

## **HB1470: Utility transmission improvements and costs**

### **BACKGROUND**

House Bill 1470 amends Senate Enrolled Act 560, which was signed into law by Governor Mike Pence on April 30, 2013. SEA560 created a new billing mechanism for the electric and gas investor-owned utilities known as the TDSIC tracker. TDSIC is an acronym for Transmission, Distribution, and Storage Improvement Charge.

The law allows the utilities to file at the Indiana Utility Regulatory Commission (“IURC”) for a 7-year TDSIC plan and, if approved by the IURC, collect 80% of the costs for the plan through the TDSIC tracker on customers’ monthly bills. The remaining 20% of the costs associated with the plan would be deferred for recovery in the utilities’ next base rate case. The law requires that the utility file a base rate case at the conclusion of the 7-year TDSIC plan.

The TDSIC tracker was described by proponents of SEA560, and defined in the law, as an incentive for electric and gas utilities, granting expedited cost recovery, including a rate of return, for 80% of the costs for projects that ***a public utility undertakes for purposes of safety, reliability, system modernization, or economic development, including the extension of gas service to rural areas.***<sup>1</sup> Notably, the utilities are already under this obligation—SEA560 merely provided utilities with less risk and easier access to customer money to do so.

### **WHY ARE WE HERE? WHY HB1470?**

The TDSIC tracker has spent the better part of the last five years in the courts. The industrial customers have repeatedly challenged IURC approval of certain costs included in the TDSIC tracker. The industrial customers have argued that the utilities may only recover costs associated with specific projects designated in the TDSIC plan, and that the utilities should not be allowed to recover costs for “categories” of projects which were not specifically identified in the TDSIC plan. In other words, the utilities should not be allowed to charge customers through the TDSIC tracker for new projects which were not identified in the initial TDSIC plan and included in the costs of that plan, i.e. TDSIC is not a blank check for utilities to recover costs through a tracker, especially considering the fact that utilities can otherwise recover prudently incurred costs in base rate cases.

The NIPSCO Industrial customer group secured a significant win at the Indiana Supreme Court in June 2018, when the Court unanimously reversed a lower court ruling. The lower court had upheld the IURC approval of NIPSCO’s requested cost recovery for categories of projects under

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<sup>1</sup> Indiana Code § 8-1-39-2

their existing 7-year TDSIC plan. In reversing this lower court ruling, the Indiana Supreme Court wrote:

***We conclude the TDSIC Statute permits periodic rate increases only for specific projects a utility designates, and the Commission approves, in the threshold proceeding and not for multiple-unit projects using ascertainable planning criteria. In other words, a utility must specifically identify the projects or improvements at the outset in its seven-year plan and not in later proceedings involving periodic updates. There is an appreciable difference between designating specific ‘projects’ and ‘improvements’ up front, which the Statute requires, and describing the criteria for selecting them later, which the Commission approved (emphasis added).***<sup>2</sup>

NIPSCO then filed a motion for rehearing with the Indiana Supreme Court. After rehearing, the Court modified the unanimous decision on September 25<sup>th</sup>, 2018, and made a small, but significant, addition to the language of the unanimous opinion. The Court stated that while the TDSIC statute did not allow the utility to recover costs for new projects through the TDSIC tracker, the utilities could recover expenditures related to any cost overruns in the utilities’ next base rate case. Specifically, the Court added the bolded language below in the updated opinion:

*After the Commission has approved the foundational seven-year plan under Section 10, the utility may file petitions every few months under Section 9 to obtain ‘automatic’ rate adjustments for approved costs and expenditures as it completes these improvements and puts them into service. I.C. §§ 8-1-39-9(a), (c), (e). These periodic Section 9 petitions allow the utility to recoup eighty percent of approved cost estimates. Id. § 8-1-39-9(a). The remaining twenty percent—**along with any cost overruns that are specifically justified by the utility and specifically approved by the Commission**—is recoverable during the general ratemaking case required (emphasis added).*<sup>3</sup>

Clearly, NIPSCO and the other investor-owned utilities were not satisfied with the updated opinion, which leads us to HB1470.

### **WHAT DOES HB1470 DO?**

1. HB1470 makes several significant changes to the original statute. Those changes are mostly in response to rulings made by the IURC and opinions written by the Indiana Courts.

As interpreted by the Indiana Supreme Court, the current law requires the utilities to specifically identify the projects within their 7-year TDSIC plan and limits the costs which

<sup>2</sup> [NIPSCO Industrial Group v. Northern Indiana Public Service Co.](#), 100 N.E.3d 234, 241 (Ind. 2018).

