

ORIGINAL

| Commissioner | Yes | No | Not Participating |
|--------------|-----|----|-------------------|
| Huston | | | √ |
| Bennett | √ | | |
| Freeman | √ | | |
| Veleta | √ | | |
| Ziegner | √ | | |

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**CONSENT AGREEMENT OF NORTHERN INDIANA)
PUBLIC SERVICE COMPANY, LLC AND THE)
PIPELINE SAFETY DIVISION OF THE INDIANA)
UTILITY REGULATORY COMMISSION FOR)
APPROVAL OF MONETARY CIVIL PENALTIES)
UNDER IND. CODE CH. 8-1-22.5 FOR VIOLATIONS OF)
MINIMUM PIPELINE SAFETY STANDARDS)**

CAUSE NO. 46003

APPROVED: FEB 14 2024

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Ann Pagonis, Administrative Law Judge

On January 24, 2024 the Indiana Utility Regulatory Commission (“Commission”) issued an Order concerning its intent to approve a January 8, 2024 Consent Agreement entered into between the Commission’s Pipeline Safety Division (“Division”) and Northern Indiana Public Service Company, LLC (“NIPSCO”) regarding alleged pipeline safety violations by NIPSCO in the calendar year 2022 unless an objection or request for hearing was filed under this Cause within 20 days.

Twenty days have passed and no objection or request for hearing has been received.

1. Commission Jurisdiction. Under Ind. Code § 8-1-22.5-7(b), the Commission may, after notice and opportunity to be heard, impose a civil penalty against a person that violates Ind. Code ch. 8-1-22.5 or any rules issued under that chapter. NIPSCO is a person as defined by Ind. Code § 8-1-22.5-1(e). Therefore, the Commission has jurisdiction over NIPSCO and the subject matter of this proceeding.

2. Background and Procedural History. On April 13, 2023, the Division issued a Notice of Probable Violations to NIPSCO alleging 257 violations that occurred in the calendar year 2022. These violations consisted of failing to follow its own procedures to timely or accurately locate its facilities in response to an 811 notice.

On January 8, 2024, the Division entered into the Consent Agreement that resolves the 257 violations occurring in the calendar year 2022. For the violations, NIPSCO has agreed to pay \$707,850. The total penalty would have been \$1,287,000 according to the “Advisory Penalty Matrix” transmitted by the Commission to Indiana natural gas operators on May 6, 2021, but the Division decided to reduce the penalty due to NIPSCO’s mitigative actions. The mitigative actions that NIPSCO took include training more than 25% of the excavators who caused at fault damages in 2022 and lowering the operator at fault rate from 0.54 to 0.48 per thousand locates. None of the penalty will be recoverable in the utility’s rates. NIPSCO also waives the right to a public hearing pursuant to Ind. Code §§ 8-1-22.5-7(b) and 8-1-22.5-10.

Upon review of the information provided by the Commission's General Counsel Division, the Commission finds the Consent Agreement reasonably resolves the alleged violations. Accordingly, the Commission approves the January 8, 2024 Consent Agreement entered into between NIPSCO and the Division.

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

1. The January 8, 2024 Consent Agreement entered into between NIPSCO and the Division, a copy of which is attached to this Order, is approved.
2. Within 30 days from the date of this Order, NIPSCO shall pay a civil penalty of \$707,850 to the Treasury of the State of Indiana through the Secretary of the Commission.
3. This Order shall be effective on and after the date of its approval.

BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR; HUSTON ABSENT:

APPROVED: FEB 14 2024

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

Dana Kosco
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

CONSENT AGREEMENT OF NORTHERN
INDIANA PUBLIC SERVICE COMPANY, LLC
AND THE PIPELINE SAFETY DIVISION OF
THE INDIANA UTILITY REGULATORY
COMMISSION FOR APPROVAL OF MONETARY
CIVIL PENALTIES UNDER IND. CODE CH. 8-1-
22.5 FOR VIOLATIONS OF MINIMUM
PIPELINE SAFETY STANDARDS

CAUSE NO.

**STIPULATION, CONSENT AGREEMENT,
AND WAIVER OF EVIDENTIARY HEARING**

Northern Indiana Public Service Company LLC (“NIPSCO”) and the Pipeline Safety Division (“Division”) of the Indiana Utility Regulatory Commission (“Commission”) voluntarily enter into this Stipulation, Consent Agreement, and Waiver of Evidentiary Hearing (“Agreement”) pertaining to the violations and penalties described herein.

A. Jurisdiction and Procedural Posture

1. The Division is responsible for the administration and enforcement of compliance with pipeline safety standards applicable to transportation and related pipeline facilities established 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.) (the “PHMSA Standards”) and under Indiana Code Ch. 8-1-22.5. The Division is also responsible for the administration and enforcement of compliance with the pipeline safety standards adopted by the Commission for the State of Indiana in 170 IAC 5-3, which adopts and adds to the federal safety standards.

2. NIPSCO is a “public utility” as that term is defined in Ind. Code § 8-1-2-1, and is a “person who engages in transportation or who owns, operates, or leases pipeline facilities” within the meaning of Ind. Code § 8-1-22.5-6 and subject to the pipeline safety standards and the jurisdiction of the Commission.

3. Division staff perform inspections and other activities to verify compliance with the pipeline safety standards and issues Notices of Probable Violation (“NOPVs”) and Notices of Proposed Penalties (“NOPPs”) to pipeline operators subject to the Commission’s jurisdiction in instances where non-compliance with the PHMSA Standards is alleged.

B. Specific Violations

4. On April 13, 2023, the Division issued NOPV No. 12093-20230322 to NIPSCO. The NOPV alleged 257 violations occurring in the year 2022, each consisting of an instance when NIPSCO failed to follow its own procedures by failing to timely or accurately locate its facilities in response to a notice of excavation submitted through what is commonly known as Indiana 811.

