

**ORIGINAL**

| Commissioner | Yes | No | Not Participating |
|--------------|-----|----|-------------------|
| Huston       | √   |    |                   |
| Freeman      | √   |    |                   |
| Krevda       | √   |    |                   |
| Ober         | √   |    |                   |
| Ziegner      | √   |    |                   |

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF THE TESTIMONIAL STAFF OF THE INDIANA )  
UTILITY REGULATORY COMMISSION’S PIPELINE SAFETY ) CAUSE NO. 44970 S2  
DIVISION FOR PENALTIES RELATED TO 2018 VIOLATIONS )  
OF PIPELINE SAFETY STANDARDS UNDER THE APPROVED ) APPROVED: AUG 05 2020  
SETTLEMENT AGREEMENT IN CAUSE NO. 44970. )**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**James F. Huston, Chairman**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On December 31, 2019, the Testimonial Staff of the Pipeline Safety Division (“Division”) of the Indiana Utility Regulatory Commission (“Commission”) (“Testimonial Staff”) filed a petition initiating this subdocket in which the Division requests approval of penalties against Northern Indiana Public Service Company LLC (“NIPSCO”) for 2018 pipeline safety violations. The Testimonial Staff prefiled the direct testimony of William Boyd, the Division’s Director on March 17, 2020.

On April 13, 2020, NIPSCO filed the direct testimony of Daniel L. Douglas, Senior Vice President of Gas Operations for NIPSCO. On that same day, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Notice of Intent Not To File Testimony.

On May 19, 2020, the Presiding Officers requested additional information from the Division, to which the Division responded on May 21, 2020.

The Commission noticed this matter for an evidentiary hearing at 9:30 a.m. on May 26, 2020, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A Docket Entry was issued May 22, 2020, advising that in accordance with Indiana Governor Holcolmb’s Executive Orders related to the COVID-19 pandemic, the hearing would be conducted via teleconference and providing related information. The Testimonial Staff, NIPSCO, and the OUCC, by counsel, participated in the evidentiary hearing via teleconference, and the testimony and exhibits of the Division and NIPSCO were admitted without objection.

Based upon the applicable law and the evidence herein, the Commission now finds as follows:

**1. Notice and Jurisdiction.** Due, legal, and timely notice of the public hearings in this Cause was given and published as required by law. NIPSCO is a public utility within the meaning of Ind. Code § 8-1-2-1 and is subject to, among other requirements, the gas pipeline safety standards and requirements set forth in Ind. Code ch. 8-1-22.5, 170 IAC 5-3, and incorporated federal pipeline safety regulations. The Commission, therefore, has jurisdiction over NIPSCO and the subject matter of this proceeding.

**2. NIPSCO’s Characteristics.** NIPSCO provides natural gas utility service to more than 821,000 retail customers in 32 counties of Indiana pursuant to authority granted by the Commission.

NIPSCO also provides electric utility service to more than 468,000 retail customers in 20 counties in Indiana pursuant to authority granted by the Commission. NIPSCO owns and operates pipeline facilities and is engaged in the operation, distribution, and provision of natural gas to the public within the State of Indiana and is subject to the provisions of 49 C.F.R. Part 192 as incorporated into 170 IAC 5-3.

**3. The Division.** The Division is a division of the Commission established by Ind. Code § 8-1-22.5-4, including the administration and enforcement of federal pipeline safety standards under the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 60101 *et seq.*), as amended and incorporated into state law through 170 IAC 5-3-0.6. The Division employees include inspectors and engineers tasked with, among other duties, inspecting Indiana pipeline facilities.

**4. Background and Requested Relief.** NIPSCO is subject to pipeline safety standards applicable to transportation and related pipeline facilities established under the Natural Gas Pipeline Safety Act of 1968 as those federal laws are incorporated into state law. The Commission has authority under Ind. Code § 8-1-22.5-7, after notice and opportunity for public hearing, to impose a civil penalty for violations of Ind. Code § 8-1-22.5-7 or any rules issued pursuant to that chapter. The Division initiated its petition in Cause No. 44970 to request the Commission exercise its authority under Ind. Code ch. 8-1-22.5.

The Division's petition in Cause No. 44970 requested the Commission: (a) impose a penalty under Ind. Code § 8-1-22.5-7 for alleged violations of the provisions of state and federal pipeline safety statutes and regulations relating to the obligation to (1) timely and accurately locate its underground facilities in compliance with the written procedures for conducting operations and maintenance activities pursuant to 49 CFR 192.605 and 170 IAC 5-3-0.6, and (2) maintain accurate facility maps and records pursuant to 170 IAC 5-3-2(10); and (b) require NIPSCO to undertake corrective actions with regard to its violations.

The Division and NIPSCO (together "Settling Parties") filed a Stipulation, Settlement Agreement, and Joint Proposed Order in Cause No. 44970 on August 4, 2017 ("Settlement Agreement"), after which the Commission issued its Order approving the Settlement Agreement on November 29, 2017 ("44970 Order"). The petition for NIPSCO's 2018 violations was filed in this subdocket on December 31, 2019.

In this subdocket, the Division seeks approval of penalties against NIPSCO for 2018 violations of minimum pipeline safety standards consistent with the agreed schedule of civil penalties approved in the 44970 Order and set forth in the Settlement Agreement. In the Settlement Agreement, the Settling Parties agreed upon the dollar amount for each violation NIPSCO commits in 2017, 2018, and 2019 with respect to locating its underground gas pipelines and facilities, provided these penalties are subject to the Commission's approval. With regard to 2018, Section C.10.b.ii. and Section C.10.c. of the Settlement Agreement prescribes how the civil penalties at issue in this proceeding shall be calculated.

