispatch on July 11, [verbatim] '22 --
13 2022 and in the Northwest Indiana Times on July 8, 2022
14 [verbatim].

15 These are newspapers of general circulation, and
16 these publications were made at least ten days prior to the
17 date of this Field Hearing.

18 The proofs of publication of the notices have
19 been received by the Commission and are now incorporated
20 into the record of this cause by reference and placed in
21 the official files of the Commission.

22 Notice has also been given to the Indiana Office
23 of Utility Consumer Counselor and other interested parties.

24 May we have appearances of counsel, please?

25 MS. LORRAINE HITZ: Thank you, Your Honor.

1 On behalf of the Public, Lorraine Hitz, Indiana
2 Office of Utility Consumer Counselor.

3 MS. JENNIFER A. WASHBURN: Thank you, Your Honor.

4 Please accept the appearance of Jennifer Washburn
5 on behalf of Citizens Action Coalition of Indiana.

6 MR. BRYAN M. LIKINS: Thank you, Your Honor.

7 Please accept the appearance of Bryan Likins for
8 the Petitioner, Northern Indiana Public Service Company,
9 LLC.

10 THE COURT: Thank you.

11 Will all those who know that they wish to speak
12 tonight, please stand and raise your right hand?

13

14 (OATH DULY ADMINISTERED TO NUMEROUS PEOPLE)

15

16 THE COURT: Thank you.

17 You may be seated.

18 Ms. Hitz?

19 MS. HITZ: Thank you, Your Honor.

20 I first want to say that it's very important that
21 you spell your name for our Court Reporters so that we have
22 it accurately in the record and to speak slowly and
23 distinctly, and to make the point rather pointedly about
24 the need to spell your last name, I'm calling on City
25 Councilman Don Przybylinski. I think I got it right.

1 WITNESS DON PRZYBYLINSKI: Oh, you want me to
2 spell it?

3 MS. HITZ: Well, you need to come up here, sir.
4 I apologize.

5 I'm calling you forward so that you can speak and
6 yes.

7

8 **DON PRZYBYLINSKI**, a witness appearing on behalf of the
9 Public, having been first duly sworn,
10 testified as follows:

11

12 **DIRECT EXAMINATION,**

13 **QUESTIONS BY MS. HITZ:**

14 A You want me to spell the last name; right?

15 Q Yes, please.

16 A Okay.

17 Q Our Court Reporter would kill me if I didn't ask.

18 A The first name is Don, and the last name is spelled
19 P-r-z-y-b-y-l-i-n-s-k-i.

20 Q Thank you, sir.

21 A Got it?

22 Q Thank you.

23 A Thank you.

24 Q Go ahead and address your comments to the Commission.

25 A Okay, and as I said, my name is Don Przybylinski, and

1 I live in Michigan City. I'm also a ten-year member of the
2 Michigan City City Council.

3 I participated in the rate hearings in Hammond in
4 2019 and stated the case for the City of Michigan City and
5 for the citizens of Michigan City, and just to give you a
6 little background about Michigan City, Michigan City is a
7 city of 32,000 people; approximately 30 percent of the
8 people that live here live below the poverty level, and our
9 schools are 100 percent free and reduced lunches. So I
10 think that would give you kind of an idea that Michigan
11 City, although it's a great place to live, it's not the
12 wealthiest place to live.

13 I would take that into consideration when we're
14 talking about increasing rate hikes and things of that
15 nature. Even if it is \$8 a month or \$10 a month, or
16 whatever the small amount may be, it still adds up for the
17 less fortunate that don't have that type of money to pay.

18 Also, with the City budget, I know that back in
19 2019 when that rate increase went in, that affected the
20 Michigan City City budget by \$115,000 where we had to find
21 monies to cover the increased utility bill and cut services
22 elsewhere. What effect that will have on our City budget
23 this go-round, I would assume it's going to be somewhere in
24 the neighborhood of 120 to 150,000 that we're going to have
25 to pay for the -- any rate increases.

1 Just in short, the bottom line is I didn't make
2 this mess and the people sitting behind me didn't make this
3 mess that needs to be paid for now. NIPSCO made this
4 hazardous waste mess over years and years of producing
5 electricity here on the lakefront, and over decades they
6 should have had a financial plan in place knowing the day
7 that it comes for clean-up, that they need to clean this
8 mess up, and they need to pay for it.

9 That is all I have to say.

10 Thank you.

11 MS. HITZ: Thank you, sir.

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(WITNESS DON PRZYBYLINSKI EXCUSED)

1 MS. HITZ: Angie Nelson Deutch.

2 WITNESS ANGIE NELSON DEUTCH: Pretty good.

3 MS. HITZ: I will, however, ask you to spell it.

4

5 **ANGIE NELSON DEUTCH**, a witness appearing on behalf of the

6 Public, having been first duly sworn,

7 testified as follows:

8

9 A Good evening. Thank you for allowing us to have this
10 here.

11 So Angie Nelson Deutch, D-e-u-i-t-c-h, and I
12 serve as President of the Michigan City Common Council, and
13 I would like to read into the record -- I won't read all of
14 them, but I will submit them in writing to you. I will
15 read a Resolution that's on our agenda for tomorrow at our
16 City Council meeting.

17 Opposing the Proposed NIPSCO Rate Hike: WHEREAS,
18 Northern Indiana Public Service Company in Cause No. 45700
19 is requesting IURC approval to close five ash -- five coal
20 ash ponds at its Michigan City generating station and
21 recover the closure and remediation cost of \$40 million
22 through rates. WHEREAS, the IURC is currently seeking
23 public comments regarding the proposed rate hike, and
24 WHEREAS, NIPSCO wants residential customers to pay more
25 than their fair share of these costs compared to big

1 commercial and industrial customers, and WHEREAS, the
2 Common Council passed Resolutions 4781 and 4812 setting
3 forth recommendations and seeking a full environmental
4 cleanup.

5 NOW, THEREFORE, BE IT RESOLVED by the Common
6 Council of Michigan City, Indiana as follows: That the
7 City of Michigan City, Indiana opposes the proposed
8 increase in NIPSCO's rates due to the adverse impact it
9 will have on families struggling to pay existing utility
10 bills. No. 2. That NIPSCO should revise their proposed
11 closure plan to include the full removal of all 2 million
12 cubic yards of historic fill containing coal ash along the
13 lakefront at their Michigan City Generating Station., and
14 then, No. 3, that this be forwarded to the OUCC, and that
15 the Resolution shall be in full force and effect after
16 passage by the Michigan City Common Council and approval by
17 the Mayor.

18 So to kind of echo, I agree wholeheartedly with
19 Councilman Don Przybylinski and the comments that he has
20 made before you.

21 We've had two Resolutions over the last two years
22 seeking full clean-up in that -- at the Michigan City
23 generation station, and one thing I would add is not only
24 are you increasing the rates, but we'll be losing that tax
25 base eventually there at that site. So we're going to have

1 a double whammy on our citizens here in Michigan City
2 because that tax base is one of the biggest and largest tax
3 bases here in LaPorte County.

4 So not only are you going to increase the rates,
5 we're going to lose money, and the citizens are going to
6 pay for it, and so we are adamantly and vehemently opposed
7 to this. I will say that all of the Resolutions that have
8 been passed have been unanimous from the Michigan City
9 Common Council.

10 So, again, our poverty rate here in Michigan City
11 is higher than most areas, and we know that our families
12 are struggling, and we are adamantly opposed to this.

13 I would like to submit for the record Resolution
14 4781 that was passed and approved on the 3rd day of
15 June 2020 and Resolution 4812 which was passed on
16 August 3rd of 2021, and I don't know who I give these to.

17 MS. HITZ: You can bring them up to me.

18 Thank you very much.

19 A One last thing, and, again, we can't afford this, but
20 if you're not going to do a full clean-up, you need to come
21 back with a new plan and seek input. In one of those
22 Resolutions, it asks for a community -- a community group
23 to kind of have some input, not the IRP, but a true
24 community organization full of diverse candidates and
25 people from around the community to talk about that plant.

1 I can honestly say, I'm a former NIPSCO employee,
2 that I understand the process; so I don't take this
3 lightly, but I do understand that there's no way we're
4 going to have green space and development and the things
5 that we need there without a full clean-up.

6 Thank you for your time.

7 MS. HITZ: Thank you.

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25 **(WITNESS ANGIE NELSON DEUTCH EXCUSED)**

1 MS. HITZ: Gisele Perry.

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3 **GISELE PERRY**, a witness appearing on behalf of the Public,
4 having been first duly sworn, testified as
5 follows:

6

7 A Good evening, everyone.

8 My name is Gisele Perry. The last name is
9 P-e-r-r-y.

10 MS. HITZ: Thank you.

11 A I'm a Michigan City resident, and I've been here my
12 whole life, born and raised.

13 I'm actually just really learning about the coal
14 ash. It was so ironic that last -- I believe it was last
15 week, I took my children, my grandchildren, and a couple
16 friends, we were at the beach, and my kids were swimming;
17 my grandbabies, they were swimming, having a good time, and
18 when I got home, I looked at my grandson, and he's a nice
19 caramel color, but he was dark and dusty looking.

20 It just so happened that I was talking to one of
21 my friends at church, and we were talking about the coal
22 ash. It was really -- I was amazed that the things that
23 happened that day at the beach had everything to do with
24 the coal ash and the particles that are coming out of that
25 big tower. We were sitting there, and all of a sudden, it

1 just kind of started pouring down these huge drops of rain
2 or I thought it was rain, and we -- you know, we were
3 sitting there, and we were like amazed because there was no
4 rain clouds, and it was -- it was something to learn
5 exactly what that was.

6 I have children, and we love the beach, and
7 they're playing in this toxic water. You know, they're
8 young, and it's going in their mouths. Like I said, my
9 grandson was a whole other color at home, and it was -- it
10 was -- it was an overcast that day so there was no sun, but
11 I didn't know exactly what was happening until I talked to
12 someone and they informed me.

13 So we just started -- I started looking up
14 everything, and I know someone that's worked at NIPSCO for
15 years, and just all of the health hazards. We are running
16 around here, and we're wondering why our children -- we
17 think that they had asthma or they have asthma, our
18 sinuses, a lot of the diseases -- I mean, even me, I'm
19 going back -- I'm going, I've never been a real nasally
20 person until the last maybe five or six years.

21 It's just so much, and we are supposed to pay for
22 the clean-up, most of it, and it's just -- it's not fair.
23 Like they said, we have -- we are very -- you know, we have
24 people that are below the poverty level. I'm one of them.
25 I'm taking care of my children. I'm taking care of

1 grandchildren. I can't afford to pay any more than what
2 I'm already paying, and I know a lot, a lot, of people that
3 just can't do it.

4 I mean, everything right now is going up. So for
5 us to have to pay for something that we did not do -- We're
6 already having to pay for the heat and the electric and now
7 we have to pay for a clean-up that we did not do. It's not
8 a mess that we made. Why are we being held liable for this
9 clean-up? It's just not fair. It's not fair. We can't do
10 it. Something has got to give here for us. It's always
11 something as far as, you know, our NIPSCO bills and now
12 this. It's just not right. You know, something has got to
13 be done to where we're not held liable, you know, to have
14 to pay for this.

15 So that's all I have.

16 Thank you.

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(WITNESS GISELE PERRY EXCUSED)

1 MS. HITZ: Paul Kysel.

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3 **PAUL KYSEL**, a witness appearing on behalf of the Public,
4 having been first duly sworn, testified as
5 follows:

6

7 A Hi. My name is Paul Kysel, K-y-s-e-l. I appreciate
8 having the opportunity to speak to you today, that you
9 folks have come up for this field trip.

10 I'm a resident of Pines Township which sits, I
11 don't know, four or five, six miles, to the west of here,
12 and I am both past President and Vice President of the
13 Pines Group which was an or is an environmental citizen
14 action group that took the position of being the liaison
15 between the U.S. EPA and NIPSCO at what is affectionately
16 known as Yard 520 where NIPSCO deposited over a million
17 tons of coal ash, again, just maybe five or six miles away
18 from where they're proposing to leave this coal ash.

19 I was involved with that organization for
20 approximately 12 years with the EPA. To say that it ran
21 smoothly is short of a lie. NIPSCO fought us tooth and
22 nail every step of the way. The only thing that NIPSCO was
23 willing to do was what EPA forced them to do. They never
24 acted as a good corporate citizen in our opinion.

25 In the end only about half the citizens of the

1 Town of Pines got connected water from the Michigan City
2 water system. The rest of them are either still on private
3 wells or are getting bottled water delivered to them.

4 So the legacy in my opinion and my experience of
5 living in this area for over 40 years is that NIPSCO is a
6 poor corporate customer, a poor corporate citizen, that is
7 ever attempting to buy some good PR by donating monies to
8 local charities like Save the Dunes or the Shirley Heinze
9 group.

10 I will never be a member of any of those
11 organizations because when you lay with the devil, you take
12 them into your home, and so how they can justify getting
13 the money, I don't know, but their legacy is clear. They
14 poison the ratepayers that then -- now they're going to be
15 asking to bail them out of this and even make this a
16 positive capital expenditure where they're going to make
17 money on this, and it's insane, and for anybody to
18 seriously consider allowing them to pass this on to the
19 ratepayers, it's obscene.

20 Thanks.

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25 **(WITNESS PAUL KYSEL EXCUSED)**

1 MS. HITZ: Okay, I'm going to probably mangle
2 this, but Maria -- it looks like M-o-a-n-g or H-o-a-n-g?

3

4 **MARIA HOANG**, a witness appearing on behalf of the Public,
5 having been first duly sworn, testified as
6 follows:

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8 A Good evening. My name is Maria Hoang. The last name
9 is spelled H-o-a-n-g. Thank you for letting me talk today.

10 I'd like to speak for young people like myself
11 who are not ratepayers yet. As I begin college this month,
12 I have many plans of continuing the lifestyle my parents
13 taught me, to be self-sufficient and to be thrifty and to
14 be frugal.

15 I also want to stick around Lake Michigan and
16 work in environmental conservation so that water,
17 electricity, and fresh fish are not taken away by greed or
18 willful negligence, and as I face adulthood with hundreds
19 of peers in this town, I think about how I will soon join
20 my parents huddled over our bills. Though our parents
21 provide for us now, the young people of Michigan City will
22 soon inherit the issue that began with NIPSCO decades ago.