5. NIPSCO’s own procedures require it to timely and accurately locate its facilities in accord with the Indiana 811 law found at Ind. Code § 8-1-2-26.

6. By failing to follow its own procedures, NIPSCO violated 192 C.F.R. 605(a), which is incorporated in state law by 170 IAC 5-3-0.6.

7. A copy of the NOPV is attached hereto as Attachment 1, and NIPSCO’s Response, dated June 13, 2023, is attached hereto as Attachment 2.

C. Advisory Penalty Matrix

8. On May 3, 2021, the Commission transmitted by letter an Advisory Penalty Matrix to natural gas operators setting forth advisory penalties for the failure to timely or accurately locate a gas operator’s pipeline and facilities, effective after July 1, 2021.

9. The Advisory Penalty Matrix includes a graduated penalty schedule for assessing increasing penalties depending on the number of violations committed by a gas operator.

10. Based on the 257 violations in the NOPV, application of the Advisory Penalty Matrix would result in the following penalty:

| Penalty Level | Number of violations in level | Per violation in level | Penalty total in each level |
|----------------------|--------------------------------------|-------------------------------|------------------------------------|
| 1 | 0 – 3 | 0 | 0 |
| 2 | 4 – 20 | \$1,000 | \$17,000 |
| 3 | 21-100 | \$2,500 | \$200,000 |
| 4 | 101-200 | \$5,000 | \$500,000 |
| 5 | 201-257 | \$10,000 | \$570,000 |
| Total | | | \$1,287,000 |

11. The Advisory Penalty Matrix is attached hereto as Attachment 3.

D. Agreed Civil Penalty

12. The Commission may impose penalties against NIPSCO for violations of the pipeline safety standards of up to \$25,000 for each violation for each day that the violation persisted, up to a maximum of \$1,000,000 for a related series of violations. The Division discovered 257 violations committed by NIPSCO. All are subject to a maximum \$25,000 fine for each violation, for each day the violation persisted. *See* Ind. Code § 8-1-22.5-7.

13. However, due to the actions taken and the response provided to NOPV No. 12093-20230322, the Division has decided to reduce part of the proposed penalty, to a total proposed penalty of \$707,850, in recognition of mitigative actions taken as listed below:

- Partial reduction due to lower the Operator at fault per thousand locates.
 - Operator successfully lowered the at fault rate from 0.54 to 0.48.
 - This will result in a 20% reduction, or a reduction of \$257,400 in the overall penalty recommendation.
- Partial reduction of penalty for having trained more than 25% of the excavators who caused at fault damages in 2022.
 - Operator reports having trained 214 out of 515 excavators.
 - This will result in a 25% reduction, or a reduction of \$321,750 in penalty amount.

14. A copy of the NOPP is attached hereto as Attachment 4, and NIPSCO's Response, dated August 11, 2023, is attached hereto as Attachment 5.

15. NIPSCO admits to the violations alleged in the NOPV and agrees to payment of a total monetary civil penalty in accord with the Advisory Penalty Matrix of **\$707,850**, payable to the general fund of the State of Indiana for the foregoing identified violations.

16. Payment of this civil penalty will be made within 30 days of approval by the Commission, and the civil penalty shall not be recoverable by NIPSCO through its Commission-authorized rates and charges.

E. Waiver of Public Hearing

17. Given its admission of the violations alleged in the NOPV and its agreement to pay a statutory civil penalty for those violations, and in the interest of administrative efficiency, NIPSCO waives its right to a public hearing pursuant to Ind. Code §§ 8-1-22.5-7(b) and 8-1-22.5-10 on the matters alleged in the NOPV and the associated penalties. The Parties agree that the facts above together with the attachments hereto constitute an adequate evidentiary record upon which the

Commission may base an Order approving this Agreement, including payment of the agreed monetary civil penalty.

F. Public Record

18. This agreement is a public record subject to disclosure upon request under the Indiana Access to Public Records Act, Ind. Code Ch. 5-14-3.

G. Stipulation

19. It is so stipulated and agreed this 8th day of January, 2024.



Printed Name: Orville Cocking
Title: SVP Gas Operations

Miranda Erich
Director
Pipeline Safety Division

ATTACHMENT 1



INDIANA UTILITY REGULATORY COMMISSION
101 W. WASHINGTON STREET, SUITE 1500E
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

Northern Indiana Public Service Company
OPSID 13730
Steve Sylvester, VP & GM Gas Operations
801 E 86th Ave.
Merrillville, IN 46410

13 April 2023

RE: Notice of Probable Violation: 12093-20230322

The Pipeline Safety Division (“Division”) of the Indiana Utility Regulatory Commission (“Commission”) hereby provides you notice of the probable violation(s) listed below, pursuant to the Division’s authority under Indiana Code chapter 8-1-22.5, the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60101 et seq.), and the Commission’s minimum pipeline safety rules and standards for transportation and related pipeline facilities, Title 170 Indiana Administrative Code Rule 5-3, incorporating 49 CFR Parts 40, 191, 192, 193, 194, 195, 198, and 199. Under Ind. Code § 8-1-22.5-7, the Commission, after notice and opportunity for public hearing, may issue civil penalties not to exceed twenty-five thousand dollars (\$25,000) for each violation for each day that the violation persists and not to exceed one million dollars (\$1,000,000) for any related series of violations.

