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IN THE

COURT OF APPEALS OF INDIANA

NIPSCO Industrial Group,

September 29, 2022

Appellant / Intervenor / Cross-Appellee,

and

Office of the Utility Consumer Counselor,

Appellant / Statutory Party,

v.

Northern Indiana Public Service Company,

Appellee / Petitioner,

and

Indiana Utility Regulatory Commission,

Appellee / Cross-Appellant.

Court of Appeals Case No. 22A-EX-187

Appeal from the Indiana Utility Regulatory Commission

The Hon. James F. Huston, Chair

The Hon. Stefanie Krevda,
The Hon. David L. Ober,
The Hon. David E. Ziegner
Commissioners

Cause No. 45557

Bradford, Chief Judge.

Case Summary

[1] In June of 2021, Northern Indiana Public Service Company ("NIPSCO") petitioned the Indiana Utility Regulatory Commission ("the Commission") for approval of its five-year plan for transmission, distribution, and storage system improvements pursuant to Indiana Code section 8-1-39-10(a), including targeted economic development plans pursuant to Indiana Code section 8-1-39-10(c) ("the TDSIC Plan"). Various groups, including the NIPSCO Industrial Group ("the Industrial Group"), petitioned to intervene in the proceeding, which petition was granted. In October of 2021, the Commission held an evidentiary hearing, after which it granted NIPSCO's petition for approval of

the TDSIC Plan. The Commission cross-appeals, claiming that the Industrial Group lacks standing to prosecute this appeal. On direct appeal, the Industrial Group and the Indiana Office of the Utility Consumer Counselor (collectively, "Appellants") allege that the Commission has misapplied the TDSIC statute in some respects and inappropriately considered evidence regarding the regional and national economic impact of the TDSIC Plan. Because we reject the Commission's assertion that the Industrial Group lacks standing and disagree with Appellants' contentions, we affirm.

Facts and Procedural History

[2] On June 1, 2021, NIPSCO petitioned the Commission for approval of its TDSIC Plan for the period from June 1, 2021, through December 31, 2026. Various organizations, including the Industrial Group, requested permission to intervene, which requests were granted. The Industrial Group is "an ad hoc group of industrial users" served by NIPSCO and consists of seven of its largest customers. Appellants' App. Vol. II p. 101.

[3] On October 5, 2021, the Commission conducted an evidentiary hearing. As the Commission summarized in its order, NIPSCO divided its Plan into three segments of work:

> (1) Aging Infrastructure projects, aimed at maintaining safe and reliable performance [and] replacing aging, high risk equipment […]; (2) System Deliverability projects, aimed at maintaining adequate system capacity to reliably serve customer loads; and (3) Grid Modernization projects, [to install] technologies that

> support improved reliability [and] asset health […] and prepare for future customer expectations.

Order p. 55. Of these segments, the parties focus their arguments on the second, system deliverability projects, which are those projects undertaken from the purpose of maintaining adequate capacity to serve current and future customer needs. NIPSCO noted below, however, that the categories cannot be completely separated from one another and that it is customary for it to "combine[] projects or project categories for efficiency." Order p. 11.

[4] With respect to the benefits of system deliverability work, NIPSCO Director of Electric T&D Charles Vamos explained generally that this work is a basic requirement of continuing to provide electric service: "not performing [system deliverability] work would prohibit NIPSCO from fulfilling its obligation to serve its customers, which is simply not an option." Order p. 46. Vamos also testified that "the benefit to NIPSCO's customers from […] System Deliverability investments cannot be easily calculated in an actuarial calculation[,]" Order at 12, because "the value [of] life and property" affected by these projects "is too high to realistically contemplate." NIPSCO's Supp. App. Vol. III p. 88. NIPSCO, however, did present testimony on the costs and qualitative benefits of system deliverability work, both as a general category and with respect to specific projects.