23 A rate hike of any amount if it is being put into
24 a plan that doesn't fully address the targeted issue is
25 money unjustly taken. Any amount of this hike that is used

1 for the profit of NIPSCO or its shareholders is money
2 unjustly taken. My parents and I will have to pay more and
3 more for light and water as I go through college and start
4 my own life, and I refuse to let our money be taken by
5 deceitful means.

6 NIPSCO is turning its back on me and all of
7 Michigan City's youth. We are the future, and we are being
8 left behind with larger bills and a toxic build-up dumped
9 here on the lake that I was born two miles from and that I
10 have frequented and loved for almost 18 years.

11 Because of NIPSCO's proposal, I'm asking
12 questions like: Will water pollution or the cost of
13 pumping it force me to give up self-sufficient practices
14 that my parents taught me like raising vegetables, fishing,
15 or having chickens? Will I be able to pursue a career that
16 helps the environment or will I have to abandon those plans
17 and look for a higher paying job so that I can afford to
18 turn on a lamp? What does my future look like if I back
19 down today?

20 It's unfortunate that I can't answer those
21 questions myself. That's why I'm here to ask that the IURC
22 deny NIPSCO's proposal in Cause No. 45700 and that the OUCC
23 stand with ratepayers by working to alleviate them of
24 having to fund an incomplete clean-up.

25 I demand that all of the coal ash sitting on the

1 lake at the Michigan City Generating Station be addressed
2 in NIPSCO's proposal instead of only 10 percent of this.

3 Thank you for your time.

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(WITNESS MARIA HOANG EXCUSED)

1 MS. HITZ: Jalisa Mauldin.

2 THE COURT: And when you come up, please try to
3 raise your voice, too, so that we can hear you better.

4 Thank you.

5

6 **JALISA MAULDIN**, a witness appearing on behalf of the
7 Public, having been first duly sworn,
8 testified as follows:

9

10 A Hello, everyone. My name is Jalisa Mauldin. It's
11 spelled J-a-l-i-s-a; Mauldin, M-a-u-l-d-i-n.

12 Good morning, [verbatim] board members. My name
13 is Jalisha Mauldin, and I am a resident of Gary, Indiana.

14 I am wholeheartedly against the rate hike that
15 NIPSCO is proposing to impose on their customers. I
16 believe that allowing this price hike would be an excuse
17 of negligence to many communities throughout northwest
18 Indiana. NIPSCO's efforts in cleaning up the pollution
19 that they have allowed to contaminate communities
20 throughout Indiana was one of the first steps towards
21 healthy resolution; however, this appeal to re-allocate
22 responsibility to their clients would be a huge step
23 backwards.

24 NIPSCO's coal ash clean-up was a moment of
25 victory and reconciliation between community and

1 corporation. This was the very embodiment of corporate
2 responsibility that most communities try to establish.
3 Nonetheless, NIPSCO has proven to show their true intention
4 in this effort by only cleaning up 10 percent of their
5 2 million tons of toxic coal ash waste. Not only is their
6 job incomplete, but they are attempting to -- I'm sorry --
7 they're attempting to make their laxity towards toxic waste
8 management a problem for citizens like myself and so many
9 others to fix.

10 The approval of this Petition would be a
11 precedential allowance for industries to callously cause
12 harm to thousands without any recompense. It would be
13 remiss to expect families to be held responsible for
14 another entity's carelessness. It would -- Many families
15 are undergoing various tragedies. Lives have been lost to
16 a pandemic that we have no control over. Many are
17 constricted to limited finances, and they are enduring the
18 result of living near the very pollution that NIPSCO has
19 created.

20 We are not a community nor are we a nation that
21 revels and celebrates the re-victimization of our fellow
22 man, and NIPSCO is asking the victims of their negligence
23 to be responsible for a problem that they had no hand in
24 making. NIPSCO's attempt to reassign the responsibility of
25 their inaction over the course of decades must be

1 acknowledged in this case. The only just solution to this
2 Petition would be to deny any increase to NIPSCO's
3 customers.

4 The lake, the land, and the air we breathe are
5 all basic needs for human survival. Asking us to pay more
6 for access to any of these would be an egregious disregard
7 to our basic human needs.

8 It is listed under the IURC's homepage that they
9 are responsible for making decisions in the public interest
10 to ensure that the utilities provide safe and reliable
11 service at just and reasonable rates. Rate hikes for
12 access to irresponsible service, however, would be anything
13 but just.

14 That is all.

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(WITNESS JALISA MAULDIN EXCUSED)

1 MS. HITZ: Angela Henzman.

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3 **ANGELA HENZMAN**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

6

7 A Good evening, Your Honor. My name is Angela Henzman,
8 and that's spelled H-e-n-z-m-a-n.

9 I'm here today because House Representative
10 Pat Boy asked me as her campaign manager to speak in her
11 stead. She's unfortunately in Indianapolis currently.

12 As I was speaking with Pat, who has become
13 intimately aware of the issues that NIPSCO has brought to
14 our community, she did want me to point out about this rate
15 hike that NIPSCO already is the second highest energy
16 provider in our state and that Indiana is the 16th highest
17 provider in the country, and we have to understand that
18 that includes places who have a much higher cost of living
19 and a much higher minimum wage. We're still dealing with a
20 7.25 minimum wage here.

21 There are many people who cannot afford the rate
22 hike, and that rate hike will unjustly affect the most
23 vulnerable families, people who are on fixed incomes,
24 people who did not ask for this. As many have already
25 pointed out, this is not our mess to clean up.

1 Thank you.

2 MS. HITZ: Thank you.

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25 (WITNESS ANGELA HENZMAN EXCUSED)

1 MS. HITZ: Dominic Yanke.

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3 **DOMINIC YANKE**, a witness appearing on behalf of the Public,
4 having been first duly sworn, testified as
5 follows:

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7 A Thank you, IURC and OUCC, for holding this hearing
8 today.

9 MS. HITZ: Sir, if you could just spell your
10 name, please?

11 A Oh, I'm sorry.

12 Dominic, D-o-m-i-n-i-c, Yanke, Y-a-n-k-e.

13 MS. HITZ: Thank you.

14 A I've had severe, persistent asthma for my entire life,
15 and I -- well, almost my entire life. I can't remember --
16 I was like 5 or 6 when I was diagnosed. I can't remember
17 when I didn't have it. There's been days when I haven't
18 been able to leave my house because of the pollution. One
19 was a few years ago when I couldn't even make it to the end
20 of my driveway before I had to go back inside. I couldn't
21 even get the mail.

22 My grandma is retired, and she collects social
23 security, and she's on a fixed income, and she can hardly
24 pay her bills as it is, and I just don't want her to have
25 to scrounge for money, and so I hope that you will deny

1 NIPSCO's current proposal and make them pay for cleaning up
2 their mess and make them clean up their entire mess.

3 Thank you.

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(WITNESS DOMINIC YANKE EXCUSED)

1 MS. HITZ: Hannah Kilbourne.

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3 **HANNAH KILBOURNE**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

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7 A Hello. My name is Hannah Kilbourne, H-a-n-n-a-h
8 K-i-l-b-o-u-r-n-e.

9 MS. HITZ: Thank you.

10 A I am 12 years old, and I'm going into middle school
11 next year. You can call me Nat if you want to.

12 I was speaking against this in 2019, and three
13 years later, I have to speak against this again. My mother
14 and father are already struggling to pay for today's gas,
15 food, and many more, and as a family in the middle class,
16 my heart breaks to think about other families with
17 lesser -- with lesser salaries than my parents.

18 I feel that NIPSCO shouldn't increase the rates
19 so that other families can have what they need to survive.
20 NIPSCO needs to be accountable for their mess and clean up
21 more than just 10 percent and pay for their share for the
22 clean-up, not the customers.

23 Thank you to the IURC and the OUCC for holding
24 this hearing today. I'm asking that the IURC deny NIPSCO's
25 current proposal, Cause No. 45700, and that the OUCC stand

1 with us to prevent the rate hike.

2 Thank you.

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25 (WITNESS HANNAH KILBOURNE EXCUSED)

1 MS. HITZ: Anna Kilbourne -- Annabeth.

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3 **ANNABELLE KILBOURNE**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

6

7 **DIRECT EXAMINATION,**

8 **QUESTION BY MS. HITZ:**

9 Q If you can state your name and spell it for our Court
10 Reporter, please?

11 A K-i-l-b-o-u-r-n-e A-n-n-a-b-e-l-l-e.

12 Q Annabelle, okay. My apologies.

13 A Some families are really struggling with paying the
14 NIPSCO bills while buying everything else their family
15 needs. If the NIPSCO bills go higher, they won't be able
16 to pay the NIPSCO bills at all.

17 I'm asking you, the IURC, to deny NIPSCO's --
18 NIPSCO's current proposal, Cause No. 45700, and that -- and
19 the OUCC stand with us against the rate hike.

20 Q Thank you.

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25 **(WITNESS ANNABELLE KILBOURNE EXCUSED)**

1 MS. HITZ: Laura Henderson.

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3 **LAURA HENDERSON**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

6

7 A My name is Laura Henderson, L-a-u-r-a
8 H-e-n-d-e-r-s-o-n.

9 I want to thank the Commission and the OUCC and
10 all the other groups that are here today for having -- for
11 giving me this opportunity to speak from my heart.

12 I'm here today because I love our lake; I love
13 Michigan City, and I love our national park which is just a
14 mile or so from here.

15 I'm also here because I'm disturbed by the
16 injustice of NIPSCO trying to have the little people pay
17 for the mess they have been making for decades.

18 If I hold garbage on my property for decades and
19 then decide to move, should I ask social security for a
20 raise to help me clean up my mess?

21 So I say no rate hike. NIPSCO should do a total
22 clean-up of all the coal ash in this community.

23

24

25 **(WITNESS LAURA HENDERSON EXCUSED)**

1 MS. HITZ: Donnita Scully.

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3 **DONNITA SCULLY**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

6

7 A Good evening.

8 Public hearing, Cause No. 45700 --

9 MS. HITZ: Ma'am, ma'am, I'm so sorry, but could
10 you, please, spell your name for the Court Reporter?

11 A My name is Donnita Scully, D-o-n-n-i-t-a S-c-u-l-l-y.

12 MS. HITZ: Thank you.

13 A And I've also provided you a written format for this.

14 MS. HITZ: Thank you.

15 A I am the NAACP LaPorte County Health Committee and
16 Environmental Climate Justice Chair and the Soul Power
17 Project Manager.

18 Thank you to the Indiana Utility Regulatory
19 Commission and the Office of Consumer Counselor for
20 providing us with the opportunity to present our concerns
21 regarding coal ash contamination and the requested NIPSCO
22 rate hike.

23 The objectives for my talk today are the Indiana
24 Utility Regulatory Commission and the Office of Utility
25 Consumer Counselor will recognize the impact that toxic

1 coal ash has left -- had on our community and also
2 understand the award of an electric rate increase to NIPSCO
3 could further damage the fragility of many in our
4 community. The award would simply be unjust; therefore,
5 denial of the rate hike is requested. What I'd like to say
6 is I want power -- what we want is power without pollution,
7 and we want energy without injustice.

8 I begin with a question to you, and that is: Do
9 you value human life? Do you value humanity's right to a
10 healthy and prosperous life? Do you value human life?

11 I've been a nurse for 35 years, and early in my
12 career, I began working with a home health care agency. I
13 was assigned to take care of patients in Trail Creek. Many
14 of them had cancers, oral cancers, colon cancers, cancers,
15 et cetera. There were so many whom I cared for with these
16 cancers in a very small community that I became alarmed.

17 I was so concerned that when my husband and I
18 moved into Trail Creek to raise our family, we made a pact,
19 and that pact was to not consume the water. We rented
20 water coolers -- So we rented water coolers for years and
21 had water delivered. We have since purchased a water
22 cooler and now we just get the jugs filled at the store.
23 We've been cooking and drinking water that we've purchased
24 for 30 years now. I recognize that everyone cannot afford
25 to purchase their own water, and they really should not

1 have to. I didn't know exactly what was wrong, but I knew
2 that something was wrong.

3 So we're here today with a chance to really do
4 something about this now. According to Earthjustice, the
5 use of coal ash is really an ethical issue. Corporations
6 that burn coal ash and generate coal ash must not be free
7 of the responsibility for the -- for the consequences they
8 unleash on human and environmental health, but rather,
9 coal's contaminants must be handled in ways that minimize
10 the impacts on human health and the planet. The coal and
11 its waste -- It says the responsibility for that handling
12 must fall first -- fall first on those who produce,
13 utilize, dispose, and reuse coal and its waste products.
14 That responsibility does not belong to us, the consumer.

15 Because coal ash contains such high levels of
16 dangerous toxins, its disposal and reuse call for high
17 levels of prudence and care. From a health and medical
18 perspective, the situation calls for application of the
19 precautionary principle. The precautionary principle
20 states that where an action risks causing harm to the
21 public or to the environment, the burden of proof that it
22 is not harmful on those who would take action -- the burden
23 of proof then falls on those -- falls on those who would
24 take the action. In other words, rather than waiting until
25 harm has occurred, we should require those who want to use

1 coal ash to demonstrate that the proposed use is safe. It
2 is the same principle applied by the Food and Drug
3 Administration to keep our food supply safe, and it is the
4 wise one to apply when dealing with leaking, leaching,
5 toxic substances; for instance, the leaking seawall.

6 So how do we value and protect human life?
7 NIPSCO must remove all the coal ash from its fills for fear
8 of the collapse of all -- collapse or all -- collapse of
9 all or part of the seawall in Lake Michigan. You cannot
10 tell me that the owners of the Champion Tower South site in
11 Surfside, Florida where 97 people died from building
12 collapse regret not listening to members of their housing
13 community harming them -- alarming them of impending doom.
14 Thus, if we ignore what's being said by professionals all
15 around us, many more than 97 people may die.