A. Probable Violation(s)

On one or more days including 3/22/2023, a Damage Prevention Inspection was conducted on Northern Indiana Public Service Company. Probable violation(s) found during this inspection include:

1. **49 CFR 192.605 - Procedural manual for operations, maintenance, and emergencies.** Northern Indiana Public Service Company (“NIPSCO”) violated their procedures regarding damage prevention activities as required by 49 CFR 192.605 and 49 CFR 192.614, which requires the operator to properly locate their underground facilities through accurate maps, records, and temporary markings. During 2022, NIPSCO violated these procedures 257 times, each time resulting in a pipeline facility damage. This number is pulled from a comparison between the Quarterly damage reports and the Annual report to PHMSA F7100.1-1. Please respond to this violation with your plans or actions taken to resolve the issue. Mitigative measures that could potentially reduce your violation include, but are not limited to, the following:
 - 1) Full reduction if Operator at Fault divided by tickets times 1000 ratio is below 0.20.
 - 2) More than a .03 change to the Operator at Fault divided by tickets times 1000 ratio.
 - 3) Operator has proactively trained 25% of all excavators who damaged their facilities at least a half hour of training on the dig law and how to dig safely.

You are required to review the listed probable violation and provide a written response to this office with the following information:

- A detailed description of steps that have been or will be completed to correct non-compliance with the above cited rules, including dates such steps were or are anticipated to be taken.
- Steps that you intend to take to prevent a recurrence of the above probable violation(s), including dates such steps were or are anticipated to be taken.
- Copies of any new or existing written procedures that support the steps taken to correct and further prevent a recurrence of these violations.

Your written response must be received no later than **06/13/2023** and sent to the Division as follows:

- Via email to pipelineinspections@urc.in.gov.
- Label the subject line: NOPV 12093-20230322 Response.
- You will receive a response that your email was received; if you do not receive a response, we did not receive your email.

If you must submit your response in hard copy, please send it to this address:

Attn: Pipeline Safety Division
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 E
Indianapolis, Indiana 46204

The Division will review your response and provide acknowledgement of receipt. After review of your response, the Division may:

- (1) provide acknowledgement of a satisfactory response;
- (2) request additional information and/or documentation;
- (3) request to meet with you;
- (4) send you a Notice of Proposed Penalties; and/or
- (5) request the Commission initiate an investigation on the matter.

Failure to respond will result in a Notice of Proposed Penalty and/or a request for a Commission investigation.

Thank you for the courtesy extended during our visit. Please contact the Division at pipelineinspections@urc.in.gov should you have any questions.

Respectfully,



Miranda Erich, Director
Pipeline Safety Division

ATTACHMENT 2

June 13, 2023

Via Email Transmission – pipelineinspections@urc.in.gov

Mrs. Miranda Erich
Director, Pipeline Safety Division
Indiana Utility Regulatory Commission
PNC Center
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204

RE: Notice of Probable Violation: 12093-20230322 Response

Dear Mrs. Erich:

Northern Indiana Public Service Company LLC (“NIPSCO”) is in receipt of your letter dated April 13, 2023, setting forth the Pipeline Safety Division’s (“PSD”) Notice of Probable Violation: 12093-20230322 (the “NOPV”) identified in the letter. Attached to this letter is NIPSCO’s response to these issues.

It is NIPSCO’s desire to work with the Commission to proactively and comprehensively address the issues raised in a manner that is mutually satisfactory. To that end, NIPSCO would like to meet to discuss the NOPV further. Rick Smith, Director of Compliance and Public Safety, will reach out to identify dates and times for a meeting to discuss this matter. We look forward to the continuation of our ongoing and productive dialog.

Sincerely,

A handwritten signature in black ink, appearing to read "Orville Cocking". The signature is written in a cursive, flowing style.

Orville Cocking
Senior Vice President, NIPSCO Gas Operations

NIPSCO Response to Allegation of Probable Violation

Probable Violations:

On one or more days including 3/22/2023, a Damage Prevention Inspection was conducted at NIPSCO Corporate, 801 E 86th Ave., Merrillville, IN 46410. Probable violation(s) found during this inspection include:

NOPV:

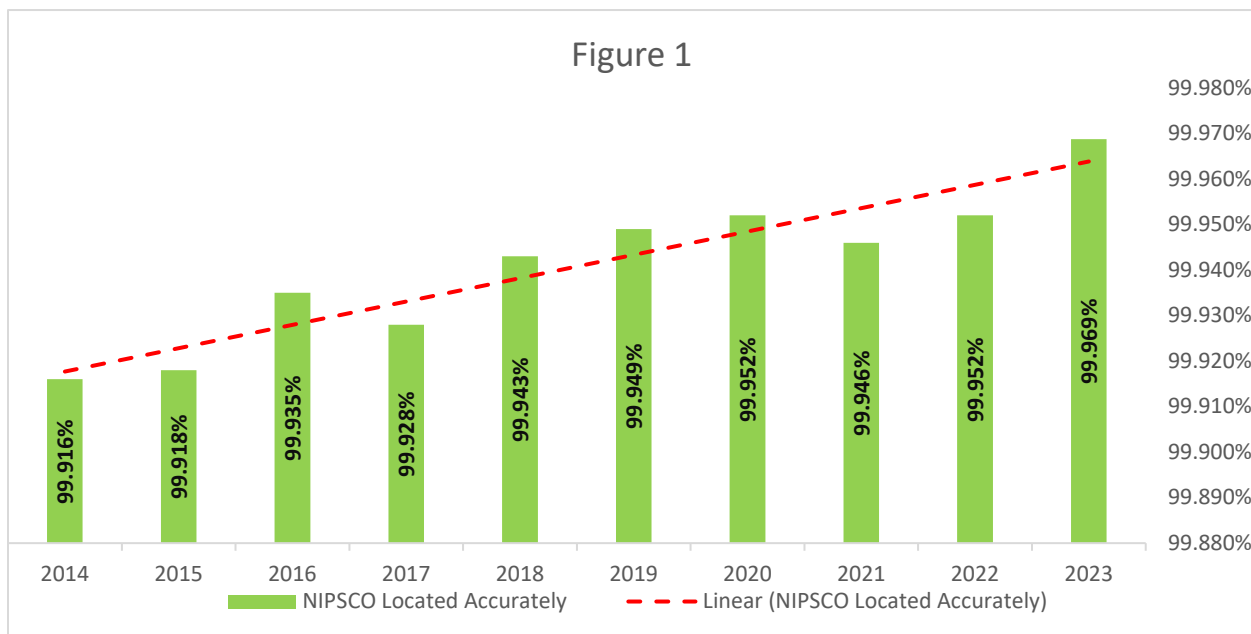
49 CFR 192.605 – Procedural manual for operations, maintenance, and emergencies. Northern Indiana Public Service Company (“NIPSCO”) violated their procedures regarding damage prevention activities as required by 49 CFR 192.605 and 49 CFR 192.614, which requires the operator to properly locate their underground facilities through accurate maps, records, and temporary markings. During 2022, NIPSCO violated these procedures 257 times, each time resulting in a pipeline facility damage. This is pulled from a comparison between the Quarterly damage reports and the Annual report to PHMSA F7100.1-1. Please respond to this violation with your plans or actions taken to resolve this issue. Mitigative measures that could potentially reduce your violation include, but are not limited to, the following:

- 1) Full reduction if Operator at Fault divided by tickets times 1000 ratio is below 0.20.
- 2) More than a 0.03 change to the Operator at Fault divided by tickets times 1000 ratio.
- 3) Operator has proactively trained 25% of all excavators who damaged their facilities at least half hour of training on the dig law and how to dig safely.

Response to NOPV:

NIPSCO agrees that there were 257 instances in 2022 in which NIPSCO mislocated a gas facility that resulted in a facility damage. It is important, however, to consider this number in light of the volume of locate tickets NIPSCO receives annually. Figure 1 illustrates NIPSCO’s continuous improvement over the last decade and just how seriously NIPSCO takes public safety. As further discussed below, NIPSCO’s facility damage rate and the numerous actions it has taken

demonstrates its commitment to safety through continual, incremental improvement in damage prevention.



Safety and quality are the focus in NIPSCO’s damage prevention program, SMS program, and our goal of operational excellence. As an operator, these mislocates resulted in fines by UPPAC, which NIPSCO has paid. NIPSCO accurately completed 540,290 locates out of 540,547 requests (99.95% accuracy rate) in 2022.

NIPSCO’s commitment to safety generally and line locating accuracy specifically has been demonstrated through consistent performance improvement over time and substantial financial investment in several initiatives that have been implemented over the past couple years. Below are several examples of these initiatives. In addition to these, if there are areas where NIPSCO should potentially expand its efforts and/or undertake new efforts, NIPSCO also welcomes feedback from the Commission and its Pipeline Safety Division.

1. Increased Damage Prevention Staffing. (Completed in Q2 2022)
 - a. Hired nine additional Damage Prevention Coordinators (DPCs).
 - b. Hired two additional Leaders of Field Damage Prevention.
 - c. Hired two additional Assigners.

NIPSCO Responses to Allegations of Probable Violation

June 13, 2023

Page 3

2. Increased Watch & Protect Activities by sixteen full-time employees. (Completed in Q2 2022)
3. Doubled QA/QC activities, from a rate of 5% to 10% of the ticket volume. (Completed in Q3 2022)
4. Completed a multi-year Data Mining Project. (Started in Q3 2015 and completed in Q4 2022)
5. Implemented GPS practices for all major projects. (Started in Q3 2022 and continues)
6. Improved NIPSCO's service line record viewing software. (Completed in Q4 2021)
7. Invested in a Damage Prevention Model. (Completed in Q3 2018)
 - a. The risk model continues to improve the ability to correctly predict risk, as NIPSCO continues to refine the model and its usage by the DPCs. The model guides NIPSCO's damage prevention team on where to make the best investment of time with the excavator community.
8. Enhanced Positive Response. (Completed in Q2 2017)
9. Invested in a Cross-Bore Awareness / Investigation program. (Started in Q3 2017 and is ongoing)
10. Conducted 3,707 education sessions of at least 30 minutes to 2,059 excavators.
 - a. These sessions cover the Indiana Dig Law, Common Ground Alliance (CGA) best practices, contact information for NIPSCO 809locators and DPCs, and how to safely excavate.

Although NIPSCO has not achieved an operator at-fault ratio of 0.20 or better, NIPSCO has driven down its at-fault ratio in half in the last 8 years, to a rate of 0.48 in 2022, through the investments noted above. NIPSCO's 2022 at-fault ratio is also a reduction of 0.06 (or approximately 11%) compared to 2021, showing NIPSCO is still proactively working to improve in this area. In 2022, NIPSCO had trained 241 of the 515 (48%) professional excavators for at least 30 minutes. These

NIPSCO Responses to Allegations of Probable Violation

June 13, 2023

Page 4

educational sessions cover CGA best practices, the Indiana Dig Law, and who to contact from NIPSCO for any questions regarding a NIPSCO facility. In terms of time, effort, and funds invested, these activities demonstrate an acknowledgment of the importance of and an unequivocal commitment by NIPSCO to preventing facility damages as much as reasonably possible, while balancing the cost to our customers.

NIPSCO also continues to partner with the Commission on data review and collaborative discussions to improve locating performance and reduce risk. In addition to NIPSCO's internal continuous improvement journey to reduce "at-fault" damages, NIPSCO is committed to helping excavators reduce their damages. Excavators are responsible for 77% of NIPSCO's damages. Each damage, regardless of fault, is a public safety issue and is important to NIPSCO as it engages in efforts to eliminate damages.

Given NIPSCO accurately locates over 99.95% of the locates it receives, is actively attempting to further reduce its mislocates, and is seeing ongoing improvement in performance, NIPSCO is continuing to focus on the mitigation of other damages causes. With this high level of performance, even as locate requests have increased and now approach 550,000 per year, and in recognitions of the significant internal and external efforts undertaken to reduce damages, NIPSCO respectfully requests that the Division consider the appropriateness of incremental fines. Considering the high degree of accuracy achieved in 2022 and the newly implemented initiatives, NIPSCO does not believe that penalties will drive incremental improvement to safety, if levied. Moreover, the stigma of being publicly penalized can have an adverse impact on employees and the perception of the company. NIPSCO appreciates the Commission's concern for and focus on public safety, as well as consideration of NIPSCO's efforts. NIPSCO looks forward to further discussion of this matter.