[5] Vamos detailed to the Commission how NIPSCO identifies which system deliverability work is necessary and worth the cost, by applying rigorous "reliability planning criteria and assessment practices." Order p. 16. To clarify

for the Commission the scope and nature of the proposed system deliverability work, NIPSCO divided it into two subcategories: "Transmission" work and "Distribution" work. NIPSCO's Supp. App. Vol. III pp. 133–34. For each of these subcategories, NIPSCO uses well-established and detailed planning criteria to identify the highest-priority work.

> For the transmission system, NIPSCO's planning criteria [are] aligned with the North American Electric Reliability Corporation ("NERC") Reliability Standards, which […] help ensure a transmission system that will operate reliably and remain resilient through multiple outages without causing cascading outages or widespread load loss and can accommodate near- and long-term customer load growth.

Order pp. 16–17. NIPSCO's transmission planning models are "[d]eveloped through NERC Eastern Interconnection Reliability Assessment Group," which "develop[s] joint models that [multiple] utilities use in local transmission planning analyses." NIPSCO's Supp. App. Vol. III p. 136.

[6] Similarly, "[f]or the distribution system, changes in electric demand associated with current and future customer growth often[]times require investment in the form of expanded, upgraded, or additional facilities[,]" which "ensure sufficient system capacity […] under peak load conditions[.]" Order p. 17. NIPSCO applies these criteria through "annual system assessments," conducted with "industry recognized power system modeling and analysis software" and using "data collected by NIPSCO on a routine cycle." NIPSCO's Supp. App. Vol. III p. 136. The analysis simulates "scenarios [of] current and future projected

conditions including load growth assumptions[,]" considering both "normal and emergency operating conditions[.]" NIPSCO's Supp. App. Vol. III p. 136.

[7] NIPSCO described its system deliverability evaluation criteria to the Commission in great detail. NIPSCO assesses its actual experience with its facilities, and also runs simulations to assess their likely performance, under normal and emergency conditions. The simulated emergencies are not far-fetched catastrophes; they are "N-1" simulations that assume only one component of a system has failed. NIPSCO's Supp. App. Vol. II p. 90. When experience or simulations show that system overload is likely in a particular area, NIPSCO then assesses what must be done to continue providing service to that area. NIPSCO's first option is not to build any infrastructure, but instead to use switching to simply transfer some of the excess electrical load to other adjacent substations or circuits. At times, this option just moves the problem elsewhere, meaning that NIPSCO must add some kind of infrastructure to continue providing reliable service, and so it assesses the most cost-effective solution. NIPSCO first explores the option of upgrading existing transformers or power lines to handle additional load but considers the more expensive options of installing new or larger transformers or rebuilding power lines if upgrading would be insufficient. Finally, NIPSCO considers the high-cost options of building new substations or power lines.

[8] In this case, NIPSCO applied these criteria to draw up a specific list of system deliverability work items that it presented to the Commission for approval. For the first two years of the TDSIC Plan, work in the "Transmission" category

includes rebuilding two 69 kV power-line circuits and extending another circuit to a new distribution substation. Order p. 17. Work in the "Distribution" category includes building a new distribution substation, adding two new power transformers at existing substations, replacing another transformer with a larger one, installing two new sets of switchgear, rebuilding four 12 kV circuits, and reconfiguring several other 12 kV circuits to accommodate the substation upgrades. Order p. 17. In later years of the TDSIC Plan, NIPSCO anticipates building additional substations and power-line circuits, the details of which will be provided to the Commission in updates and reviewed pursuant to Indiana Code section 8-1-39-9.

[9] NIPSCO presented evidence regarding two specific areas of deliverability work it wishes to conduct, one of which is the Marktown substation project. NIPSCO presented evidence "that the Marktown substation is one of the most important substations in NIPSCO's entire system" because "it provides electricity to several large industrial facilities along the Lake Michigan shoreline, including the BP Whiting Refinery, which is the the largest refinery in the Midwest[.]" Order p. 48. The refinery's daily production is "around 10 million gallons of gasoline, 4 million gallons of diesel, and 2 million gallons of jet fuel[.]" NIPSCO's Supp. App. Vol. III pp. 233–34. Moreover, NIPSCO presented evidence of the urgent need for replacing the substation to provide these facilities with electricity: the substation is over ninety years old "and the average asset age is 37 years old," which causes "significant challenges […] such as difficulty in obtaining clearances, the inability to take certain assets out

of service, the lack of redundancy, and the absence of modern breaker schemes and relaying capabilities." Order p. 48.