16 NiSource's first steel seawall was constructed by
17 NIPSCO along Trail Creek in 1930. They added to it to
18 allow for the development and expansion of the site. The
19 main sheet pile wall out into Lake Michigan was added by
20 NIPSCO in 1949, and the western portion of the Lake
21 Michigan wall was added in 1952. All added for expansion
22 to facilitate increased capacity and the generation of
23 money for its stakeholders. NiSource has paid dividends to
24 their stakeholders every year at least since 2011, and
25 revenues are significantly up in 2022 as is earning per

1 share.

2 So I ask: If a consumer breaks a window in their
3 home causing their gas and electric bill to go up, they are
4 responsible for maintenance of that window. They're
5 responsible for paying the increased bill; all of it, and
6 if they don't pay it, eventually they're cut off -- and you
7 all know I'm telling the true -- eventually they are cut
8 off. Thus, the consumer, then, is made accountable.

9 NIPSCO would -- NIPSCO's -- NIPSCO built the
10 seawall that is now leaking and creating this coal ash
11 mess. They have made millions and paid their stakeholders
12 millions, and now we ask that they be made accountable by
13 removing all of the toxic coal ash with no help from us.
14 To require the community to pay for any part of removal of
15 toxic coal ash fills would be injustice to the highest
16 degree.

17 So in conclusion what we need is governance that
18 care about the people it governs, that values their lives,
19 that are cooperative, and sees as its purpose the
20 ecological and total well-being of its constituents.

21 Thank you.

22

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(WITNESS DONNITA SCULLY EXCUSED)

1 MS. HITZ: Susan Thomas.

2

3 **SUSAN THOMAS**, a witness appearing on behalf of the Public,
4 having been first duly sworn, testified as
5 follows:

6

7 A Good evening. Susan, S-u-s-a-n, Thomas, T-h-o-m-a-s.

8 I have the honor tonight of speaking on behalf of
9 the Hoosier Environmental Council as well as for myself.

10 So I would ask: Which testimony would you prefer
11 to hear first, my personal testimony or from the Hoosier
12 Environmental Council?

13 MS. HITZ: It doesn't matter.

14 A Okay, I'll begin with my personal testimony.

15 My name is Susan Thomas. I live in Beverly
16 Shores, and I thank the IURC and UCC for hearing this case,
17 IURC Cause No. 45700.

18 I moved here to be close to the national park two
19 years ago thinking I would retire here and provide a haven
20 in nature for my children and their children. This is a
21 picture of my granddaughter, and like your children and
22 grandchildren, she is the most amazing creature on the
23 planet.

24 Once I learned of how polluted this region is, I
25 knew I had to do more to protect my home investment and my

1 family. I started working as director of legislation and
2 policy for Just Transition Northwest Indiana and have been
3 able to do a deep dive into what is happening here with
4 NIPSCO's toxic coal ash. What I have learned is alarming
5 and disheartening.

6 In spite of a recent rate hike to consumers two
7 years ago, NIPSCO is again expecting the little guys,
8 residential ratepayers, to foot the bill for cleaning up
9 only 10 percent of their toxic coal ash mess at the
10 Michigan City Generating Station, leaving the remaining
11 90 percent literally on the lake for future generations to
12 deal with. If the corroded steel wall holding that mess
13 gives way, there will be an environmental disaster that
14 will cost way more than doing a complete clean-up now.
15 Surely there is a solution for a clean-up that places the
16 fair burden of costs onto the industrial consumers who
17 created this pollution as well as NIPSCO shareholders that
18 keeps the residential consumers from being stretched to
19 breaking from increased costs across the board.

20 There is also corporate underhandedness here.
21 NIPSCO is categorizing this falsely as capital costs in
22 order to profit off of this when it actually should be
23 classified as maintenance and operations. They're also not
24 acting in good faith with several compliance issues that
25 should have been corrected years ago, one of which has

1 allowed the actual contaminated groundwater situation at
2 the site to remain virtually unchecked.

3 Little did I know when I moved here I would be
4 surrounded by NIPSCO's toxic coal ash. On one side of me
5 is Bailly and the national park where only one toxic coal
6 ash pit has been excavated. Though NIPSCO has test tubes
7 full of the contents from the second pit, they refuse to
8 test them. Why?

9 I have friends in the Town of Pines adjacent to
10 where I live. They're still suffering the impacts of
11 NIPSCO knowingly polluting their streets, their
12 playgrounds, their yards, and their wells. Many residents
13 there must rely on NIPSCO to provide bottled water because
14 the folks in the NiSource C-suites decided that would be
15 cheaper than a municipal water hookup.

16 The biggest investment of their lives, their
17 homes, have little resale value. Based on this abysmal
18 track record of decent behavior, it is no surprise where we
19 are now, and we are asking you to intervene and deny or
20 delay this rate hike request until NIPSCO cleans up its
21 act.

22 One of the primary lessons in life we teach our
23 children is if you make a mess, you clean it up, or even
24 better, do unto others as you would have them do unto you.
25 Corporations and utilities should not be exempt from that.

1 The mess they leave behind will hurt their children as
2 well.

3 I will now change hats, and on behalf of
4 Dr. Indra Frank at the Hoosier Environmental Council, I
5 will read her official statement into the record.

6 Members of the Commission, thank you for the
7 opportunity to speak. My name is Susan Thomas, and I'm
8 speaking today as a member of the Hoosier Environmental
9 Council to read testimony prepared by the staff at the
10 Hoosier Environmental Council.

11 The Council is a non-profit organization founded
12 in 1983. It has worked on the problem of coal ash for more
13 than 20 years.

14 I have two main points to convey. First, the
15 coal ash problem at Michigan City is much larger than the
16 work NIPSCO has proposed in this rate filing, and second,
17 this is supposed to be a rate case for compliance with the
18 federal coal ash rule, but there is non-compliance at the
19 Michigan City site that will not be fixed by the work
20 proposed.

21 Coal ash contains toxic heavy metals. When it
22 gets wet, it contaminates water. It needs safe, dry
23 disposal. Disposal at Michigan City is neither safe nor
24 dry.

25 From 1931 to the 1970s, the power plant in

1 Michigan City disposed of coal ash along the shore of Lake
2 Michigan and in the lake bed next to the plant without a
3 liner under the ash. The utility built a steel sheet pile
4 wall along Trail Creek and out into Lake Michigan and then
5 filled in behind it with a mix of sand and coal ash.

6 Once the walled-off area was filled in, it became
7 what is referred to as made land. The utility then built
8 buildings, parking lots, and a new coal ash pond on top of
9 that made land. The proposed work in this case -- in this
10 rate case will not remove the 40 years of coal ash buried
11 on the site. It will only remove the coal ash ponds that
12 are on the surface.

13 The 40 years of buried coal ash will be left
14 behind where it will continue to contaminate groundwater
15 and pose a significant spill risk. The buried ash is held
16 in place by the steel sheet pile wall. Such walls do not
17 last forever. Some industry estimates put their lifespans
18 at 70 years. All of NIPSCO's sheet pile walls are 70 years
19 or older. Recent inspections show that the walls are aging
20 with corrosion, and some segments are starting to lean.
21 When they fail, there will be a major spill.

22 So the coal ash problem at Michigan City is much
23 larger than the work proposed in this rate case. In fact,
24 the work proposed could interfere with the more complete
25 clean-up that is needed and make it more expensive.

1 The second point of this testimony is that this
2 is supposed to be a rate case for compliance with the
3 federal coal ash rule, but there is non-compliance at the
4 Michigan City site that will not be fixed by the work
5 proposed.

6 Currently NIPSCO is in non-compliance with the
7 federal coal ash rule in the following ways: faulty
8 groundwater testing, delayed groundwater clean-up, and an
9 inadequate proposal for groundwater clean-up.

10 NIPSCO's groundwater testing is faulty in that it
11 is using contaminated samples as background. The federal
12 rule requires testing the groundwater at coal ash sites and
13 comparing it to background water that is not contaminated
14 by coal ash. The state environmental agency warned NIPSCO
15 in January of 2019 that they needed to use true background
16 samples, but three years later, NIPSCO's groundwater report
17 in January of 2022 is still calling the contaminated
18 samples background. Using contaminated samples for
19 background artificially lowers estimates of how much the
20 coal ash is contaminating the groundwater.

21 NIPSCO is also delaying groundwater clean-up.
22 The federal rule requires groundwater clean-up as soon as
23 feasible. NIPSCO has known about the groundwater
24 contamination at Michigan City for at least eight years but
25 has not started clean-up on it and has proposed an

1 additional two-year delay after they finish the work in
2 this rate case.

3 NIPSCO has suggested they will eventually use a
4 clean-up method called Monitored Natural Attenuation. That
5 method basically amounts to watching the contamination
6 while doing nothing. It is clearly inappropriate at this
7 site.

8 NIPSCO is already in non-compliance regarding
9 groundwater. Their proposal to excavate the surface coal
10 ash ponds will create additional problems with compliance.
11 The federal rule allows closure by removal which is what
12 NIPSCO is proposing, but the rule requires that the removal
13 leave the site decontaminated. However, once NIPSCO digs
14 out the coal ash ponds on the surface, the older coal ash
15 underneath will still be there in the base of the
16 excavation. They will not be able to comply with the
17 rule's requirement for decontamination unless they also
18 remove the old buried ash.

19 I appreciate the opportunity to speak today and
20 present this information on the extent of coal ash problems
21 and the problems with rule compliance at NIPSCO's Michigan
22 City power plant.

23 Thank you.

24

25 **(WITNESS SUSAN THOMAS EXCUSED)**

1 MS. HITZ: For those who are reading things into
2 the record, if you provide copies of those documents, we
3 can put them into the record. They will still be submitted
4 as part of the record; it's just a little [inaudible].

5 Georgetta Cox.

6 UNIDENTIFIED PERSON: I believe that's for the
7 League of Women Voters --

8 MS. HITZ: Yeah.

9 UNIDENTIFIED PERSON: -- and we are having our
10 President speak.

11 MS. HITZ: Oh.

12 UNIDENTIFIED PERSON: Thank you.

13

14 **REGINA RUDELL**, a witness appearing on behalf of the
15 Public, having been first duly sworn,
16 testified as follows:

17

18 A My name is Regina Ruddell, R-e-g-i-n-a; last name is
19 R-u-d-d-e-l-l. I'm here to represent the League of Women
20 Voters of LaPorte County, working under the positions on
21 the environment adopted by the League of Women Voters of
22 Indiana, encourages NIPSCO to remove 100 percent of the
23 coal ash from the coal ash ponds on NIPSCO property during
24 the closure. The coal ash ponds are separated from Lake
25 Michigan only by a seawall.

1 We believe the presence of coal ash next to an
2 aging seawall represents a threat to the Lake Michigan
3 ecosystem in that a breach of the seawall and adjoining
4 properties during a storm or high lake levels would result
5 in a discharge of toxic pollutants from NIPSCO's commercial
6 operation into the lake. This would damage the ecosystem
7 in violation of federal, state, and local laws and
8 ordinances.

9 In the meantime, as a preventive measure, we
10 encourage NIPSCO to immediately develop an actionable
11 emergency remediation plan in case of a breach. In view of
12 the fact that this is a rate hike hearing, we encourage
13 NIPSCO to partner with IDEM, with EPA, community groups,
14 and environmental groups as they develop a new budget and
15 customer rates. We ask that NIPSCO include our
16 recommendations as they consider their new budget and rates
17 and in their closure process as they move forward.

18 I would like to read to you the League of Women
19 Voters Indiana threats to ecosystem position, a position
20 that we are working under, and that is: Discharge to air
21 or water of toxic pollutants and other material from
22 industrial, agricultural, residential or commercial
23 operations that may damage the ecosystem in violation of
24 laws and ordinances.

25 Thank you for your time.

1 MS. HITZ: Thank you, ma'am.

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25 (WITNESS REGINA RUDELL EXCUSED)

1 MS. HITZ: Lucy Bruce-Whitaker.

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3 **LUCY BRUCE-WHITAKER**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

6

7 A Thank you so much.

8 Lucy, L-u-c-y; last name is Bruce, B-r-u-c-e,
9 hyphen, W-h-i-t-a-k-e-r.

10 I also oppose NIPSCO transferring the cost of the
11 clean-up to residential customers, and I have a little bit
12 different perspective.

13 I live in Jasper County, and I think that their
14 plan needs to not bring the toxic coal dust to the Schahfer
15 plant. We already have enough down there. We already have
16 enough problems. They need to remediate that -- the plant
17 up here completely and do a plan that does not give that
18 burden to another area of the State.

19 Thank you so much.

20

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25 **(WITNESS LUCY BRUCE-WHITAKER EXCUSED)**

1 MS. HITZ: Beverly Mack-Martin.

2

3 **BEVERLY MACK-MARTIN**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

6

7 A Good evening. My name is Beverly Mack-Martin,
8 B-e-v-e-r-l-y M-a-c-k hyphen M-a-r-t-i-n. I'm a public
9 administrator, a community advocate, and a licensed general
10 contractor here in Michigan City.

11 However, this evening, I would like to thank you,
12 the Indiana Utility Regulatory Commission and the Office of
13 the Utility Consumer Counselor, for holding this meeting in
14 Michigan City where the customers reside who are in closest
15 proximity to the NIPSCO Michigan City Generating Station,
16 the focus of this hearing. Your presence to hear our
17 voices is invaluable to us.

18 I'm here to speak on behalf of an 84 year old
19 Michigan City resident who lives just a stone's throw away
20 from the generating plant in question here. Her name is
21 Annie May Garrett. Ms. Garrett gave me permission to speak
22 on her behalf because she is unable to physically appear.
23 You see, Ms. Garrett has severe asthma and arthritis and
24 can only walk a few steps before she must stop to catch her
25 breath as she says.

1 As you can see in the picture attached to this
2 document, Ms. Garrett is in view of the cooling tower as
3 she sits on her porch taking her asthma breathing treatment
4 due to the fact that Ms. Garrett has technically become a
5 prisoner in her own home due to her disabilities. She has
6 lived in the same residence for more than 30 years in view
7 of the cooling tower. Her ex-husband no longer lives at
8 the residence. Ms. Garrett has ten children of which the
9 youngest, 44 years old, also has asthma.

10 Ms. Garrett was locally employed for more than
11 35 years. She initially thought, as most of us do, that
12 she would have the ability to enjoy her retirement at her
13 leisure, traveling and visiting with her family, but her
14 asthma and debilitating arthritis for which she has had
15 surgery on both her arm and leg severely limit her
16 mobility.