ATTACHMENT 3



May 6, 2021

Re: Pipeline Safety Division Advisory Penalty Matrix for Locate Violations

Dear Operator:

I am writing to you to provide notice of the establishment of an Advisory Penalty Matrix by the Pipeline Safety Division (“Division”) of the Indiana Utility Regulatory Commission (“Commission”), as part of our obligation in enforcing gas safety regulations in accordance with federal and state law.

As you may know, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) is the federal agency that oversees the Commission’s Division. PHMSA sets rules and standards for pipeline safety issues nationally. PHMSA evaluates the Division in annual audits to ensure objectives related to pipeline safety inspections and enforcement in Indiana are being met. These evaluations also determine the amount of federal funding the Division receives to continue its important work.

As part of the audit process, PHMSA has reviewed the Division’s work regarding the enforcement of locate violations under 49 Code of Federal Regulations 192.614. In addition, the Division, under authority provided by Indiana Code chapter 8-1-22.5, investigates possible violations of Indiana Code chapter 8-1-26. Although the settlement agreements with Northern Indiana Public Service Company (NIPSCO) and CenterPoint Energy Indiana (approved by the Commission in 2017 and 2018, respectively) were important steps towards improving safety and compliance, PHMSA has directed that enforcement of locate violations and penalties should apply to all jurisdictional gas operators.

To achieve this in an equitable and transparent manner, the Division developed the Advisory Penalty Matrix to set expectations and provide consistency across all Indiana gas operators. The goal of the Advisory Penalty Matrix is to encourage better compliance through progressive penalties that recognize the hazards involved in large numbers of locate violations while also recognizing the inherent differences between larger and smaller gas operators.

It’s important to note that the Advisory Penalty Matrix is considered a starting point. Actual penalties may reflect mitigating and aggravating circumstances or factors, and the penalties in the Matrix would not apply if a violation resulted in an incident or accident, consistent with the Commission’s rules. *See* 170 Ind. Admin. Code 5-3-0.6-6 and -2. Ultimately, the Commission will approve the final penalty amounts based on the evidence presented in each case, including the Advisory Penalty Matrix.

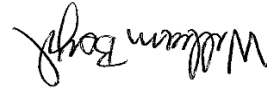
We recognize and appreciate the ongoing efforts by Indiana's gas operators to ensure the provision of safe and reliable service with an astute focus on safety. The Advisory Penalty Matrix was designed to reduce overall risk and emphasize the importance of safety. The Division is committed to developing tools that foster behavior changes, when needed, and incorporate feedback we hear from our PHSMA partners.

The Advisory Penalty Matrix will apply to "Locating Practices Not Sufficient" violations occurring on and after July 1, 2021, based on Part D.1.b of each gas operator's Gas Distribution Annual Report, commonly known as the F7100 Annual Report, due annually on March 15. It will not apply to any operator at fault locate violations that occurred in 2020 or in the first half of 2021. We are providing you this notice to allow you some time to improve your locate practices if necessary.

After your submission of the Gas Distribution Annual Report for CY 2021, due March 15, 2022, if you had more than three operator at fault locate violations occur from July 1, 2021, to December 31, 2021, you will receive a Notice of Probable Violation (NOPV), after which you will have the opportunity to provide your response including any mitigating circumstances before receiving a Notice of Proposed Penalty (NOPP) that will be based on the Advisory Penalty Matrix.

A copy of the Advisory Penalty Matrix is attached with this letter for reference. Please let me know if you have any questions. You can reach me at (317) 232-2718 (office) or (317) 460-8401 (mobile) or WBoyd@urc.IN.gov.

Sincerely,



William Boyd

Director

Pipeline Safety Division

Indiana Utility Regulatory Commission

PSD Advisory Penalty Matrix for Locate Violations for 2021-2022

Goals/Benefits:

Although the enforcement and penalties for locate violations under the settlement agreements with NIPSCO and Vectren (now CenterPoint Indiana) were important steps, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has provided direction that enforcement of locate violations and penalties should apply to all gas operators.

The goal of the Advisory Penalty Matrix is to change behavior through progressive penalties that recognize the hazards involved in large numbers of locate violations and the limited risk by small gas operators with very low numbers of locate violations. Having a penalty matrix sets expectations and provides consistency across all Indiana gas operators.

It’s also important to note that the Advisory Penalty Matrix is a starting point and actual penalties may reflect mitigating and aggravating factors. In addition, the penalties in the Matrix do not apply to an operator violation if the violation results in an incident or accident, as defined in the Commission’s rules, specifically, 170 IAC 5-3-0.6-6 and -2, respectively (an example is the Camby incident in the Vectren settlement).

PSD Advisory Penalty Matrix:

| Penalty Level | Number of violations in level | Per violation in level | Penalty total in each level |
|---------------|-------------------------------|------------------------|-----------------------------|
| 1 | 0 – 3 | 0 | 0 |
| 2 | 4 – 20 | \$1,000 | \$17,000 |
| 3 | 21-100 | \$2,500 | \$200,000 |
| 4 | 101-200 | \$5,000 | \$500,000 |
| 5 | 201 + | \$10,000 | Max \$10,000 x # |