[10] NIPSCO also presented evidence regarding the need for improvements in the Nappanee area in both the distribution- and the transmission-related system deliverability areas. On the distribution side, NIPSCO presented evidence that its Nappanee substation currently has three transformers, two of which are forty-four years old and one of which is fifty-nine years old. Even under normal usage conditions, the oldest transformer currently must operate at 99% of its rated capacity. If one of the three transformers were to go out of service, even temporarily, the other two would have to run at 175% of their capacity to satisfy existing demand. Similar challenges exist on the transmission side. Failures of even a single component take Nappanee's existing power lines well over 100% of their capacity even at current levels of demand.

[11] NIPSCO also presented evidence that the demand for electricity in this area is very likely to increase significantly in coming years, including that the service area of the Nappanee substation has been growing by up to 26% annually. That trend is set to continue, with the result that the local government "is strongly concerned regarding NIPSCO's ability to meet new growth" and "industrial customers" are complaining about power outages. NIPSCO's Supp. App. Vol. II pp. 94, 95. The existing infrastructure can barely keep up with current electricity use, and even small problems cause it to overload. If the area continues to grow, as is very likely, then at some point relatively soon the

existing infrastructure simply would not be enough to provide electricity to everyone who wants it.

[12] To address these problems in the Nappanee region, therefore, NIPSCO explained to the Commission that it intended to rebuild its Nappanee substation with newer, higher-capacity transformers and replace the switchgear. The improvements will approximately triple the capacity of the substation, which will eliminate the existing problems and allow NIPSCO to meet the needs of future growth. On the transmission side, NIPSCO proposes to upgrade its switchgear in the area to allow for six circuits of power lines rather than the current five, with a new circuit on the west side of Nappanee running out to the industrial park.

[13] NIPSCO also presented the Commission, over objection, with an expert report that gave an overview of the general economic impact of NIPSCO's proposed TDSIC spending ("the Report"). The Report explained that the TDSIC Plan likely would create or sustain about 11,000 jobs in Indiana, at an average pay of $68,000 per year, and about 7000 jobs elsewhere in the United States, paying, on average, $71,000 per year. The TDSIC Plan was projected to increase Indiana's GDP by $1.28 billion and the GDP of the rest of the United States by about $816 million. Total economic output from the Plan would be $2.61 billion in Indiana and $1.57 billion in the rest of the United States. Although the Commission found the Report to be relevant, it does not appear to have relied upon it to any great degree; the Commission's entire analysis of the Report in the Order consisted of one five-sentence paragraph. The Commission

also noted that it recognized the Report's limitations, specifically its exclusion of "attendant costs, such as the potential impact of NIPSCO's electric rates" and that "while the report is an important piece of evidence to consider, it is not the only evidence offered by NIPSCO to support overall Plan approval." Order p. 60.

[14] On December 28, 2021, the Commission approved NIPSCO's TDSIC Plan in an order which provides, in part, as follows:

> 10. Conclusion. We find that NIPSCO's TDSIC Plan meets the requirements of the TDSIC Statute. However, as required by the TDSIC Statute, NIPSCO will be required to provide specific justification for the Commission to approve the recovery of costs in excess of approved estimates.
>
> IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:
>
> 1. The projects identified in NIPSCO's 2021-2026 Electric Plan constitute "eligible transmission, distribution, and storage system improvements" within the meaning of Ind. Code § 8-1-39-2;
>
> 2. NIPSCO's 2021-2026 Electric Plan is reasonable and approved;
>
> 3. NIPSCO is authorized to defer costs associated with the 2021-2026 Electric Plan that are incurred prior to and subsequent to the issuance of an Order in this proceeding until such amounts are recovered through rates;
>
> 4. NIPSCO's request to recover operation and maintenance expenses are TDSIC costs pursuant to Ind. Code § 8-1-39-7 under the TDSIC mechanism is approved;
>
> 5. NIPSCO's request to recover projected depreciation and property tax expenses under the TDSIC mechanism is approved.