17 I met with Ms. Garrett following my attendance at
18 a community meeting about the NIPSCO coal ash issue. It
19 was my first meeting and my first awareness of what coal
20 ash even was. I had been away from Michigan City for
21 nearly ten years. As I was leaving the meeting,
22 Ms. Garrett waved to me to come within her earshot and
23 inquired from me what was going on at the meeting. She was
24 sitting there on her front porch, and for a minute, she
25 stopped performing her breathing treatment.

1 I informed Ms. Garrett that the meeting was about
2 NIPSCO's intention to leave 2 million tons of coal ash at
3 the closure site and to raise utility bills to offset that
4 cost to which Ms. Garrett inquired of me: So first they
5 put that power plant in my neighborhood, and it's already
6 made me sick, and now they want to leave 2 million tons of
7 coal ash there? They want me to pay for the clean-up of
8 the mess they created and then pay them to make me even
9 sicker?

10 At first, I was taken aback by her questions and
11 was quite unsure how I should answer them. You see, I
12 wasn't sure myself whether or how involved I personally
13 planned to be as an activist surrounding this issue, but it
14 was at that moment that I realized somebody had to speak
15 for Ms. Garrett, and somebody has to speak for all
16 the other Ms. Garretts in our town, and I promised her that
17 I would do my best to do just that.

18 Most of us here are aware of the many ills
19 related to health that coal ash can contribute to,
20 including groundwater contamination possibly impacting
21 millions of us along the Lake Michigan lakeshore, but as I
22 reviewed mounds of information that was sent to me when
23 people learned that I planned to become involved in this
24 issue in an attempt to bring myself up to speed on the
25 issues prior to this hearing, I happened upon a study in

1 which I had some involvement.

2 The study was performed by the Indiana Minority
3 Health Coalition titled "A Health Needs Assessment Study of
4 the Minority Population in LaPorte County" and was dated
5 2005, a period when I was an independent contractor for
6 IMHC, and in that study, it was determined that the No. 1
7 cause of death for black residents of LaPorte County was
8 not heart disease nor lung cancer nor diabetes but oddly
9 enough a disease called malignant neoplasm, a form of
10 cancer. In my further research, I found that one of the
11 risk factors that contributes to this No. 1 killer here is
12 toxic chemical exposure and that decedents are generally
13 elderly, 65 or older, when the disease is first diagnosed.

14 I have submitted with my testimony Figure 19a of
15 that study from the Minority Health Coalition with the
16 numbers that I have quoted to you.

17 The reason I am addressing this finding now is
18 that Ms. Garrett lives in an area where there is a high
19 concentration of black residents, mostly elderly, near the
20 NIPSCO site. Is there a correlation with such a small
21 sample size? That remains to be seen.

22 However, upon my return to Ms. Garrett's home to
23 complete my interview with her, she informed me that she
24 had been having difficulty swallowing and that she had just
25 returned from the doctor. She stated that the doctor

1 informed her that she had a lump in her throat and that she
2 was being referred for further follow-up diagnostics.

3 Will Ms. Garrett be another LaPorte County
4 minority health statistic? Are there other residents in
5 that area suffering similar health conditions? Only time
6 and consistent monitoring and follow-up in that
7 neighborhood will tell. I am sure that another similar
8 City of the Pines situation can be averted right now.

9 So here I stand before you today to tell
10 Ms. Garrett's story and to ask you, the people in charge of
11 making these decisions, what do I tell Ms. Garrett? I want
12 to be able to tell her that NIPSCO is going to be forced to
13 clean up 100 percent of the coal ash mess they have made
14 and that the shareholders will not profit because there
15 will be no rise in cost of Ms. Garrett's utility bills to
16 pay for this clean-up. I want to be able to answer her
17 with the good news that as a 30-year paying utility
18 customer, you all have heard her voice and that you are
19 positively making decisions for her community's benefit and
20 on her behalf.

21 I am, therefore, requesting the denial of Cause
22 No. 45700, the NIPSCO request for financial recovery at the
23 expense of consumers, and thank all of you for listening
24 and for acting on Ms. Garrett's behalf.

25 **(WITNESS BEVERLY MACK-MARTIN EXCUSED)**

1 THE COURT: Thank you.

2 We're just going to take a brief five-minute

3 recess and then we'll return.

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25 (HEARING IN RECESS UNTIL 7:30 P.M., SAME DAY)

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE 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 ASH)
 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) CAUSE NO.
 FEDERALLY-MANDATED COSTS AND) 45700
 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)
 INDIANA CODE SECTION 8-1-8.4-1 ET)
 SEQ., SECTION 8-1-2-19, SECTION)
 8-1-2-23, AND SECTION 8-1-2-42,)
 AND, TO THE EXTENT NECESSARY,)
 APPROVAL OF AN ALTERNATIVE)
 REGULATORY PLAN PURSUANT TO INDIANA)
 CODE SECTION 8-1-2.5-6)

TRANSCRIPT OF FIELD HEARING

Field Hearing continued to be heard on August 1, 2022 at 7:30 P.M. (CDT) at City Hall Chamber, 100 East Michigan Boulevard, Michigan City, Indiana, before Chairman James F. Huston and Chief Administrative Law Judge Loraine L. Seyfried (Presiding)

Reporter: Amy L. Tokash

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1 Michigan City, Indiana
2 August 1, 2022
3 7:30 P.M. (CDT)
4

5 THE COURT: We're going to go back on the record.

6 I understand that there have been people who have
7 indicated that they would like to speak tonight, so would
8 those individuals stand, please, and raise your right hand
9 so that you can be sworn in.

10

11 (OATH DULY ADMINISTERED TO FIVE PEOPLE)

12

13 THE COURT: Ms. Hitz?

14 MS. HITZ: Thank you, Your Honor.

15 Joseph Conn?

16

17 **JOSEPH CONN**, a witness appearing on behalf of the Public,
18 having been first duly sworn, testified as
19 follows:

20

21 A Hello. I'd like to welcome you to northwest Indiana.

22 Oh, excuse me. My name, yes. My name is Joseph Conn.

23 It's J-o-s-e-p-h, and the last name is C-o-n-n like the

24 band instruments, and I would like to welcome you to

25 northwest Indiana. It's been my home all my life. I'm 70

1 years old.

2 I'm the Chairman of the Northwest Indiana Green Party,
3 and I'm also a sailor. I own a small sail boat that I keep
4 here in Michigan City; I live in Hobart, but I keep a sail
5 boat here up Trail Creek and restored it. It's 50 years
6 old, and I was actually out on it last night with my
7 daughter, and we sailed out past the NIPSCO plant on west
8 and went up to the foot of a big sand dune there called
9 Mount Baldy, and I don't know if you know about the history
10 of this site, NIPSCO's site, but there was an even bigger
11 dune there called the Hoosier Slide.

12 It was the largest sand dune in Indiana, and people
13 would come there, and it had a high enough slope that you
14 could literally slide down it; it was 200 feet high, and in
15 the 1920s -- late 1800s. By 1920, it was gone. It was
16 carted off and made into Mason jars by Ball company, and
17 then another company made them into those little blue glass
18 things you saw that were resistors that were on the top of
19 poles mostly on railroad tracks. You could see that they
20 were blue glass, gorgeous. You can still find the glass at
21 antique shops and stuff.

22 I bring that up because we had an industrial
23 development there. We basically gave up what was then
24 called Indiana's best landmark; I think that was the
25 phrase. People came from all over just to go climb that

1 dune and see the views and slide, and we let it slip.
2 Instead of protecting it like Sleeping Bear Dunes or Dune
3 State Park or now the National Lakeshore, we let that go,
4 and that was not any fault of NIPSCO; they bought the
5 property after the thing had been mined down, but I bring
6 that up because I was trying to think about what to say
7 here today to this, and so many people have given great
8 testimony, but what I want to talk about is your own
9 responsibility here as human beings.

10 How many have you seen the Ken Burns' series on the
11 national parks? See them? Remember? The whole framing of
12 it was America's best idea, not the Mackinac Bridge or the
13 Panama Canal or the Interstate Highway System or any other
14 great accomplishments that have been made by people in this
15 country and people in authority like yourselves, but the
16 national parks. We're going to save something of value for
17 our grandchildren and their grandchildren forever, and to
18 get this national park here has been a 100-year long
19 struggle, mostly against industrial developers like NIPSCO,
20 and the way Ken Burns positioned that series if you saw it,
21 each one was a morality play. Each park was just this
22 brawl between people who wanted to save something and
23 protect something -- our natural heritage, our legacy
24 and people who just wanted to despoil it and make money off
25 of it like the Hoosier Slide, cart it off and make Ball

1 jars out of it.

2 So we were out last night, my daughter and I, and I've
3 sailed past Michigan City's -- the NIPSCO plant a number of
4 times, and I've gotten up close to the revetment that
5 people have been talking about. It's not just weak;
6 there -- if you go to the west end of it, there are holes
7 in it, holes in it that can you put your arms, your whole
8 body through, and I invite you to come back up here, come
9 with me, we'll get on my sail boat -- I can only take three
10 of you at a time because it's not -- it's a 24-foot boat,
11 but I'll sail you right past there and get a look at that
12 revetment.

13 There was a guy who actually wanted to dam up the
14 Grand Canyon, if you remember seeing that in the series,
15 because he had mining interests in there and mining claims,
16 and he needed electrical power so he could go and mine the
17 Grand Canyon. So Burns set that up as sort of like good
18 versus evil, good versus evil, and everywhere you went,
19 there was always somebody who wanted to ruin it to make
20 money, and there was always some group of people like these
21 people who wanted to do the right thing and keep a little
22 bit of it, okay?

23 So what we've got here is we've got -- I can boil this
24 down to I think real simple. We have a class war here
25 going on in this country, and we've always had one; it's

1 not new. We have a group of people who've got money and
2 think that they can control everything and they're entitled
3 to control everything and they're entitled to extract
4 wealth from working class people and put it in their
5 pocket.

6 Now you have a decision to make whether or not the
7 stockholders of NIPSCO or the ratepayers of NIPSCO should
8 pay for this mess that's sitting out there, but I'm telling
9 you that steel is not going to last much longer. 70 years
10 on a piece of steel -- you know, that's -- -- it has a
11 life; maybe it's got another 20 years, maybe 30. Maybe we
12 won't live so long to see that collapse, but I guarantee
13 you it's going to collapse.

14 Go that way about, oh, 15 or 20 miles, and you'll see
15 Gary Works at U.S. Steel. It has an enormous breakwater
16 out in front of it because it brings in ore boats, you
17 know, ships really. They're called boats on Lake Michigan;
18 they don't have ships on Lake Michigan or the Great Lakes.
19 They're all called boats even if they're 400 feet long. Go
20 figure, but they have a break wall out there, and they had
21 a storm come up, and it took a 40-foot wide section of the
22 break wall and wiped it out. Can you imagine such a wave?
23 I don't know if you've ever been up here and you go out on
24 Michigan City pier when a storm comes in, and it's
25 electrifying because, one, you're seeing the power and the

1 majesty of that lake, and then you're thinking am I going
2 to be able to get back off of this pier in time before it
3 washes me away.

4 There's a reason that there's a catwalk out there on
5 that pier all the way to the lighthouse because it used to
6 have to staff that lighthouse, and you wanted to get people
7 out of there or get supplies into them when there was a
8 storm, and, you know, that thing is like 30 feet up in the
9 air. That's because if you tried to walk out on that pier
10 in a storm, the waves would sweep you away. So what you
11 have there is a revetment that's getting every year
12 pounded, pounded, pounded, and I'm telling you it's already
13 broken.

14 This rate case is premature. What you need to do is
15 tell NIPSCO no and come back with a real plan that's going
16 to protect the people of northwest Indiana or protect the
17 people of Indiana, protect the people of the United States
18 because all kinds of people drink water out of that lake,
19 and you're going to have an environmental disaster on your
20 hands if it's not cleaned up. We've been dodging this
21 bullet now for a long, long time, and already that
22 revetment is starting to fail; it's starting to leak.

23 So I'll close with this: You're all human beings here
24 like me. We all have our little time on this earth, and
25 then we're done and then history judges us. What did you

1 do when you were here when you had an opportunity? Were
2 you going to be in Ken Burns' movie as one of the bad guys
3 or one of the good guys? It's just as simple as that. You
4 have an opportunity here; this is a pivotal time in the
5 history of northwest Indiana. Join the Dorothy Buells;
6 don't join the despoilers that want to dam up the Grand
7 Canyon. It's just that simple.

8 Thank you for your time.

9

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17 **(WITNESS JOSEPH CONN EXCUSED)**

18

19

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22

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25

1 MS. HITZ: Anthony Lewis? Or not.

2 Nora McDonald?

3

4 **NORA McDONALD**, a witness appearing on behalf of the Public,
5 having been first duly sworn, testified as
6 follows:

7

8 A Good evening, council members. My name is Nora
9 McDonald, N-o-r-a M-c-D-o-n-a-l-d.

10 Man, I don't really want to follow that. How do
11 I follow that? That was such a powerful testament.

12 So I'm going go a little bit off book here. I
13 want to begin that I did not grow up here in Michigan City.
14 I grew up in Beverly, which is southwest Chicago. My mom
15 is one of eight, so I have lots of cousins and aunts and
16 uncles, and I was thinking about -- Susan was saying to
17 tell your story, and I'm thinking about all of these
18 childhood -- these wonderful childhood memories of, you
19 know, going into the city, and I can't think of a memory
20 that doesn't include the beautiful and infamous Lake
21 Michigan whether it was Taste of Chicago, the Children's
22 Museum at Navy Pier, the awesome air and water show with
23 the Blue Angels in the city, and I would often go into the
24 city. Now I don't really remember it because I was young.