Comparison Using 2017-2020 Locate Violations:

| Utility / Year | # of Violations | Amounts Paid Under Settlements | PSD Advisory Penalties | Max per Statute |
|-----------------|-----------------|--------------------------------|------------------------|-----------------|
| Citizens / 2017 | 20 | n/a | \$17,000 | \$500,000 |
| Citizens / 2018 | 13 | n/a | \$10,000 | \$325,000 |
| Citizens / 2019 | 14 | n/a | \$11,000 | \$350,000 |
| Citizens / 2020 | 21 | n/a | \$19,500 | \$525,000 |
| NIPSCO / 2017 | 296 | (1) \$900,000 (2) \$765,000 | \$1,677,000 | \$7,400,000 |
| NIPSCO / 2018 | 241 | \$1,033,000 | \$1,127,000 | \$6,025,000 |
| NIPSCO / 2019 | 231 | \$1,138,000 | \$1,027,000 | \$5,850,000 |
| NIPSCO / 2020 | 211 | n/a | \$827,000 | \$5,275,000 |
| Vectren / 2017 | 242 | \$736,000 | \$1,137,000 | \$5,700,000 |
| Vectren / 2018 | 197 | \$584,000 | \$702,000 | \$4,925,000 |
| Vectren / 2019 | 205 | \$894,000 | \$767,000 | \$5,875,000 |
| Vectren / 2020 | 223 | n/a | \$947,000 | \$5,575,000 |

Note: only Citizens, NIPSCO, and Vectren/CenterPoint are shown on this comparison chart, as they are the only gas operators that would have had penalties under the Matrix if it had been in place during 2017-2020. No other gas operator had more than three violations in each of the last four calendar years.

ATTACHMENT 4



INDIANA UTILITY REGULATORY COMMISSION
101 W. WASHINGTON STREET, SUITE 1500E
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

Northern Indiana Public Service Company
OPID 13730
Mr. Orville Cooking, Senior Vice President, Gas Operations
801 E 86th Ave
Merrillville, IN 46410

July 6, 2023

Re: Notice of Proposed Penalty: NOPP No. 12093-20230322

On April 13, 2023, the Pipeline Safety Division (the “Division”) of the Indiana Utility Regulatory Commission (the “Commission”) sent Northern Indiana Public Service Company (“NIPSCO”) a Notice of Probable Violations (“NOPV”) 12093-20230322. The Division received NIPSCO’s response to the NOPV on June 13, 2023, regarding the violations found surrounding the 2022 Damages rates. Because the nature of the violations is such that the Division believes penalties should be assessed, the Division is now issuing this Notice of Proposed Penalty (“NOPP”).

Under Ind. Code § 8-1-22.5-7, the Commission, after notice and opportunity for public hearing, may issue civil penalties not to exceed twenty-five thousand dollars (\$25,000) for each violation for each day that the violation persists and not to exceed one million dollars (\$1,000,000) for any related series of violations. However, in 2021, there as an advisory penalty matrix for how to handle locate violations that led to damages, as follows:

| Penalty Level | Number of violations in level | Per violation in level | Penalty total in each level |
|---------------|-------------------------------|------------------------|-----------------------------|
| 1 | 0 – 3 | 0 | 0 |
| 2 | 4 – 20 | \$1,000 | \$17,000 |
| 3 | 21-100 | \$2,500 | \$200,000 |
| 4 | 101-200 | \$5,000 | \$500,000 |
| 5 | 201-257 | \$10,000 | \$570,000 |
| Total | | | \$ 1,287,000.00 |

The Proposed Penalty based off the penalty matrix would be \$1,287,000 for the following 257 damages:

Violation: **49 CFR 192.605 – Procedural Manual for operations, maintenance, and emergencies.** Northern Indiana Public Service Company (“NIPSCO”) violated their procedures regarding damage prevention activities as required by 49 CFR 192.605 and 49 CFR 192.614, which requires the operator to properly locate their underground facilities through accurate maps, records, and temporary markings. During 2022 NIPSCO violated these procedures 257 times, each time resulting in a pipeline facility damage. This number is pulled from a comparison between the Quarterly damage reports and the Annual report to PHMSA F7100.1-1.

However, due to the actions you have taken, and the response provided to NOPV 12093-20230322, the Division has decided to reduce part of the proposed penalty in recognition of mitigative actions taken as listed below:

- Partial reduction due to lower the Operator at fault per thousand locates.
 - Operator successfully lowered the at fault rate from 0.54 to 0.48.
 - This will result in \$257,400, or a 20% reduction, in the overall penalty recommendation.
- Partial reduction of penalty for having trained more than 25% of the excavator’s who caused at fault damages in 2022.
 - Operator reports having trained 241 out of 515 excavators.
 - This results in a reduction of \$321,750, or a 25% reduction, in penalty amount.

Using the above methods, the division will be recommending a \$707,850.00 proposed penalty. You must provide a written response no later than August 17, 2023, indicating whether you agree to the Proposed Penalty. If you disagree with the Proposed Penalty, you must provide justification for each violation, using the following factors from the federal Pipeline and Hazardous Materials Safety Administration’s methodology under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225 for determining penalties:

- a. The nature, circumstances, and gravity of the violation, including adverse impact on the environment.
- b. The degree of the operator’s culpability.
- c. The operator’s history of prior offenses.
- d. Good faith by the operator in attempting to achieve compliance.
- e. The effect on the operator’s ability to continue in business.
- f. The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages.
- g. Such other matters as justice may require.

Failure to respond to this NOPP, or failure to come to an agreement on the amount of penalty, will result in a request for a Commission investigation.

If you have any questions or need additional information regarding the penalty reduction, you can reach me at (317) 502-2966 or MErich@urc.in.gov.

Sincerely,

A handwritten signature in black ink that reads "Miranda Erich". The signature is written in a cursive style with a large initial "M" and a long horizontal stroke at the end.

Miranda Erich, Director
Pipeline Safety Division

ATTACHMENT 5

August 11, 2023

Via Email Transmission – pipelineinspections@urc.in.gov

Mrs. Miranda Erich
Director, Pipeline Safety Division
Indiana Utility Regulatory Commission
PNC Center
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204

RE: Notice of Proposed Penalty Response: NOPP No. 12093-20230322

Dear Mrs. Erich:

Northern Indiana Public Service Company LLC (“NIPSCO”) is in receipt of your letter dated July 6, 2023, setting forth the Pipeline Safety Division’s (“PSD”) Notice of Proposed Penalty 12093-20230322 (the “NOPP”) identified in the letter.