6. NIPSCO's request for authority to defer its plan development and PS&I costs for recovery via NIPSCO's future TDSIC tracker filing pursuant to Ind. Code § 8-1-39-9 and to amortize such costs over the life of the Plan is approved;

7. NIPSCO's proposed process for updating the 2021–2026 Electric Plan in future TDSIC annual adjustment proceedings, and filing TDSIC rate updates separately on a semi-annual basis, under the Cause No. 45557-TDSIC-X is approved; and

8. The information filed by NIPSCO in this Cause pursuant to its Motion for Protective Order is deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2, is exempt from the public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

9. The Order shall be effective on and after the date of its approval.

Order pp. 67–68.

Discussion and Decision

Background

[15] "Under traditional rate regulation, an energy utility must first make improvements to its infrastructure before it can recover their cost through regulator-approved rate increases to customers." *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 100 N.E.3d 234, 236–37 (Ind. 2018), *modified on reh'g*, September 25, 2018. These after-the-fact rate increases are accomplished "through periodic rate cases, which are expensive, time consuming, and sometimes result in large, sudden rate hikes for customers." *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 31 N.E.3d 1, 4 (Ind. Ct. App. 2015).

[16] Therefore, under certain circumstances, the legislature has authorized utilities to obtain regulatory preapproval for designated improvements before the utility engages in the work:

> The TDSIC Statute, I.C. ch. 8-1-39, enacted in 2013, is one such procedure. It encourages energy utilities to replace their aging infrastructure by modernizing electric or gas transmission, distribution, and storage projects. This TDSIC procedure, pronounced "tee-DEE-zick", is a process for utilities to assess a distinct charge—a Transmission, Distribution, and Storage System Improvement Charge—for completed projects deemed eligible improvements under the Statute. In contrast to traditional rate-making, the TDSIC procedure permits a utility to seek preapproval of designated capital improvements to the utility's infrastructure[.]

NIPSCO Indus. Grp., 100 N.E.3d at 238–39 (cleaned up). "Presumably understanding that these modernization projects require significant investments of time and money, the legislature drafted the TDSIC Statute to allow utilities to first petition the Commission for approval of a multi-year TDSIC plan and then petition the Commission for periodic rate adjustments based on [the approved plan's] progress." *NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co.*, 125 N.E.3d 617, 624 (Ind. 2019).

[17] The intent of this is that "[e]veryone reaps a benefit." *Id*. at 619. "[U]tilities," for their part, "can count on recouping their investment in upgraded infrastructure," because the Commission approves the recoupment before the utility engages in the work. *Id*. And

> [o]n the consumers' side, the statute requires the Commission to make [advance] determinations regarding the public convenience, necessity, and reasonableness of planned projects before approving a plan to complete them. This process protects both suppliers and consumers of electric and gas services, improves the stability of the provision of these services, and increases the predictability of costs associated with providing and using these services.

Id. at 619. To gain approval from the Commission, the TDSIC statute requires that a "plan must satisfy certain enumerated statutory criteria." *IPL Indus. Grp. v. Indpls. Power & Light Co.*, 159 N.E.3d 617, 621 (Ind. Ct. App. 2020), *trans. denied*. "[T]he burden of showing a project's eligibility for TDSIC treatment" is on the utility. *NIPSCO Indus. Grp.*, 31 N.E.3d at 9.

[18] First, the TDSIC statute requires that a utility's plan include only "eligible transmission, distribution, and storage improvements." Ind. Code § 8-1-39-7.8. By statutory definition, improvements are not TDSIC-eligible unless they are "undertake[n] for purposes of safety, reliability, system modernization, or economic development[.]" Ind. Code § 8-1-39-2(a)(1). It is undisputed that the improvements detailed in the TDSIC Plan are eligible improvements.