25 There are a lot of my community members here that

1 have mentioned about people here becoming sick because of
2 what they're drinking in the water and everything, all of
3 the environmental pollution and the toxic coal ash that has
4 happened to the City. I did not have anything
5 environmental happen to me personally, but I was diagnosed
6 with leukemia when I was 22 months old, so thinking about
7 all of the patients that my fellow community member had to
8 treat, it -- it really affects me especially when it's
9 children that are being diagnosed with cancer that it is
10 something preventable; God forbid their parents and their
11 grandparents who are already suffering. It sounds like
12 it's been going on for quite some time, and listening to
13 all of my community members speak about this, I wanted to
14 make sure that I brought it up having gone through that
15 experience with my family. It is an awful, terrible
16 experience.

17 Now I was extremely fortunate that I had support
18 from my loving parents and my sisters and my family and
19 their loved ones. There are lots of people who don't have
20 that support.

21 We were also very privileged to have the means to
22 pay for cancer treatment, and we never had to worry about
23 that, but there are lots of families, lots of children
24 that, you know -- that cannot provide those bills, and it
25 frightens me; it frustrates me that if something like this

1 spill that he just mentioned happens, how many people are
2 going to get sick from this?

3 It's something that we can do now. It is
4 something that is a simple solution by denying NIPSCO's
5 request to clean up only 10 percent of what they are
6 responsible for. It's just like he was saying, it's
7 where are you going to be on the side of history? Where
8 are you going to be? I was thinking about -- Pastor Erica
9 was speaking about morale in her speech in the rally before
10 we came in, and it reminded me of one of my favorite
11 superheroes, and when he was talking about where are you
12 going to be on the good side and on the -- you know, the
13 bad side, I'm thinking like, oh, gosh, this is my mind
14 going to Star Wars. Are you going to be on the dark side,
15 or are you going to be on the light side? Are you going to
16 be a Jedi, or are you going to be you know, are you
17 going to be on the Sith side, and it really is. I mean,
18 Lucas makes it very black and white that it's the good guys
19 versus the bad guys, but what's great about the fight of
20 the rebellion is that they never lose -- they never lose
21 hope; they never lose spirit; they have losses; they have
22 casualties. You know, things go wrong, and they lose
23 people that they love almost constantly throughout those
24 movies, favorite characters.

25 Here, you know, I may not have grown up here, but

1 my aunt and uncle have had a cottage here in Sheridan Beach
2 for, oh, gosh, probably 20 years, and so although I didn't
3 grow up here, I visited very, very often here, and again,
4 lots of fond memories with me and my cousins in the lake,
5 on the beach with my mom. You know, all of those wonderful
6 memories that I will always remember, and it's great now
7 being back here, but

8 I mean, I live here; I'm a social worker. I care
9 about the lake; we care about the lake. I know it affects
10 thousands. You know, it's not just here in northwest
11 Indiana that if something -- if a spill happens, it's going
12 to affect Indiana, Michigan, Wisconsin, all of these
13 surrounding states. It's going to spread. It's going to
14 spread, and knowing that we can do something about it now,
15 that they can do something about it while cleaning up their
16 own mess, by being responsible, just like we teach our
17 children, just like we expect from each other.

18 You know, I love the -- like, there are signs
19 often in like employee or staff lounges like your mom
20 doesn't work here; clean up your own mess, and that's what
21 I'm thinking about right now too.

22 So I will close that I am a part of this
23 community; I care about this community; I care about the
24 children that will be growing up on these shores, and it's
25 not just about the children now -- of course it is and the

1 people who are here now -- but generations to come, and in
2 the words of my favorite superhero, I can -- I'm going to
3 amend it a little bit. I can do this, and I will fight
4 this all day.

5 Thank you very much.

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16 (WITNESS NORA McDONALD EXCUSED)

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1 MS. HITZ: I'm going to try and pronounce this
2 correctly.

3 Bob Uryga?

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5 **BOB URYGA**, a witness appearing on behalf of the Public,
6 having been first duly sworn, testified as
7 follows:

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9 **DIRECT EXAMINATION,**

10 **QUESTION BY MS. HITZ:**

11 Q You have to make sure you spell it for my Court
12 Reporter.

13 A I sure will. My last name's U-r-y-g-a, Uryga. You
14 did fantastic.

15 I'm a volunteer firefighter of 54 years. I have
16 to come here and tell you people this says the utility is
17 proposing complete removal of coal ash. That says
18 complete; that doesn't say 10 percent. That's in black and
19 white right here.

20 They have poisoned my brothers and sisters in the
21 Pines. They have no right to bury this coal ash here in
22 Michigan City and poison the rest of the lake. That poison
23 in the Pines is leaking into Lake Michigan right now. They
24 dumped the coal ash in the swamp and then to seal it, they
25 put clay on top of this, but it's still leaking. It

1 poisoned their groundwater; they're going to poison our
2 lake. They're poisoning it for all the years they've been
3 here. I ask you not to give them a rate increase. They do
4 not deserve it.

5 They brought that coal in from Wyoming. Put the
6 coal ash in the cars and send it back to Wyoming. Put it
7 back where you got it. It's not right for us to pay for
8 that. It's part of doing business; that's what it's all
9 about. You bought that crap; put it back where you found
10 it.

11 You know, I can't say it any plainer than that,
12 but I hope you people do not allow them to have a rate
13 increase, and I realize we have to go to the EPA and get
14 these people to do the right thing, and maybe you guys can
15 help us get the EPA here, and maybe we can get something
16 done with it, okay?

17 Thank you, guys.

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(WITNESS BOB URYGA EXCUSED)

1 MS. HITZ: Richard Gersch?

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3 **RICHARD GERSCH**, a witness appearing on behalf of the
4 Public, having been first duly sworn,
5 testified as follows:

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7 A My name is Richard Gersch, and I'm here representing
8 Richard Gersch, and that's spelled G-e-r-s-c-h. Thank you
9 for the opportunity to speak here today.

10 The observation that I would like to make is that
11 it seems to me that there's actually two issues going on
12 here, two distinct issues.

13 One is the clean-up of the coal ash from the
14 Michigan City power plant, and the second issue is who is
15 going to pay for that clean-up, and it saddens me that we
16 do not have any representatives here from either the
17 Indiana Department of Environmental Management nor from the
18 EPA, and it seems that without that here, we really
19 don't you guys from the Indiana Regulatory Commission
20 don't have the authority to force anyone to do clean-up
21 efforts. That's not in your jurisdiction. The only thing
22 that you have authority over is the rate case that's before
23 you.

24 In regards to that, it seems to me that we need
25 to have -- the one thing that you could do is delay the

1 schedule until there is a fair opportunity for either the
2 EPA or the IDEM to force NIPSCO to clean up not just
3 10 percent of the coal ash but 100 percent of the coal ash
4 as everyone here has commented on already.

5 What I would urge you to do is forward the
6 information of the testimonies that's been provided here to
7 the -- at least to the Indiana Department of Environmental
8 Management.

9 Secondly, I would like to point out that rate
10 cases from utilities are extremely complex cases, and it's
11 thousands of pages of testimony that come from the --
12 NIPSCO or whatever utility it is, and for normal citizens
13 to try to work through the details of these is nearly
14 impossible without specialized education.

15 I realize that most of you are here from
16 Indianapolis, including the Office of Utility Consumer
17 Counselor, and that happens to be the capitol of our State,
18 and I don't know how many people remember a group called
19 the Globetrotters, but when they were playing, they would
20 always play against a team called the Capitals, and it
21 turned out that whenever the Globetrotters played against
22 them, they would always win, and it wasn't just a minor
23 win; they would destroy this team called the Capitals. Now
24 they would let them get a basket every now and then, but as
25 far as winning the game, there was absolutely no chance

1 that the Harlem Globetrotters were not going to win and
2 make it a lot of fun in doing that.

3 NIPSCO, being a utility, a public utility, is in
4 a different business from normal businesses. The method
5 that NIPSCO gets its revenue from is in this game of
6 bringing rate cases before the Indiana Regulatory
7 Commission.

8 A normal business has two objectives: One, to
9 increase their revenue through greater sales or for higher
10 prices, and, two, to lower their costs, and if they succeed
11 in that, they're going to increase their profits.

12 For NIPSCO, that does not apply. It's all about
13 the game before the rate cases, and it's my observation
14 that NIPSCO is very well prepared in doing their rate
15 cases, and I'm afraid to say that the office that's
16 representing us, the citizens, is not so well prepared.

17 It seems like we are on the losing side, and
18 they're going to go and claim, oh, we saved you so many
19 millions of dollars, but we still lose because the rates
20 are always going up, and in the case before us today, I'm
21 pretty sure that NIPSCO's going to get their way, and
22 they're going to -- the rates are going to increase. We,
23 the citizens, are going to be stuck paying for this
24 clean-up of, what, 10 percent of the coal ash. That is a
25 tragedy.

1 So again, I would like to urge the Indiana
2 Regulatory Commission to delay this process and give the
3 authorities the opportunity to force NIPSCO to do the
4 correct clean-up effort.

5 Thank you.

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17 **(WITNESS RICHARD GERSCH EXCUSED)**

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1 **ANTHONY EDWARD LEWIS**, a witness appearing on behalf of the
2 Public, having been first duly sworn,
3 testified as follows:

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5 **DIRECT EXAMINATION,**

6 **QUESTION BY MS. HITZ:**

7 Q Sir, if you can state your name so I can find your
8 sheet.

9 A My name is Sargent Anthony Edward Lewis, United States
10 Army Infantry, retired. I'm a resident of Michigan City.
11 I'm also the Democratic Precinct Chairman of Cool Spring
12 [inaudible].

13 I rise tonight in opposition to any proposition
14 for a raise hike -- rate hike and must insist and demand
15 that NIPSCO/NiSource do the right thing for the right
16 reasons.

17 100 percent clean-up of the mess that has been
18 made in Michigan City is the only acceptable, practical
19 result of this gathering tonight.

20 These people that you see here with me, what we
21 have in common is a commitment to not being exploited
22 anymore.

23 What you see here is a group of people that
24 oppose the idea of paying a company to poison us. I really
25 don't even need to say anything more than that except that,

1 you know, I don't like being here to have to have this
2 conversation. It's condescending; it is contemptuous; it's
3 insulting; it's an embarrassment, but even if I would not
4 ask for such a fight, I will not run from it. That's what
5 you see right here in front of you, a group of people who
6 will not fight -- who will not quit, will only fight for
7 the right reasons for their lives.

8 Thank you.

9 Oh, Anthony Edward Lewis; Lewis is spelled Las
10 in lima, E as in echo, Was in whiskey, I as in India; Sas
11 in sierra.

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18 (WITNESS ANTHONY EDWARD LEWIS EXCUSED)

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1 MS. HITZ: Forgive me; I want to catch up with my
2 notes here and make sure I have the right people up.

3 Ashley Williams?
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5 **ASHLEY WILLIAMS**, a witness appearing on behalf of the
6 Public, having been first duly sworn,
7 testified as follows:
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9 A Ashley Williams, A-s-h-l-e-y W-i-l-l-i-a-m-s.

10 Good evening. I wanted to thank the IURC for
11 holding this hearing in Michigan City. Thank you to the
12 OUCC for presiding over comments, and I want to thank each
13 and every one of you in this room tonight, all the
14 beautiful people that have been pouring out their hearts
15 and their souls before the IURC tonight. You are my
16 heroes; you're so brave and so courageous.

17 I'm here to state my opposition to NIPSCO's
18 proposal, Cause No. 45700, and to share my reasoning to
19 urge you to reject this hike.

20 Again, my name is Ashley, and I'm the Executive
21 Director of Just Transition Northwest Indiana, a grassroots
22 organization working to ensure justice for NWI communities
23 most impacted by pollution and NIPSCO's energy transition.
24 We organized many of the folks that you heard from tonight
25 that are speaking against this hike.

1 I am a proud resident of Michigan City where I
2 have lived now for five years. I love our community, and
3 I'm here tonight to fight for it.

4 I've been no stranger to pollution all my life.
5 I grew up next to a cluster of 16 superfund sites. In my
6 hometown of Ottawa, Illinois, much like the Town of Pines,
7 industry knowingly poisoned workers in our community, in
8 this case with radium, contaminating our drinking water and
9 soil, but the injustice did not end there. I later saw my
10 community overtaken before my eyes by the local mining
11 industry that blanketed our air with crystalline silica.
12 When exposed, it cuts the lungs like fine glass.

13 This was everyday life for me, but as I matured
14 and understood the nature of environmental injustice, I
15 realized what was happening around me. I often recall at
16 hearings just like this one people regarding I'm just a
17 housewife; what do I know? I'm just a farmer; what do I
18 know? I am just a child; what do I know?

19 We sell ourselves short and participate in our
20 own marginalization, but we who live here and breathe this
21 air and drink this water every single day, we know. We
22 know the difference between what's right and what is
23 terribly, terribly wrong.

24 Now living in Michigan City, it's like deja vu.
25 Touting a complete clean-up of toxic coal ash waste while

1 leaving it to sit on the shores of Lake Michigan and our
2 backyards behind an aging, leaking sealed sorry, seawall
3 is not misleading -- not only misleading, it is morally
4 wrong. Leaving behind 2 million tons of coal ash waste in
5 a neighborhood of low income residents of color is textbook
6 environmental racism.

7 For nearly 100 years, Michigan City has lived in
8 the shadow of the NIPSCO coal burning plant, inhaling
9 carcinogens on a daily basis, cleaning black dust off of
10 our porches, children's play sets, and boats only to be
11 left with an impending pollution disaster.

12 What have we learned from the coal ash tragedy in
13 Kingston, Tennessee that left 50 workers dead and hundreds
14 ailing? What have we learned from the other Lake Michigan
15 disasters like Oak Creek, Wisconsin that cascaded 120 yards
16 of toxic coal ash and debris into our lake? History has
17 shown us when we don't address a ticking time bomb, this is
18 what happens.

19 No matter what way you spin it, we should not be
20 left to foot the bill. We also know that this number will
21 only increase in time as they recover the full 40 million
22 in costs. NIPSCO's industrial customers including BP,
23 Cleveland-Cliffs, and U.S. Steel are responsible for the
24 worst pollution in Indiana, and they also use the most
25 electricity in contrast to any other consumer.

1 Still, they continue to receive the deal of a
2 century by paying NIPSCO at a discount. How about asking
3 their billion dollar corporations to shoulder the burden of
4 this rate increase? How many in this room would agree?
5 Please raise your hands if you think these industrial
6 polluters should pay their fair share to clean up NIPSCO's
7 mess. Thank you. Amen.