<sup>3</sup> Id

the utilities may recover through the TDSIC tracker to the cost estimates associated with those specific projects. HB1470 changes that by amending the definition of **eligible transmission, distribution, and storage system improvements**<sup>4</sup>, which can be included in the TDSIC tracker. HB1470 adds the following language to the definition of projects eligible to receive the TDSIC tracker:

*projects that do not include specific locations or an exact number of inspections, repairs, or replacements, including inspection-based projects such as pole or pipe inspection projects, and pole or pipe replacement projects (emphasis added).*<sup>5</sup>

Should HB1470 become law, the utilities would no longer need to specifically identify the projects they intend to complete in order to receive the favorable TDSIC tracker, effectively overturning the Indiana Supreme Court opinion.

In other words, even if the utilities have little to no idea what they are going to spend customer money on, they can provide merely a rough estimate of costs and still collect that money from customers through the TDSIC tracker. This new language reduces the utilities incentive to adequately plan for the future, and to properly manage their costs.

2. HB1470 goes a step further in amending the definition of **eligible transmission, distribution, and storage system improvements**. The bill also adds the following to the definition of projects eligible to receive the TDSIC tracker:

*projects involving advanced technology investments to support the modernization of a transmission, distribution, or storage system, such as advanced metering infrastructure, information technology systems, or distributed energy resource management systems (emphasis added).*<sup>6</sup>

Advanced metering infrastructure is more commonly referred to as smart meters. The IURC, and other state regulatory commissions, have denied trackers for smart meters and the related infrastructure, questioning the costs borne by customers when compared to the purported benefits received by customers. HB1470, should it become law, would mandate that the IURC allow smart meters to be included in the TDSIC tracker, regardless of whether or not the benefits to customers outweigh the costs.

3. HB1470 would allow the utilities to cancel an existing approved TDSIC plan and refile for approval of a new TDSIC plan. Currently, Duke has an approved electric TDSIC plan, and both NISPCO and Vectren have approved electric and gas TDSIC plans. Those five plans

<sup>4</sup> Indiana Code § 8-1-39-2

<sup>5</sup> [HB1470, updated January 30, 2019, page 2, lines 6-9](#)

<sup>6</sup> Id, page 2, lines 10-14

collectively total over \$3 billion. Considering the new definitions of eligible projects, all of those existing plans could be withdrawn, and the utilities could file new, updated, and more expensive plans with the looser requirements applying to the new plans. Considering these proceedings are statutorily required to be finished within 210 days, this is an extraordinary ask of the IURC and customer parties.

4. HB1470 further reduces the authority and discretion of the IURC by amending only a few words in the existing law. While the law currently mandates that the IURC approve the TDSIC plan by stating ***the commission shall approve the plan***<sup>7</sup>, it does provide some discretion to the IURC when approving TDSIC proposals by allowing the IURC to ***designate the eligible transmission, distribution, and storage improvements included in the plan as eligible***<sup>8</sup> for the TDSIC tracker.

HB1470 removes that discretion by striking the language allowing the IURC to designate the eligible projects and replacing that language with ***the commission shall approve the plan and authorize TDSIC treatment for the eligible transmission, distribution, and storage improvements included in the plan.***<sup>9</sup>

## **CONCLUSION**

When taken together, these four significant changes to the existing TDSIC law contained within HB1470 effectively turns the IURC into a rubber stamp by requiring approval of a TDSIC tracker, even if the IURC has previously rejected all or parts of a proposed plan, and even if the utility has little to no idea what their plan is and how they will spend customer money. In other words, the State of Indiana is giving the utilities a blank check and is rendering the IURC, our state agency with the expert and technical knowledge to fully understand the impact of these plans, virtually powerless to do anything about it.

The Supreme Court opinion<sup>10</sup> says it all:

*The stakes are much larger than just the roughly \$20 million at issue between NIPSCO and the Industrial Group. The Commission, we are told, has approved billions of dollars of utility-infrastructure investments through the TDSIC process. **Given the favorable regulatory treatment, utilities are likely to funnel increasing amounts of infrastructure investments through this reimbursement mechanism. How we resolve these competing visions of the TDSIC Statute will likely have enormous financial consequences for utilities and their customers.**(emphasis added)*

<sup>7</sup> Indiana Code § 8-1-39-10

<sup>8</sup> Id

<sup>9</sup> [HB1470, updated January 30, 2019, page 4, lines 12-14](#)

<sup>10</sup> [NIPSCO Industrial Group v. Northern Indiana Public Service Co.](#), 100 N.E.3d 234, 241 (Ind. 2018).



There are billions of dollars at stake here. The legislature should hit the pause button on this legislation and, instead, undertake a comprehensive and inclusive dialogue with all stakeholders at the table to craft energy policy which is truly in the public interest. Encouraging and incentivizing the status quo will only lead to excessive utility profits and significant increases in the cost of energy. That may be in the best interest of the monopoly utilities, but it's certainly not in the best interest of the public or the State of Indiana.