Due to NIPSCO’s improving performance in this area and the extensive investments by NIPSCO demonstrating a clear commitment to compliance, NIPSCO believes that a penalty is not warranted, and, assuming a penalty is assessed, firmly believes that the proposed penalty amount of \$707,850 is higher than what is reasonable. However, in the spirit of collaboration and to avoid protracted litigation of the matter, NIPSCO is willing to accept a penalty of some amount and requests to engage in settlement discussions regarding a potential, reasonable penalty amount.

It is NIPSCO’s desire to work with the Commission to discuss the violations and come to an agreement on the amount of the penalty. NIPSCO would like to meet to discuss the NOPP further, as NIPSCO has shown good faith in attempting to achieve compliance. NIPSCO’s response to the NOPV (Attachment A hereto), outlines several of the important initiatives NIPSCO has undertaken to demonstrate its commitment to compliance and reach its 99.95% locate accuracy rate. These initiatives are intended to prevent facility damages as much as reasonably possible, while balancing costs to its customers.

Mrs. Miranda Erich

August 11, 2023

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Finally, whether separately or as part of potential settlement discussions, NIPSCO requests the Commission provide guidance on corrective actions it may take to reduce potential violations in the future. We look forward to the continuation of our ongoing and productive dialog.

Sincerely,

Orville Cocking

Senior Vice President, NIPSCO Gas Operations

June 13, 2023

Via Email Transmission – pipelineinspections@urc.in.gov

Mrs. Miranda Erich
Director, Pipeline Safety Division
Indiana Utility Regulatory Commission
PNC Center
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204

RE: Notice of Probable Violation: 12093-20230322 Response

Dear Mrs. Erich:

Northern Indiana Public Service Company LLC (“NIPSCO”) is in receipt of your letter dated April 13, 2023, setting forth the Pipeline Safety Division’s (“PSD”) Notice of Probable Violation: 12093-20230322 (the “NOPV”) identified in the letter. Attached to this letter is NIPSCO’s response to these issues.

It is NIPSCO’s desire to work with the Commission to proactively and comprehensively address the issues raised in a manner that is mutually satisfactory. To that end, NIPSCO would like to meet to discuss the NOPV further. Rick Smith, Director of Compliance and Public Safety, will reach out to identify dates and times for a meeting to discuss this matter. We look forward to the continuation of our ongoing and productive dialog.

Sincerely,

A handwritten signature in black ink, appearing to read "Orville Cocking". The signature is written in a cursive style with a vertical line separating the first and last names.

Orville Cocking
Senior Vice President, NIPSCO Gas Operations

NIPSCO Response to Allegation of Probable Violation

Probable Violations:

On one or more days including 3/22/2023, a Damage Prevention Inspection was conducted at NIPSCO Corporate, 801 E 86th Ave., Merrillville, IN 46410. Probable violation(s) found during this inspection include:

NOPV:

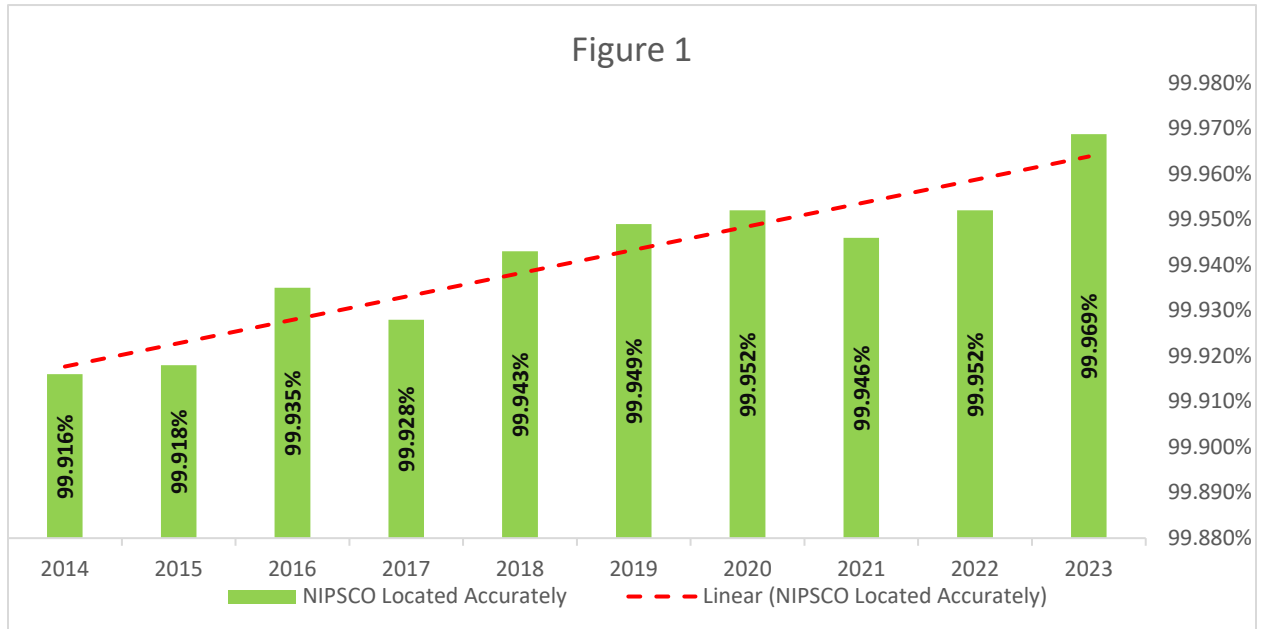
49 CFR 192.605 – Procedural manual for operations, maintenance, and emergencies. Northern Indiana Public Service Company (“NIPSCO”) violated their procedures regarding damage prevention activities as required by 49 CFR 192.605 and 49 CFR 192.614, which requires the operator to properly locate their underground facilities through accurate maps, records, and temporary markings. During 2022, NIPSCO violated these procedures 257 times, each time resulting in a pipeline facility damage. This is pulled from a comparison between the Quarterly damage reports and the Annual report to PHMSA F7100.1-1. Please respond to this violation with your plans or actions taken to resolve this issue. Mitigative measures that could potentially reduce your violation include, but are not limited to, the following:

- 1) Full reduction if Operator at Fault divided by tickets times 1000 ratio is below 0.20.
- 2) More than a 0.03 change to the Operator at Fault divided by tickets times 1000 ratio.
- 3) Operator has proactively trained 25% of all excavators who damaged their facilities at least half hour of training on the dig law and how to dig safely.

Response to NOPV:

NIPSCO agrees that there were 257 instances in 2022 in which NIPSCO mislocated a gas facility that resulted in a facility damage. It is important, however, to consider this number in light of the volume of locate tickets NIPSCO receives annually. Figure 1 illustrates NIPSCO’s continuous improvement over the last decade and just how seriously NIPSCO takes public safety. As further discussed below, NIPSCO’s facility damage rate and the numerous actions it has taken

demonstrates its commitment to safety through continual, incremental improvement in damage prevention.



Safety and quality are the focus in NIPSCO’s damage prevention program, SMS program, and our goal of operational excellence. As an operator, these mislocates resulted in fines by UPPAC, which NIPSCO has paid. NIPSCO accurately completed 540,290 locates out of 540,547 requests (99.95% accuracy rate) in 2022.

NIPSCO’s commitment to safety generally and line locating accuracy specifically has been demonstrated through consistent performance improvement over time and substantial financial investment in several initiatives that have been implemented over the past couple years. Below are several examples of these initiatives. In addition to these, if there are areas where NIPSCO should potentially expand its efforts and/or undertake new efforts, NIPSCO also welcomes feedback from the Commission and its Pipeline Safety Division.

1. Increased Damage Prevention Staffing. (Completed in Q2 2022)
 - a. Hired nine additional Damage Prevention Coordinators (DPCs).
 - b. Hired two additional Leaders of Field Damage Prevention.
 - c. Hired two additional Assigners.

NIPSCO Responses to Allegations of Probable Violation

June 13, 2023

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2. Increased Watch & Protect Activities by sixteen full-time employees. (Completed in Q2 2022)
3. Doubled QA/QC activities, from a rate of 5% to 10% of the ticket volume. (Completed in Q3 2022)
4. Completed a multi-year Data Mining Project. (Started in Q3 2015 and completed in Q4 2022)
5. Implemented GPS practices for all major projects. (Started in Q3 2022 and continues)
6. Improved NIPSCO's service line record viewing software. (Completed in Q4 2021)
7. Invested in a Damage Prevention Model. (Completed in Q3 2018)
 - a. The risk model continues to improve the ability to correctly predict risk, as NIPSCO continues to refine the model and its usage by the DPCs. The model guides NIPSCO's damage prevention team on where to make the best investment of time with the excavator community.
8. Enhanced Positive Response. (Completed in Q2 2017)
9. Invested in a Cross-Bore Awareness / Investigation program. (Started in Q3 2017 and is ongoing)
10. Conducted 3,707 education sessions of at least 30 minutes to 2,059 excavators.
 - a. These sessions cover the Indiana Dig Law, Common Ground Alliance (CGA) best practices, contact information for NIPSCO 809locators and DPCs, and how to safely excavate.

Although NIPSCO has not achieved an operator at-fault ratio of 0.20 or better, NIPSCO has driven down its at-fault ratio in half in the last 8 years, to a rate of 0.48 in 2022, through the investments noted above. NIPSCO's 2022 at-fault ratio is also a reduction of 0.06 (or approximately 11%) compared to 2021, showing NIPSCO is still proactively working to improve in this area. In 2022, NIPSCO had trained 241 of the 515 (48%) professional excavators for at least 30 minutes. These

NIPSCO Responses to Allegations of Probable Violation

June 13, 2023

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educational sessions cover CGA best practices, the Indiana Dig Law, and who to contact from NIPSCO for any questions regarding a NIPSCO facility. In terms of time, effort, and funds invested, these activities demonstrate an acknowledgment of the importance of and an unequivocal commitment by NIPSCO to preventing facility damages as much as reasonably possible, while balancing the cost to our customers.

NIPSCO also continues to partner with the Commission on data review and collaborative discussions to improve locating performance and reduce risk. In addition to NIPSCO's internal continuous improvement journey to reduce "at-fault" damages, NIPSCO is committed to helping excavators reduce their damages. Excavators are responsible for 77% of NIPSCO's damages. Each damage, regardless of fault, is a public safety issue and is important to NIPSCO as it engages in efforts to eliminate damages.

Given NIPSCO accurately locates over 99.95% of the locates it receives, is actively attempting to further reduce its mislocates, and is seeing ongoing improvement in performance, NIPSCO is continuing to focus on the mitigation of other damages causes. With this high level of performance, even as locate requests have increased and now approach 550,000 per year, and in recognitions of the significant internal and external efforts undertaken to reduce damages, NIPSCO respectfully requests that the Division consider the appropriateness of incremental fines. Considering the high degree of accuracy achieved in 2022 and the newly implemented initiatives, NIPSCO does not believe that penalties will drive incremental improvement to safety, if levied. Moreover, the stigma of being publicly penalized can have an adverse impact on employees and the perception of the company. NIPSCO appreciates the Commission's concern for and focus on public safety, as well as consideration of NIPSCO's efforts. NIPSCO looks forward to further discussion of this matter.