8 Honorable members of the Commission, I know you
9 do not regulate coal ash; we have had this conversation.
10 We know you are not IDEM; you are not the EPA. Still, I am
11 asking you to consider the long-term implications of this
12 proposal that will only serve to fund the demise of our
13 communities and the Lake Michigan region.

14 NIPSCO has already committed three strikes. The
15 company poisoned the Town of Pines with coal ash, then they
16 poisoned them again and their families, and now they want
17 to leave their coal ash behind in our city and ask them to
18 fund their half-baked job. We say no. We cry justice for
19 Town of Pines to ensure this atrocity does not ever repeat
20 itself, but that's exactly what's at stake tonight, isn't
21 it?

22 I am sick and tired of paying NIPSCO to sicken us
23 while their shareholders profit off of our trauma. How
24 many people in this room are sick and tired? Please raise
25 your hands if you agree.

1 All of the coal ash in Michigan City including
2 the 2 million tons sitting on Lake Michigan in Trail Creek
3 should be accounted for, not just 10 percent.

4 Costs should be proportionately shifted to
5 NIPSCO's record-profiting billionaire industrial customers,
6 not disproportionately off the backs of you and I and every
7 struggling ratepayer in this room tonight.

8 Then lastly, NIPSCO's removal should be
9 rightfully characterized as maintenance and operations, not
10 falsely as capital costs.

11 In closing, I am asking that the IURC deny
12 NIPSCO's current proposal and that the OUCC stands with us
13 in our demands to alleviate us of the funding of an unjust
14 and incomplete coal ash clean-up.

15 I am not alone in this room tonight; I know that.
16 We stand as one united as Michigan City, as a regional
17 community against NIPSCO's proposal.

18 Please deny this hike.

19 Thank you.

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(WITNESS ASHLEY WILLIAMS EXCUSED)

1 MS. HITZ: Lou Donkle?

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3 **LOU DONKLE**, a witness appearing on behalf of the Public,
4 having been first duly sworn, testified as
5 follows:

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7 A I am Lou Donkle; that's D-o-n-k-l-e, and I would like
8 to thank you for the opportunity to speak to you tonight on
9 the NIPSCO rate increase, case 45700, and before I get
10 started on the rate case, I would like to just say a word
11 about NIPSCO that I'm very pleasantly surprised that NIPSCO
12 appears to be a leader in announcing their conversion of
13 power generation from fossil fuel to renewable energy by
14 2028, so I would like to congratulate -- give
15 congratulations where they're due, and thank you for your
16 leadership on this subject.

17 So to frame the context of us here talking to
18 you, NIPSCO is a monopoly, but it's a regulated monopoly,
19 and they agree -- so they've been given the opportunity to
20 produce electricity for our benefit without competition but
21 on the basis that they're regulated, and that's where you
22 come in to represent our interests as consumers, so we
23 thank you for your efforts in doing that.

24 I have several items here for you to consider as
25 you're doing your evaluation of whether to grant the rate

1 increase. My comments are also submitted in writing
2 separately so if you want to follow up, there's a little
3 more detail there.

4 So I'm just an interested customer of NIPSCO,
5 and, you know, these two articles certainly caught my
6 attention. Seawall is a ticking time bomb. That rings a
7 bell; I think I just heard somebody say that, and that was
8 quite interesting, of course, and I was not really aware of
9 the coal ash problem until reading that, so I was pretty
10 interested from then on, and then just yesterday, there was
11 this editorial by NIPSCO, coal ash clean-up is a sign of
12 progress in the region. This is by NIPSCO's Vice President
13 of Environmental Policy, and I'll cite from these two
14 articles a little bit as I go.

15 The -- so I've got four basic areas of concern
16 that I wish you would consider as you are vetting this
17 issue.

18 First is that there's unfair cost shifting that
19 the industry should pay their historical share of power
20 usage versus residential should pay their historical share
21 of power use.

22 Second is that the cost plus contract format is
23 unfair for consumers. It seems to be an incentive to
24 generate higher costs which generate higher profits.

25 Third is that the proposal of full recovery of

1 costs seems to reward prior bad management because coal ash
2 has been a known issue for a long time. It seems to go
3 back at least to 1976 according to EPA records that I'll
4 explain in a little bit, and the fourth one is that the
5 proposal does only cover the coal ash ponds; it doesn't
6 seem to cover the solid landfill at all or the main land,
7 and that just begs all kind of questions.

8 So to go into just a little more detail on the
9 first one, unfair cost shifting, that the industry should
10 pay their historical share of power use, so in 2019, there
11 was another rate case. It was rate case 45159; I testified
12 there too. That case had the end result of shifting the
13 percentage of billing from the big group of industrial
14 customers to residential customers.

15 I believe after the rate case hearings like this
16 that that shift was reduced a little bit so the
17 customers you did exercise some influence. I'm kind of
18 going off my head here. I'm not sure that's true, but
19 that's the way I kind of remember it back at the time, so
20 the improvement was good, but, nonetheless, there was a
21 substantial shift of the burden of power cost and the
22 formula from industry the big industry to residential
23 and small commercial, but historically here, this coal ash
24 has obviously been generated over decades and decades, and
25 so when you consider the cost reimbursement for the

1 clean-up here, you've got to consider that the majority of
2 the coal ash was made by -- when the major power
3 consumption customer in the area was big industry, so that
4 would bode towards -- I'm not quite sure how the proposal
5 is structured here, but for sure it should recognize that
6 the current formula of a little bit heavier payment by
7 residential should be -- go back to the historical formula
8 where the industrial was the major contributor. So the
9 solution here is the industrial customers should pay a
10 bigger share than what I presume they are lined up to be
11 paying here. That was my first area of concern.

12 The second one was the cost plus contract format
13 is basically unfair to all customers. Any cost plus format
14 has got a built-in incentive for higher costs, so you get a
15 bid to do -- you know, put a new roof on your house or
16 something; you don't say come and put on a roof and I'll
17 pay whatever it costs you plus 10 percent. You get a fixed
18 estimate.

19 So my understanding of this -- I mean, we're
20 talking about a number here, \$40 million or something, but
21 even that is a fixed price. You know, NIPSCO has come up
22 with an estimate, and they've got the cost built in for
23 their profit.

24 I would suggest that the solution here is
25 whatever reimbursement or whatever recovery NIPSCO is

1 awarded for the costs they incur during this clean-up,
2 there shouldn't be a profit component in there at all. Any
3 profit component just motivates them to somehow -- or it
4 has already motivated them to come up with a higher cost so
5 they get more profit. So that's just the nature of cost
6 plus estimates or contracts. So that's a concern.

7 My third concern, again, was providing the full
8 recovery of the clean-up costs and that -- and that that
9 rewards bad management because coal ash has been a known
10 historical problem for a long time as far back as 1976, so
11 that reflects on NIPSCO's bad management in the past, I
12 would say, and the concept of full recovery for bad
13 management doesn't seem quite fair.

14 So the current structure, as I understand it, is
15 they're applying for 80 percent of the cost of clean-up to
16 be recovered now or fairly soon, and then at some couple
17 years down the road after the clean-up's done, they get
18 recovery for the remaining 20 percent, but that's still
19 100 percent recovery, so is that fair if its cost is
20 responsible -- is caused by bad management on NIPSCO's
21 part?

22 So in the article -- or in the opinion piece in
23 the paper by Kelly Charmichael he's NIPSCO's Vice
24 President of Environmental Policy -- he cited that the key
25 law involved here is the Coal Combustion Residuals Rule and

1 stated that the date for clean-up is -- the deadline for
2 total clean-up of the pond removal is 2023. So that
3 just -- you know, being kind of an analytical type of guy,
4 I go Coal Combustion Residuals Rule, I bet I can Google
5 that, and sure enough, you Google that, and it takes you to
6 the EPA website or, I mean, one of the -- it takes you a
7 lot of places, but the most interesting place was the EPA
8 website that gave a time line of this whole subject, and it
9 called -- the title of the website was "Legislative and
10 Regulatory Timeline for Fossil Fuel Combustion Wastes", so
11 that's pretty much the whole idea here. Coal Combustion
12 Residuals Rule or fossil fuel combustion wastes.

13 So that website lists -- has 39 entries going
14 back to 1976, and the very first one -- lest you think
15 there's just a lot of discussion and picking around bad
16 ideas in '76, the very first one was the Resource
17 Conservation and Recovery Act, which has to do with
18 which is -- which involves recovery of fossil fuel
19 combustion waste. So I've got the website in my
20 attachment -- or my source here that you can look up if you
21 like.

22 So that's how far back the history -- the legal
23 history with the EPA of this subject goes, and there's been
24 a lot of steps in between. Certainly by 2008 when
25 Kingston, Tennessee had their massive coal ash spill, all

1 utilities in the world would have been alerted to the fact
2 that coal ash is a real problem.

3 Then in the next article, the ticking -- or not
4 the next but actually the first article, the ticking time
5 bomb article, the Reporter there, Molly Devore, did a
6 really good -- a thorough job of investigating some legal
7 background on this subject, and she had two particular laws
8 related to this case that were of interest to me.

9 In 2015, the EPA ruled that in unlined coal ash
10 ponds, which is what we have here with the coal ash ponds,
11 2015, it says if there is detected groundwater
12 contamination, then the rule is you've got to stop
13 receiving coal ash and start a process to close the
14 landfill. In 2015, NIPSCO certainly would have been aware
15 that -- I don't know if they had detected groundwater
16 contamination then, but it kind of sounds like they
17 probably did; certainly they'd been on alert anyway.

18 Then the next one cited in the article is in
19 2020, the EPA rule -- they tightened the rule and said that
20 all unlined coal ash ponds must begin to close; no matter
21 what you detect, you've got to close starting in 2020.

22 So here we are two years later, and now it's a
23 problem? I just kind of wonder why this wasn't being dealt
24 with, you know, a decade or decades ago. It just seems
25 like there's room to criticize the management of our public

1 utility that is being regulated by us -- or by you for us,
2 and you should consider that when you decide how much you
3 want to allow NIPSCO to claim a cost recovery with profit.

4 And the fourth and last item I had is one that
5 I've heard many times here tonight which has to do with --
6 they're planning to recover and fix -- you know, reclaim
7 only the coal ash ponds, not the solid landfill. I've
8 heard people saying 10 percent. I'm kind of guessing maybe
9 10 percent of the waste is in the ponds and 90 percent is
10 in the landfill.

11 So the interesting point I found on this is in
12 the editorial by Kelly Charmichael, the vice president --
13 NIPSCO's Vice President of Environmental Policy, he's got
14 the quote in there that the primary source of the known
15 groundwater impacts is believed to be the ash ponds. The
16 primary source of the contamination is believed to be the
17 ash ponds. Well -- so that's why the program is nothing
18 but ash ponds? It sounds like they're just not as sure as
19 we all wish they were for something that is as hazardous to
20 us people that live right around these ash ponds.

21 So it begs the question: What if he's wrong?
22 What if the plan is not good enough? So the solution is
23 that we'd have a comprehensive plan to remove all of the
24 ash -- all of the coal ash, not just the ash ponds. It
25 should be the landfills too, and I know that's not

1 particularly a rate issue but certainly a concern.

2 If you have any influence in that regard, your
3 influence would be greatly appreciated, and that's all I've
4 got.

5 Thank you for the opportunity.

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17 **(WITNESS LOU DONKLE EXCUSED)**

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1 MS. HITZ: Sheila Brillson Matias?

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3 **SHEILA BRILLSON MATIAS**, a witness appearing on behalf of
4 the Public, having been first duly
5 sworn, testified as follows:

6

7 A Good evening. Sheila, S-h-e-i-l-a, Brillson,
8 B-r-i-l-l-s-o-n, Matias, M-a-t-i-a-s.

9 I know it's been a long evening, and so I'll try
10 to be brief.

11 My I'm here as a private citizen; I'm here as
12 a mother of six and a grandmother of 12; I am also the
13 former Mayor of Michigan City. I was Mayor for two terms
14 in 1996 to 2003, and I'm currently a LaPorte County
15 Commissioner, but I'm here as a private citizen because I'm
16 really proud of our community tonight. They spoke from the
17 heart. A lot of facts, a lot of feeling; we need you to
18 hear us. You have a huge responsibility to represent us
19 and be our voice.

20 I know that rates and removal of 100 percent coal
21 ash seem like two different things, but I've been in and
22 out of politics for a while, and I know that the rate
23 conversation can control the action plan. You can use that
24 as a pressure point on our behalf.

25 There is no way that the west side of Michigan

1 City, which is home to the Indiana State prison looming
2 over it and has the coal ash pile and the cooling tower
3 right there, can ever be the neighborhood our community
4 wants it to be. It is not fair to the people who live
5 there who have dust on their cars. If you work at the
6 Indiana State prison, you come out after your shift and
7 there's coal ash, a nice layer.

8 I worked at City Hall for eight years, always a
9 layer of coal ash. When the wind would blow, there was
10 coal ash on your car. That's in the lungs of our children;
11 that's in the lungs of our parents, our working families,
12 and our elders.

13 Lake Michigan provides drinking water for
14 13 million people in the watershed. 13 million people. It
15 is one of the largest fresh bodies of water in the United
16 States. People want our water.

17 I'm on the NIPRC Commission, and they had some
18 harebrained idea about piping water out of Lake Michigan to
19 areas of the country that don't have good water.

20 Our water is precious, and our responsibility is
21 to take care of it and to treat it like it's precious
22 because we have generations that long after we're all
23 gone long after everyone in this room is gone, there
24 will be people who will be thirsty who will want to drink
25 good water.

1 So on behalf of all those people, I beg you and I
2 urge you to use the power that you have to represent the
3 people of this county, the people of northwest Indiana,
4 those 13 million people I talked about who need safe
5 drinking water whose health has already been impacted in
6 many cases by our high cancer rates. That doesn't just
7 happen. We have superfund sites all over northwest
8 Indiana. This is not the -- the Pines is a terrible
9 tragedy and an omen of what could come. The Pines is a
10 superfund site, a town. It's on their playgrounds; it's on
11 their streets; it's in their garden beds. The grow a
12 tomato in coal ash. That's inexcusable.