[19] Second, the TDSIC statute requires the Commission to make "[a] determination whether public convenience and necessity require or will require the eligible improvements included in the plan." Ind. Code 8-1-39-10(b)(2). This requires the Commission to find that the work "is no more ('convenience') and no less ('necessity') than warranted by the interests of the […] public." Appellants' Br. p. 43.

[20] Third, once the Commission has found that improvements are eligible and necessary, the statute additionally requires it to make "[a] finding of the best estimate of the cost of the eligible improvements included in the plan." Ind. Code § 8-1-39-10(b)(1). Because the burden of proof lies on the utility, a utility cannot simply propose whatever costs it wishes to the Commission—it must instead persuade the Commission that the cost it proposes to recover in its TDSIC plan is actually the "best estimate," and not inflated or an over-estimate of the expense of the work. Ind. Code § 8-1-39-10(b)(1). If the TDSIC Plan is approved and the utility starts incurring costs, it may adjust its rates only to recover the approved costs. Ind. Code § 8-1-39-9(a). If the utility overruns that cost estimate, it must return to the Commission and offer additional, specific justification for the additional costs before it can change its rates to reflect them. Ind. Code § 8-1-39-9(g).

Relevant Standards of Review

[21] On cross-appeal, the Commission contends that the Industrial Group lacks standing in this case and should therefore be dismissed from this appeal. To have standing the party initiating the appeal must be adversely affected by the order. *See Solarize Ind., Inc. v. S. Ind. Gas and Elec. Co.*, 182 N.E.3d 212, 218 (Ind. 2022) ("[T]o obtain judicial review of the IURC's order, Solarize must show it was 'adversely affected' by the Commission's decision."). To be "adversely affected," a party must have "sustained or is in immediate danger of sustaining a direct injury as a result of the order" and "it is not sufficient that [a party] has merely a general interest common to all members of the public." *Id.*

Mere participation in the proceeding before the Commission "does not—on its own—confer standing[,]" nor does the fact that it may have had a "substantial interest" in the proceeding before the Commission under Indiana Code section 8-1-3-3. *Id*.

[22] On direct appeal, Appellants contend that the Commission has misinterpreted the TDSIC statute in some respects. Specifically, Appellants argue that the TDSIC statute requires the Commission to conduct a cost-benefit analysis of each individual project or category of projects in a proposed plan, that the TDSIC cost-benefit requirement categorically disqualifies any work that could in the future result in a utility providing more service to more customers, and that the TDSIC public-interest and cost-benefit requirements prohibit the Commission from even considering the benefits a TDSIC Plan will offer to anyone other than the proposing utility's customers.

[23] When an agency interprets a statute it administers, the question on judicial review is whether "[the agency's] interpretation is reasonable." *Moriarity v. Ind. Dept. of Nat. Res.*, 113 N.E.3d 614, 620 (Ind. 2019). If it is, the interpretation is entitled to deference, and the courts "stop our analysis and need not move forward with any other proposed interpretation." *Id*. To the extent that Appellants also argue that the Commission erroneously admitted and considered certain evidence, they bear the burden of persuading us that the error was not harmless and affected their substantial rights. *Sibbing v. Cave*, 922 N.E.2d 594, 598 (Ind. 2010).

[24] Appellants' other arguments challenge the factual basis for the Commission's decision. Specifically, Appellants argue that NIPSCO did not adequately prove that the statutory cost-benefit analysis is satisfied by either the "Systems Deliverability" category of projects as a whole or by the individual projects in that category. We review an agency's findings of basic fact to determine whether they are supported by substantial evidence in light of the whole record. *N. Ind. Pub. Serv. Co. v. U.S. Steel Corp.*, 907 N.E.2d 1012, 1016 (Ind. 2009). Such determinations will stand unless no substantial evidence supports them. *Id*. "In substantial evidence review, the appellate court neither reweighs the evidence nor assesses the credibility of witnesses and considers only the evidence most favorable to the Board's findings." *Id*. (internal citation omitted). We review an agency's findings of ultimate fact for "reasonableness." *Id*.