**5. Evidence Presented.**

**A. Division Evidence.** Mr. Boyd, the Division's Director, summarized the background leading to the Settlement Agreement. He testified the Division monitors locate

performance of natural gas operators in Indiana. When conducting an inspection of NIPSCO, he stated the Division found NIPSCO had failed to properly locate its facilities and failed to follow its own procedures up to June 30, 2017. Mr. Boyd testified that many of these failures resulted in damage to underground pipelines, potentially creating a public safety hazard; consequently, the Division petitioned the Commission on August 4, 2017, to assess penalties for these violations and, ultimately, submitted the Settlement Agreement that the Settling Parties entered into. He testified the Settlement Agreement resolved violations that occurred through June 30, 2017, and set an agreed upon prospective penalty schedule for violations that would occur for the remainder of 2017, and then for calendar years 2018 and 2019.

Mr. Boyd testified that under the Settlement Agreement, the Division may request the Commission impose penalties for each of NIPSCO's violations through 2019 at an agreed upon amount. In the 44970 Order, the Commission found the Settlement Agreement was in the public interest and approved the agreement, including the agreed penalties.

Mr. Boyd stated that there are two categories of violations subject to penalties under the Settlement Agreement. The first category involves damages caused by NIPSCO's failure to locate its underground facilities in two full working days or for NIPSCO's failure to mark those facilities. The second category has a separate penalty for non-project locate tickets when NIPSCO fails to locate its facilities within two full working days and fails to contact the excavator within those two full working days.

As for the first set of penalties, the Settlement Agreement prescribes penalties for damages to NIPSCO's pipeline that are determined to be an operator violation by the Division through the investigation process. Mr. Boyd stated the number of 2018 violations NIPSCO committed in the first category was 230. Based on the penalties agreed to in the Settlement Agreement, Mr. Boyd testified this first category of violations results in a gross penalty amount of \$1,110,000. Because NIPSCO did not achieve top quartile performance in the applicable American Gas Association's marking and locating annual report, measured by total damages per 1,000 locate tickets, there is no adjustment of the gross penalty amount under Section C.10.e. of the Settlement Agreement.

As to the second category of penalties, Mr. Boyd testified the Settlement Agreement sets forth that a civil penalty may also be assessed in the amount of \$2,500 by the Division at its discretion, for each late locate reported if NIPSCO fails to maintain a log of contacts made to each excavator prior to the elapse of two working days from the locate ticket request. Mr. Boyd stated that NIPSCO began keeping a log of contacts with its excavators in the second half of 2017, and continued to maintain the required contact log in 2018 (and to present day). He stated that because NIPSCO has evidenced the behavioral change intended by the Settlement Agreement, he did not recommend a penalty under this second category of possible penalties.

In its response to the Commission's May 19, 2020 docket entry requesting the Division indicate whether it had reviewed the required contact log to verify that NIPSCO appropriately tracks contact information for the second category of violations, the Testimonial Staff stated that the Division believes NIPSCO is tracking the appropriate contact information based on data provided in NIPSCO's monthly confidential submissions made under the Settlement Agreement, oral presentations by NIPSCO detailing its software tracking system, and the fact that NIPSCO is required to provide contact information, upon request, for specific cases at quarterly meetings.

Mr. Boyd commended NIPSCO for its continued improvement to its damage rate and recommended the Commission to assess a penalty against NIPSCO in the amount of \$1,110,000 for 2018 violations.

**B. NIPSCO's Testimony.** Daniel Douglas, Senior Vice President for Gas Operations, testified that NIPSCO is in agreement with the number of 2018 violations for at-fault damages cited by the Division in Mr. Boyd's testimony. He also agreed with the Division's interpretation of the Settlement Agreement as it relates to assessment of civil penalties for NIPSCO's 2018 locate performance and the methodology used by the Division to calculate the proposed penalty of \$1,110,000. Mr. Douglas recommended the Commission approve the Division's proposed civil penalty of \$1,110,000 for NIPSCO's 2018 locate performance.

**6. Commission Discussion and Findings.** In the 44970 Order, the Commission approved the Settlement Agreement, including its agreed penalty schedule. Based on the evidence the Testimonial Staff provided in this proceeding, and with no objection from NIPSCO, the Commission finds that Mr. Boyd has identified the relevant 2018 violations NIPSCO committed, and the penalties Mr. Boyd recommended correlate to the penalties agreed upon in the Settlement Agreement. Accordingly, the Commission finds the total recommended penalty amount of \$1,100,000 is reasonable and consistent with the 44970 Order. We also find, consistent with the settlement supporting testimony in Cause No. 44970, none of this penalty shall be recovered from NIPSCO's customers. We, therefore, approve Mr. Boyd's recommendation and require that for NIPSCO's calendar year 2018 pipeline safety violations at issue in this matter, NIPSCO shall pay a penalty of \$1,110,000.00. This payment shall be paid to the Indiana General Fund, with notice to the Secretary of the Commission, within 30 days from the date of this Order. The Division shall file its petition for approval of 2019 penalties in subdocket Cause No. 44970 S3 by December 31, 2020.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. NIPSCO shall pay within 30 days from the date of this Order a civil monetary penalty in the amount of \$1,110,000 to the Indiana General Fund (Treasury of the State of Indiana), with notice to the Secretary of the Commission.
2. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:**

**APPROVED: AUG 05 2020**

**I hereby certify that the above is a true and correct copy of the Order as approved.**

*Virginia Lucas* Acting For  
**Mary M. Becerra**  
**Secretary of the Commission**