13 So on our behalf, please do what you can to
14 represent; the people of northwest Indiana deserve good
15 health and good water.

16 Thank you.

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(WITNESS SHEILA BRILLSON MATIAS EXCUSED)

1 MS. HITZ: Andrew Kubik?

2 Donna Kavanagh?

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4 **DONNA KAVANAGH**, a witness appearing on behalf of the
5 Public, having been first duly sworn,
6 testified as follows:

7

8 A My pants are falling down.

9 Well, thank you, first of all, for coming all of
10 the way up from Indianapolis and sitting here all these
11 hours listening to us.

12 I'm honored to be here with my fellow citizens.
13 I guess I should be comic relief. I have some --

14 COURT REPORTER AMYL. TOKASH: Can you please
15 spell your name for me?

16 A Oh, I'm sorry. Donna Kavanagh, D-o-n-n-a-
17 K-a-v-a-n-a-g-h, and for historical reference, yes, my
18 cousin is Brett Kavanaugh; he never molested women, and
19 please leave him alone. Don't picket.

20 I grew up with John Roberts in Long Beach,
21 Indiana, and I just want to say that -- Well, for reference
22 for you, I live alone with my cousin who came to live with
23 me. She was supposed to live here two weeks; she's been
24 with me for four years. The family joke that is true, she
25 worked for one of the only governors in Illinois that

1 didn't go to prison, okay?

2 So I do have some information -- and, sorry, I
3 lost a little weight recently; I'll tell you why later. I
4 have some information and background for corruption and
5 pain and suffering, but you should know that normally for
6 the past X amount of years, my typical highest rate at
7 Christmastime with NIPSCO is about -- between 150 and \$225
8 a month. This Christmas, I opened the bill. Now I am on
9 some kind of payment plan because I'm behind \$525, and you
10 want to raise it again. Please have some sympathy for us,
11 okay?

12 Now I want to give you a little historical
13 perspective, and please bear with me because some of you
14 should know this. I was born in 1952 with Queen Elizabeth
15 who just celebrated her Platinum Jubilee, and so I came
16 here from New York City. My father was the first national
17 sales manager of Barnes & Noble, and Mr. Barnes and Mr.
18 Noble have been to my house. I live in Long Beach, Indiana
19 three miles from here. I am not a millionaire, and -- but
20 I was dragged here.

21 Now this wasn't here when I first moved here at
22 three years old. You could see all the way down Franklin
23 Street from the lake, all the way down -- Franklin Street
24 was a busy shopping area. It was a beautiful -- and I
25 remember saying to my parents when we drove through here

1 are we joining the circus because it was just so beautiful.

2 Now I've seen a lot of pollution and crazy things
3 come and go in my lifetime, but let me give you a little
4 perspective. We had protestors outside on the you are
5 beautiful -- I call it the plantation where they're going
6 to build -- they're going to build big condos. People are
7 coming here because of the double track. We're supposed to
8 be growing and prospering now, and now we're looking at
9 this.

10 So what happened was that when I was in high
11 school in 1970 -- I'm sorry, it's true -- we protested when
12 we were told that they were going to build the NIPSCO
13 cooling plant out here. We knew about the Hoosier Slide,
14 and I have to admit that as teenagers, we used to go out to
15 the NIPSCO area where the cooling tower is now, and I had
16 my first kiss out there; I have to admit it, okay? It was
17 just a beautiful area, all right, and so we went to the
18 Mayor, and Mayor Brillson is here; I'm going to talk about
19 her in a minute for good reasons. Stay put, okay? It's
20 good.

21 So I was brought on the Mayor's Commission --
22 Mayor [inaudible] was Mayor in 1970 -- along with high
23 school kids from Marquette High School where I went to,
24 the Catholic high school, and Elston which is no longer
25 there, and we were asked to talk with each other because

1 there was the civil rights going on and the black and white
2 fighting, and they thought if -- if -- if -- Mayor
3 [inaudible] thought if we kids could get together, there
4 would be no more protesting and fighting.

5 Well, one thing we did learn at that Mayor's
6 conference -- and we would meet in the Mayor's office once
7 a week as teenagers. When we found out about NIPSCO, we
8 protested, okay? We had signs coming down Franklin Street,
9 and we were on the site saying please don't do this.

10 So as a Commission member, I went to the Mayor,
11 and I said, Mayor, please don't do this. We don't want it;
12 we love that area. It's special to us, and you know what
13 he said to me, and I got it -- and we [inaudible] some
14 politicians [inaudible] here in the --

15 COURT REPORTER TOKASH: Excuse me, ma'am.

16 I can't hear you when you turn and face the
17 audience away from me.

18 A Oh, I'm sorry. Yes, okay. I'm just used to talking,
19 I'm sorry, on camera. I do radio and television; I
20 freelance.

21 So what the Mayor said to me was, Donna, NIPSCO
22 just gave us \$1 million to lay the foundation. Now if you
23 and your students can come up with \$1 million, I'll change
24 my mind. Otherwise, welcome to the real world. I'll never
25 forget that as long as I live. I can still see where I was

1 when he said that to me, and, hence, it was built.

2 Now I don't want to dump on NIPSCO completely,
3 and I'll tell you why. I was seeing what was going on with
4 trees in Michigan City and in my own community and my own
5 property, and so I went to then Mayor Brillson who was
6 Mayor at the time in 1995, and I said can we start a tree
7 board, so we started the tree board. I started it along
8 with several other people here in Michigan City, and we
9 were named Tree City USA, and then I was brought on to the
10 State Board. I went down to Indianapolis at least once a
11 week, and we taught people how to trim trees properly and
12 form state tree boards, and we taught NIPSCO how to trim
13 properly, and what they did for us here is they gave us a
14 lot of money to plant trees in Michigan City, and I'll tell
15 you that I appreciate NIPSCO for the things that they've
16 done like that, but not this.

17 And I will tell you that I went to church at St.
18 Ann's in Beverly Shores. It's about 10 miles that way.
19 The Pines is about maybe, what, 8 miles that way. I used
20 to ride my bike sometimes to church, or sometimes I would
21 just ride in my little convertible. I would see open air
22 trucks leaving the NIPSCO site with fly ash in the back.
23 It was like a pickup truck; it wasn't even covered, and you
24 could see the stuff flying. I didn't know what it was. It
25 was like Sunday or Saturday whenever I would see it. Well,

1 those people in the Pines have been tortured. It is now
2 2022, and they've been living with cancer and all sorts of
3 problems for decades. That whole area is still -- as you
4 brought up still horribly polluted, and I've seen my
5 friends that I grew up with that lived there die horrible
6 deaths. It's terrible. You want to do that to us again,
7 NIPSCO, and God bless NIPSCO; they've done some really good
8 things for our community, but this is not one of them.

9 Now I will also tell you in 2019 we started
10 losing our beach here. I know all the people behind me
11 know what I'm talking about. The whole coast up and
12 down -- this coast up into southwest Michigan, their houses
13 are still falling into the lake. Where I live in Long
14 Beach, I told our town council, please, the McMansions are
15 coming. Don't let them build on the lake side. Well, that
16 was 20, 30 years ago they let them build. You know, I
17 wouldn't wish this on my worst enemy. You have the money?
18 You can do it, but guess what? They're falling into the
19 lake because our lake level was so high we lost our beach.
20 You should have seen what was splashing up on the NIPSCO
21 cooling tower.

22 Whoever brought up the information about the wall
23 failing, that is true. The amount of destruction we have
24 and still have -- Where I live in Long Beach, I used to see
25 the couches going down the lake in 2019. The houses were

1 falling apart before my eyes. The street where I live, the
2 water and the NIPSCO lines are together. I had to call
3 Chicago. We have Mary Ann Ahern that grew up here on
4 Channel 5 and South Bend where I have a TV show on WNIT and
5 plead with them to come and cover it because the water was
6 coming underground. It was breaking up the lines, and my
7 whole community, especially the street where I lived, could
8 have gone up in -- been -- gone up in smoke. It was
9 terrifying. This can't happen to us again, please.

10 I'm pleading with you because what will happen is
11 we'll see that wall fail. We'll have the whole lake
12 polluted. This is not a joke, and, you know, they have
13 droughts out west. They've been asking Minnesota for help.
14 I know Las Vegas just had a big rain storm and so did
15 Kentucky, but the -- some of the big lakes -- Lake Powell,
16 et cetera -- they're dry. As a matter of fact, the mafia
17 that buried bodies there decades ago, they're starting to
18 come up. This is a crazy time, all right? So they're
19 going to be asking us for water. I already know that China
20 comes up up above in the upper peninsula and gets water
21 out of Lake Michigan, but, you know, if we are polluted, we
22 won't be able to swim there; we won't be able to go to the
23 beach there, nothing, and you can't come up and visit us at
24 the national park because it will be dead. It will be a
25 dead space, and we have a lot of those, so, please, I'm

1 pleading with you. Think about this when you go back and
2 talk to your people and you think about what you heard
3 here.

4 And the final thing I'm going to reveal to you
5 and to my fellow citizens is at 70, a year-and-a-half ago,
6 I was diagnosed with Stage 1 cancer, which is why my pants
7 keep falling down because I keep losing weight. I battled
8 it for a year-and-a-half. Thank God, knock on wood, I'm
9 okay. I wonder how did I get it? We don't know, okay, but
10 I do know that when NIPSCO opened the steam, which turns
11 black at night -- Why is it black all of a sudden? It
12 comes across the lake, and where I live right here in Long
13 Beach is the highest hill from here to there. It's called
14 Silvertip. It's gigantic. It goes straight down. Well,
15 that air hits right at the top of Silvertip, and I can tell
16 you -- I was in graduate school in New York City at the
17 time, and I did a lot of -- this is the last thing I'll
18 say. I did a lot of information hunting about that because
19 the same thing was happening on Long Island in New York
20 where I was born, but air that came down, it hit
21 Silvertip -- and I know how you feel because I'm getting
22 choked up just talking about it. The women on the top of
23 Silvertip and the houses all the way down including the
24 bottom where my family bought the house in 1961 where I
25 live now -- and by the way, there was black dust all over

1 the -- everything in our house from NIPSCO back then.
2 Still happening as people have brought up. All of the
3 women down Silvertip including the women at the bottom of
4 Silvertip where I live where my mother and father had just
5 bought the house, they all got cancer and died including my
6 mother who died in 1972 from cancer.

7 So I'm just saying there's a lot more to the
8 story when you look deeper into what's happening, and that
9 wall is going to fail. I've looked at it myself. With my
10 camera, I went out and did a lot of filming with a friend
11 of mine that had a boat right after the water started
12 coming down and we started getting our beach back, which we
13 kind of have now. That wall is ready to fall apart, and
14 you're going to let all of that fly ash in Lake Michigan.

15 I just want to plead with you from the bottom of
16 my heart to listen to what everybody has said here, and as
17 they said, the young people after all the mass murders and
18 they went to Washington, they said do something. So that's
19 what I'm asking and pleading from you.

20 Thank you for your time. Thank you for coming up
21 here. God bless.

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25 **(WITNESS DONNA KAVANAGH EXCUSED)**

1 MS. HITZ: Tina Mahone?

2

3 **TINA MAHONE**, a witness appearing on behalf of the Public,
4 having been first duly sworn, testified as
5 follows:

6

7 A Hi, and thank you for having this forum here in
8 Michigan City.

9 My name is Tina Mahone, T-i-n-a M-a-h-o-n-e, and
10 unlike most of the people who spoke today, I am from
11 Michigan City, born and raised -- thank you, Ms.
12 Brillson on the west side. I only heard one person
13 mention the west side of Michigan City, but I was raised
14 there. I attended Park Elementary School, which is now
15 closed and has been for some years. I graduated from
16 Rogers High School. I went on to go to Purdue University
17 and became an engineer, lived in Atlanta for a number of
18 years, and then brought my family back to Michigan City
19 because my parents are here because I wanted them to see
20 their grandkids grow up but because I love the lake. I
21 love Michigan City. When my nieces and nephews come in
22 town, the first place we go is Mount Baldy. I take my kids
23 to Mount Baldy. I -- we spend Memorial Days and Labor Days
24 at Michigan City Washington Park. In the pictures, people
25 think we're on vacation somewhere, and it's right here in

1 Michigan City.

2 So my concern is the three kids and believe it or
3 not the two grandkids -- three grandkids that I now have.
4 We enjoy Michigan City, but it's also my parents who still
5 live on the west side in the house I grew up in who walk
6 out of their front door, and the first thing they see is
7 the huge tower that I grew up under wondering why when it
8 wasn't raining on the east side it was raining on the west
9 side and asking my teachers at Park Elementary School: Are
10 those towers dangerous? Is that really where clouds come
11 from? I really thought for a while that we in Michigan
12 City made our own clouds. Little did I know how dangerous
13 those clouds were.

14 My brothers -- one is here -- both had asthma
15 their entire life. My mother is a cancer survivor, had
16 thyroid disease. Many of my friends who also attended Park
17 School and lived on the west side their entire life, their
18 mothers -- who are my mother's age -- died of thyroid
19 disease.

20 I asked NIPSCO to do what they said they would
21 do. My first knowledge of this was when I saw at Pullman
22 Field -- which is a neighborhood park that I grew up
23 playing at. Some years ago, I was very upset when they
24 were going to rebuild -- put money into Pullman Field Park,
25 but they were only putting money into this very small

1 corner of the skating park. Well, I grew up on that park
2 playing there my entire life. As a matter of fact, at the
3 time, the same playground equipment was there as when I
4 played their 45 years before. So I worked with a group; we
5 did a petition, and we got the playground equipment totally
6 renovated. We got a small walking track. We made
7 improvements to that park, but now I feel guilty because
8 the very kids I wanted to have a better park, I feel like I
9 am playing a part in their -- in the risk of them playing
10 on contaminated soil because of the coal ash because we
11 know it's under the ground. It's not stopping just leaving
12 the lake. It's actually under the ground at the very
13 playground that we just renovated for those same low income
14 kids on the west side, kids who look just like me. Kids
15 who I wanted to come back.