> Insofar as the order involves a subject within the Commission's special competence, courts should give it greater deference. If the subject is outside the Commission's expertise, courts give it less deference. In either case courts may examine the logic of inferences drawn and any rule of law that may drive the result.

Id. (internal citations omitted).

Cross-Appeal Issue

I. Whether the Industrial Group Has Standing

[25] The Commission argues that the Industrial Group lacks standing on the basis that the Group itself is merely an ad hoc group of industrial users in the electric service territory of NIPSCO and not itself a customer or ratepayer. At the

outset, it is worth mentioning that we have already rejected this claim, in *Indiana Gas Co. v. Indiana Finance Authority*, 977 N.E.2d 981 (Ind. Ct. App. 2012), *reversed in part and summarily affirmed in part*, 999 N.E.2d 63 (Ind. 2013). In that case, the appellees disputed an ad hoc industrial group's standing and right to appeal. 977 N.E.2d at 993–95. We stated the following regarding the interests of the industrial group:

> The Industrial Group will suffer direct harm if it is subject to pass-through charges and if we find that those charges are not authorized under the SNG Act. As a result, we conclude that the Industrial Group is adversely affected by the Commission's order and has standing to appeal.

Id. at 994. While it is true that the Indiana Supreme Court dismissed the appeal on another basis, it held, "[a]s to all other claims [(including the standing issue)], we summarily affirm the decision of the Court of Appeals." *Ind. Gas Co.*, 999 N.E.2d at 68. Put another way, the Indiana Supreme Court affirmatively endorsed our conclusion that the industrial group had standing to appeal. We see nothing to distinguish that case from this one.

[26] We will nonetheless briefly address the merits of this claim. The Commission contends that the Industrial Group is not a ratepayer and also lacks associational standing. The Industrial Group, however, does not claim standing by virtue of being a ratepayer or associational standing. As the Industrial Group notes, it is not a formal legal entity, but, rather, an ad hoc group with no legal existence apart from its members. *See, e.g.*, *McKinley v. Long*, 227 Ind. 639, 647, 88 N.E.2d 382, 385 (1949) ("It is true that a

partnership as such has no legal existence apart from the individuals composing it."). Indeed, the Industrial Group's intervention petition recognized this, specifically requesting that the "members" be given leave to intervene as "parties[,]" not that the *group* be given leave to intervene as *a* party. Appellants' App. Vol. II p. 103. Even so, it is entirely proper for the Industrial Group to participate in litigation using that collective name. Pursuant to Indiana Rule of Trial Procedure 17(E), "[a] partnership or unincorporated association may sue or be sued in its common name." In summary, we reject the Commission's contention that the Industrial Group does not have standing and so decline its invitation to dismiss it from this appeal on that basis.[1]

Direct Appeal Issues

II. Whether the Commission Erred in Relying on Inappropriate Cost-Benefit Evidence

[27] At the outset, Appellants appear to argue that the recent Indiana Supreme Court case of *Indiana Office of Utility Consumer Counselor v. Duke Energy Indiana, LLC*, 183 N.E.3d 266 (Ind. 2022), effectively overrules the *Moriarty* rule, under which an agency's interpretation of a statute is given deference. *Duke Energy*, however, does not mention *Moriarty*, much less overrule it. Our reading of

[1] A cursory search of the Indiana Reports uncovered twenty-two cases, dating back to 1997, in which the name of at least one of the parties to the appeal included the phrase "Industrial Group." Should the Indiana Supreme Court or General Assembly wish to do away with the apparently-common practice of allowing numerous industrial ratepayers to proceed as an ad hoc group in Commission cases, they may, but we see no reason to do so.

Duke Energy is that it essentially stands for the proposition that "the Court owes no deference where the commission has violated the law[.]" *Id*. at 269. Here, the question is more properly framed as whether the Commission's interpretation of the TDSIC is reasonable. We need not enter into this particular legal debate, however, as the Commission's interpretation of the TDSIC statute passes muster either way.