16 After completing a degree in engineering, 20
17 years of work experience at that time, now over 30, I now
18 work for a polluter. I did not know at the time. I now
19 work -- I'm now an engineer for Cleveland-Cliffs Steel
20 Company. Little did I know the history of coal ash, but
21 the more I learned, the more guilty I felt, but it's not
22 our fault. We didn't do it; we shouldn't pay for it, and
23 NIPSCO should be held responsible for the damage that they
24 put into this community.

25 So I came back to the City, one, because I love

1 Michigan City. I didn't bring personal pictures, but if
2 you I don't know if you're -- if you all are familiar,
3 but if you look at our Michigan City LaPorte magazine which
4 shows all the water sports -- Are you all familiar with
5 this? So we proudly boast the lake that we're polluting,
6 and then ironically, I looked at the last page of this
7 particular one, and who has a full page ad? NIPSCO with a
8 little girl who looks just like me at Park Elementary
9 School with a future to do anything I wanted to do. So I.
10 went to school; I pursued engineering; not a lot of us do.
11 There's not a lot of brown girls in engineering.

12 This article says NIPSCO will complete 14
13 renewable energy projects by the time she starts high
14 school. That could have been me. I don't know how old
15 this little girl is, but should we pay for NIPSCO's 14 new
16 renewable energy projects while they still kill the
17 residents who are here now? It's not fair; it's not right.

18 I ask that you not approve this hike. I didn't
19 understand it, and I almost didn't come today because I saw
20 the article on Friday saying a rate hike was approved.
21 Well, I didn't understand how the game was played, that
22 there's several rate hikes, and that's just another one.
23 That's -- and then there's another one after that, so we're
24 really going to pay for all of the polluting that they do,
25 and it just doesn't seem right. It seems like the polluter

1 wins and not the citizens.

2 So I ask you on my behalf, on my parents' behalf,
3 and on all the little girls that NIPSCO say they support --
4 And I just want to read what they say. Your energy, your
5 future. If we are informed consumers, I don't think we
6 asked to pay for this. We're not paying for their solar
7 energy by having them kill us and leaving coal ash in our
8 communities. It's not right, and their statement is
9 NIPSCO, the future will be here before you know it; that's
10 why we're making swift and steady progress on a number of
11 initiatives within the plan we call your energy, your
12 future and are on track to achieve our goals in the areas
13 of economic growth, social responsibility, and
14 environmental stewardship.

15 So I ask them to be held accountable for false
16 advertisement. I ask that they not be allowed to pursue
17 this rate hike and that you consider us in your final
18 decision.

19 Thank you.

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(WITNESS TINA MAHONE EXCUSED)

1 MS. HITZ: Brian Gross?

2

3 **BRIAN GROSS**, a witness appearing on behalf of the Public,
4 having been first duly sworn, testified as
5 follows:

6

7 A Hello. My name is Brian Gross, B-r-i-a-n G-r-o-s-s.

8 I lived in Fort Wayne for several years before I
9 moved here. Fort Wayne is part of Indiana Michigan Power
10 which gets a lot of their power from -- it was Palisades
11 and Donald C. Cook nuclear plants. Moved here in LaPorte
12 County, and my rates basically quadrupled. I think I was
13 paying almost four times as much per kilowatt hour once I
14 moved into NIPSCO's territory.

15 They didn't have any nuclear plants seeing that
16 they had abandoned the Bailly plant at about 2 percent of
17 construction because it was going over budget. I don't
18 know who their management was then or what happened, but I
19 think they tried to recover those rates too on a plant that
20 never went into production from the ratepayers. They were
21 trying to petition your Commission -- this is going back
22 decades -- to have us, the ratepayers, pay for something
23 that we were never even able to use.

24 I also used to be a NiSource stockholder, which I
25 believe is still the parent company of NIPSCO. I haven't

1 been a NiSource stockholder now for about a decade or so.
2 I was for about 15 years, and I never recall in the annual
3 reports ever seeing anything about reserves for coal ash or
4 any expenses on that which definitely was -- had to be
5 known by then, and I understand, you know, as a stockholder
6 that they expect a return on their investments and all
7 that, but if you've looked at your 401k or IRAs this year
8 at all and you read the bottom that says past returns are
9 not guaranteed and all this other stuff, stocks go up and
10 down, and shareholders basically are gambling, okay?
11 Ratepayers should not be gambling. Ratepayers should know
12 what they're up against, and they should be paying for the
13 services they get.

14 Typically when they build a utility, the utility
15 is not allowed to charge the ratepayers for the building of
16 that utility; the stockholders bear that cost until the
17 utility goes on line. The same should probably be -- it
18 should probably be the same when they're decommissioning a
19 utility. The decommissioning should have been figured in
20 during the use of that utility, and the stockholder should
21 be bearing that cost, not the shareholders. The
22 stockholders are the ones that have been benefiting for
23 decades from the running of that plant. Why aren't they
24 the ones also responsible for shutting it down and cleaning
25 it up?

1 You know, I feel that as -- if NIPSCO is a good
2 neighbor, if they're a responsible corporate partner and
3 everything else, they should fully remediate this site and
4 bring it back to the condition it was in before they
5 occupied it, and I understand the EPA hasn't been around
6 forever and we didn't care about pollution 50, 60, 70 years
7 ago, but we do now, and we need to handle it.

8 40 years ago, if I drove up I-65 towards Chicago,
9 I could tell when I was in the region. The clouds -- the
10 sky just got hazy. It's not like that anymore. A lot of
11 industries have done a lot of stuff to clean up the air.
12 We also need to clean up this coal ash so that we aren't
13 facing the same problem.

14 I currently kayak on Michigan City. I come up
15 Trail Creek; I go past NIPSCO. Calm day, the water's
16 pristine. I can see 7 feet down. I stick my oar down
17 there and I know it's 7 feet because the oar is 6 feet and
18 I'm a foot under water. You start getting coal ash leaking
19 in there, it's not going to be the pristine water anymore.

20 I also live on the west side, so there's coal ash
21 and then there's coal dust. Got a big coal pile out there,
22 and they do water it. I'm sure the watering is partly to
23 keep the coal dust down, partly so that an errant spark
24 doesn't start the whole coal field on fire, but I still get
25 a lot of coal dust flying into my screens and all that. I

1 kind of understand that; I live near the coal field, you
2 know, but the coal ash really needs to be remediated, and
3 again, I don't see where the ratepayers should be paying
4 for this. This is something that NIPSCO over the years and
5 decades should have had reserves on the books to pay for
6 when they decommission the plant, and again, in my annual
7 reports, I have just never seen anything like that. It
8 needs to be remediated before this becomes another EPA
9 superfund site.

10 One other thing I would like to suggest is that
11 if you ever do have another hearing up here, I really
12 suggest we have it on the Lake Michigan lakefront at
13 Washington Park at the Sunset -- what is that? -- Grill.
14 Thank you. Much nicer environment.

15 Thank you.

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(WITNESS BRIAN GROSS EXCUSED)

1 MS. HITZ: That is all the speakers that I have.

2 I misspoke; we have an additional speaker.

3

4 **CHERYL CHAPMAN**, a witness appearing on behalf of the

5 Public, having been first duly sworn,

6 testified as follows:

7

8 A Hi. Cheryl Chapman, Cheryl with a C-h-e-r-y-1

9 Chapman, C-h-a-p-m-a-n, so thank you very much for coming
10 and doing this and staying with us all night long.

11 As a resident of Long Beach, also a grandmother,
12 a retired teacher, a community volunteer here, and as
13 someone who takes seriously everyone's obligation to be
14 good stewards of the environment, I'm here today of course
15 like everyone else to ask that NIPSCO reconsider this rate
16 hike and doesn't do it.

17 I know it doesn't sound like much, but I do
18 understand the rate hike is supposed to cover the coal ash
19 clean-up of the 10 percent. I've been studying the coal
20 ash problem in Michigan City and throughout Indiana for
21 several years now.

22 When our local coal-fired plant was first put
23 into service in the early 1930s, nobody probably then
24 thought about the toxic threat that coal ash would become,
25 nor did they consider the future rise in our lake levels or

1 the fact that the seawall was not going to last forever or
2 the different seawalls they put in. This has been really
3 educational for me tonight; I've been learning a lot.

4 In 1976, I guess -- I thought it was '79, but in
5 '76, the EPA not wishing to make the electric companies
6 responsible for the previous decades' unintentional bad
7 planning passed a law saying that all of the coal ash
8 generated from then onward and in a position to threaten
9 water supplies should be taken to safer locations upon the
10 plants' closures.

11 In the Michigan City case, this is the upper 10
12 percent of the coal ash ponds. NIPSCO's planning on
13 leaving the other 90 percent, as we know, to be cemented
14 over and still behind the seawall. Ideally, they should
15 remove 100 percent of the coal ash, and we all hope that
16 they do, so that the lakefront can be reclaimed for public
17 use because in Indiana, the lakeshore up to the ordinary
18 high water mark is designated for public use. NIPSCO, I
19 believe, only leases the Michigan City property; they don't
20 own it.

21 So I oppose this increase because whether NIPSCO
22 removes the 43 years' worth of coal ash deposited since '79
23 or the 91 years' worth of coal ash deposited since 1931, it
24 isn't fair to make the current residential customers pay
25 for decades and decades of accumulated coal ash removal.

1 This is a problem throughout Indiana. We're not
2 the only ones here in Michigan City, so you may hear from
3 other people. A lot of the coal ash ponds are near fresh
4 water and drinking water throughout Indiana', and NIPSCO
5 should work with the environmental organizations and IDEM
6 to be good stewards -- actual good stewards of the
7 environment and procure federal and state funding for these
8 efforts. They shouldn't take the easy way out by balancing
9 the budget on the backs of us consumers and by limiting
10 their stewardship to only 10 percent of cleaning up the
11 banks of Lake Michigan.

12 I'm hoping that everybody -- you, us, NIPSCO --
13 will all somehow be able to work together to procure the
14 clean water future that our children deserve. As a
15 grandma, it's all about the kids, so thank you very much
16 for listening.

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(WITNESS CHERYL CHAPMAN EXCUSED)

1 MS. HITZ: Is there anyone else who wants to
2 speak at this time?

3 Seeing none, Your Honor, I would submit what has
4 been marked as Public's Exhibit Field Hearing 1 into
5 evidence.

6 THE COURT: Thank you.

7 Any objections?

8 MR. LIKINS: No objections from the Petitioner,
9 Your Honor.

10 MS. WASHBURN: No objection from CAC.

11 THE COURT: Thank you.

12 Then Public's Exhibit Field Hearing 1 is admitted
13 into evidence.

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15 (PUBLIC'S EXHIBIT NO. FH-1, BEING PUBLIC FIELD
16 HEARING QUESTIONNAIRES AND COMMENTS, ADMITTED
17 INTO EVIDENCE.)

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1 THE COURT: And, with that, we will continue this
2 hearing to the evidentiary hearing on September 27, 2022 at
3 9:30 A.M. in Room 222 of the PNC Center.

4 Thank you, everyone, for coming out tonight. We
5 appreciate it.

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19 (FIELD HEARING ADJOURNED)

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23 (AND CONTINUED TO SEPTEMBER 27, 2022 AT
24 9:30 A.M. (EDT) IN ROOM 222 OF THE PNC CENTER,
25 INDIANAPOLIS, INDIANA)

	3	ADJOURNED [1] 60/19 ADMINISTERED [1] 1/11 admit [2] 40/14 40/16 admitted [2] 59/12 59/16 advertisement [1] 51/16 affect [1] 11/12 affects [2] 9/8 11/9 afraid [1] 17/15 after [10] 3/5 28/15 30/17 36/6 36/22 36/23 46/11 46/17 49/16 50/23 again [10] 11/3 18/1 21/20 24/16 30/7 39/10 43/6 44/9 55/3 55/6 against [6] 3/19 16/20 16/21 21/25 25/17 53/12 age [1] 48/18 aging [1] 23/2 ago [7] 32/24 43/16 44/17 45/5 48/23 54/7 54/8 agree [3] 24/4 24/25 26/19 Ahern [1] 44/3 ailing [1] 23/14 air [8] 6/9 8/22 22/11 22/21 42/21 45/15 45/20 54/11 alert [1] 32/17 alerted [1] 32/1 all [64] alleviate [1] 25/13 allow [2] 14/12 33/3 allowed [2] 51/16 53/15 almost [3] 10/23 50/19 52/13 alone [3] 25/15 38/19 38/22 along [2] 40/22 42/7 already [8] 6/12 6/21 9/11 16/4 24/14 30/4 37/5 44/19 also [15] 2/3 9/21 19/11 23/20 23/24 27/1 35/12 43/9 48/4 48/16 52/24 53/24 54/12 54/20 56/11 although [1] 11/2 always [8] 4/19 4/20 4/25 11/6 16/20 16/22 17/20 36/8 am [14] 6/1 11/22 22/1 22/18 24/10 24n225M125M52fi1735M239ffi 39/19 47/10 49/9 Amen [1] 24/7 amend [1] 12/3 America's [1] 3/12 amount [2] 39/6 43/23 AMY [1] 38/14 analytical [1] 31/3 Andrew [1] 38/1 Angels [1] 8/23 Ann [1] 44/3 Ann's [1] 42/18 announcing [1] 26/12 annual [2] 53/2 55/6 another [7] 2/17 5/11 28/11 50/22 50/23 55/8 55/11 Anthony [5] 8/1 19/1 19/9 20/9 20/18 antique [1] 2/21 any [12] 3/4 3/13 14/11 15/16 19/13 23/25 29/13 30/2 34/2 52/15 53/4 59/7 anymore [3] 19/22 54/10 54/19 anyone [2] 15/20 59/1 anything [5] 9/4 19/25 50/9 53/3 55/7 anyway [1] 32/17 apart [2] 44/1 46/13 appearing [12] 1/17 8/4 13/5 15/3 19/1
MR. LIKINS: [1] 59/8 MS. HITZ: [12] 1/14 8/1 13/1 15/1 21/1 26/1 35/1 38/1 47/1 52/1 56/1 59/1 MS. WASHBURN: [1] 59/10 THE COURT: [5] 1/5 1/13 59/6 59/11 60/1	30 [3] 5/11 43/16 49/17 30 feet [1] 6/8 39 [1] 31/13	
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	90 percent [2] 33/9 57/13 91 [1] 57/23 9:30 [2] 60/3 60/24	
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