[28] Appellants argue that the Commission relied on improper evidence, namely that it relied on evidence regarding "human input and real-world evaluation" and found that "the operational expertise of the utility in determining high-priority projects" should not be rejected. Order p. 61. Appellants, however, cite to no statutory language to indicate that considering such evidence is improper in any way. Indeed, keeping in mind that we are addressing cost-benefit estimates regarding projects that have yet to be started, we are at something of a loss to imagine just what sort of evidence would be more relevant than that provided by experienced experts regarding the costs and benefits of similar projects completed in the past.

[29] Appellants also rely on *NIPSCO Industrial Group*, 31 N.E.3d at 1, contending that we decided a "parallel" issue against the utility in that case. Appellants' Br. p. 27. That case, however, is distinguishable. In *NIPSCO Industrial Group*, NIPSCO petitioned for, and received, approval of a seven-year TDSIC plan, despite projects beyond the first year being poorly described, essentially "general categories of spending, separated by function rather than specific projects[.]" *Id*. at 7 (record citation omitted). In fact, the Commission found

that NIPSCO had provided sufficient detail for only the first year of the seven-year plan but, instead of denying the petition for lack of detail, established a presumption of eligibility for years two through seven and required NIPSCO to annually update the plan through an informal process. *Id*. at 4. We reversed, concluding that the Commission "erred by approving NIPSCO's seven-year plan given its lack of detail regarding the projects for years two through seven" and that the Commission's presumption of eligibility for years two through seven "inappropriately shift[ed] the burden of showing a project's eligibility for TDSIC treatment from NIPSCO to other intervening parties." *Id*. at 9. In this case, however, the Commission has not improperly created any "presumption of eligibility" for any of the proposed improvements, rendering *NIPSCO Industrial Group* inapposite. If we are to determine that the Commission's actions were improper in this case, it will be on another basis.

III. Whether the Commission Erred in Not Finding that Every Project in the TDSIC Plan Is Individually Cost-Justified

[30] Indiana Code section 8-1-39-10 provides, in part, as follows:

> (a) A public utility shall petition the commission for approval of the public utility's TDSIC plan for eligible transmission, distribution, and storage improvements. […]
>
> (b) Following notice and hearing, […] the commission shall issue an order on the petition. The order must include the following:
>
> (1) A finding of the best estimate of the cost of the eligible improvements included in the plan.

> (2) A determination whether public convenience and necessity require or will require the eligible improvements included in the plan.
>
> (3) A determination whether the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan.
>
> If the commission determines that the public utility's TDSIC plan is reasonable, the commission shall approve the plan and authorize TDSIC treatment for the eligible transmission, distribution, and storage improvements included in the plan.

[31] Appellants argue that the statute requires more specificity than NIPSCO provided, i.e., that each one of the individual improvements be cost-justified.

> Our first task when interpreting a statute is to give its words their plain meaning and consider the structure of the statute as a whole. We avoid interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results. As we interpret the statute, we are mindful of both what it does say and what it does not say. To the extent there is an ambiguity, we determine and give effect to the intent of the legislature as best it can be ascertained. We do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result.

ESPN, Inc. v. Univ. of Notre Dame Police Dep't, 62 N.E.3d 1192, 1195–96 (Ind. 2016) (cleaned up).

[32] Whether we give deference to the Commission or not, Appellants' proposed interpretation is not supported by the language of the statute. Appellants point to subsection 10(b)(1)'s requirement that the Commission's order must include "[a] finding of the best estimate of the cost of the eligible improvements

included in the plan" as requiring a best estimate of the cost of each eligible improvement. This subsection, however, uses the collective phrase "the eligible improvements" instead of "each individual improvement" and is therefore satisfied by a best estimate of the cost of the TDSIC Plan as a whole. Moreover, Appellants do not address subsection 10(b)(3)'s language that the Commission must make "[a] determination whether the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan." Again, this subsection, as written, is satisfied when the improvements are justified by the benefits attributable to the plan as a whole. Had the General Assembly wished to require more detailed findings, it could have easily required them but did not.

[33] Appellants also make what are, essentially, policy arguments regarding the purposes of subsection 10(b)(3) and how accepting the Commission's interpretation would open the door for wasteful, unnecessary, or overpriced projects. Notably absent from these arguments, however, is even a single aspect of the TDSIC Plan that Appellants feel qualifies as any of the above. In any event, arguments regarding the policy considerations behind the TDSIC statute are best addressed to the General Assembly, not this court.

IV. Whether the Commission Erred in Relying on Evidence of the Regional and National Economic Impact of the TDSIC Plan

[34] As mentioned, the Commission considered NIPSCO's report on the anticipated economic impact of the TDSIC Plan on the regional and national economies,

while noting its limitations (failure to consider the effect of the increase in rates). Appellants argue that (1) the Commission's reliance on the Report was a "material factor" in its cost-justification finding, Appellants' Brief p. 44; (2) nothing in the TDSIC statute or Indiana law generally authorizes the Commission to approve higher levels of utility spending to stimulate the economy at the regional or national levels; and (3) the "public" referred to in the statutory requirement that the Commission make a determination that "public convenience and necessity require or will require the eligible improvements included in the plan" consists solely and entirely of NIPSCO's ratepayers. Ind. Code § 8-1-39-10(b)(2).

[35] As an initial matter, there is little support in the record for the proposition that the Commission relied on the report to any great degree in granting approval for NIPSCO's TDSIC Plan. In the Order, the Commission essentially noted the Report only in passing, while also noting its limitations and affirmatively stating that its decision was supported by other evidence presented by NIPSCO. It is well-settled that

> Even if an evidentiary decision is an abuse of discretion, we will not reverse if the ruling constituted harmless error. An error is harmless when the probable impact of the erroneously admitted or excluded evidence on the factfinder, in light of all the evidence present, is sufficiently minor so as not to affect a party's substantial rights.

Dow v. Hurst, 146 N.E.3d 990, 1001 (Ind. Ct. App. 2020) (citation omitted). Even if we assume, *arguendo*, that the Commission improperly admitted the

Report, the record indicates that the probable impact of it on the Commission's decision was sufficiently minor as to be rendered harmless.

[36] That said, we are unpersuaded by Appellants' arguments for inadmissibility. While it may be true that there is nothing in the TDSIC statute specifically authorizing the admission of economic-impact evidence like the Report, neither is there anything barring it, and the question is not whether evidence is authorized, it is whether it is prohibited. "Relevant evidence is admissible unless any of the following provides otherwise: […] (c) a statute not in conflict with these rules[.]" Ind. R. Evid. 402. Put another way, it is not enough for a statute to fail to specifically authorize evidence for it to be inadmissible; the statute must either specifically exclude it or it must be irrelevant.

[37] Moreover, even if we accept Appellants' argument that "public" is limited to NIPSCO's customers, we still conclude that the Report is relevant. "Evidence is relevant if […] it has *any* tendency to make a fact more or less probable than it would be without the evidence; and […] the fact is of consequence in determining the action." Ind. R. Evid. 401 (emphasis added). It is more probable than not that NIPSCO's ratepayers would benefit from the TDSIC Plan, however indirectly, from positive regional and national economic developments on the theory that "a rising tide lifts all boats." For example, a healthier regional and/or national economy could increase business for NIPSCO's commercial ratepayers and reduce the cost of goods and services for its residential ratepayers. In summary, even if we assume that the Commission

relied heavily on the Report (and there is no indication that this is the case), Appellants have failed to establish that it was error to do so.

Conclusion

[38] We conclude that the Industrial Group has standing to participate in this appeal. We further conclude that the Commission has not misapplied provisions of the TDSIC statute and that it did not improperly rely on evidence regarding NIPSCO's operational expertise in determining high-priority projects and the regional and national economic impact of the TDSIC Plan. Consequently, we affirm the Commission's order in all respects.

[39] We affirm the Commission's approval of NIPSCO's TDSIC Plan.

Riley, J., and Pyle, J., concur.