
VERIFIED DIRECT TESTIMONY OF MICHAEL D. MCCUEN

1 **Q1. Please state your name, business address and title.**

2 A1. My name is Michael D. McCuen. My business address is 290 W. Nationwide
3 Blvd., Columbus, Ohio 43215. I am currently the Director of Income Taxes
4 for NiSource Corporate Services Company ("NCSC"), a management and
5 services subsidiary of NiSource Inc.

6 **Q2. On whose behalf are you submitting this direct testimony?**

7 A2. I am submitting this testimony on behalf of Joint Petitioners Northern
8 Indiana Public Service Company LLC ("NIPSCO") and RoseWater Wind
9 Generation LLC ("Joint Venture").

10 **Q3. Please describe your educational and employment background.**

11 A3. I received a Bachelor of Business Administration degree in Accounting
12 from Franklin University in 1992. I received a Juris Doctor degree from
13 Capital University Law School in 2000. I am a Certified Public Accountant
14 in the State of Ohio and licensed to practice law in the State of Ohio. I held
15 various accounting and tax positions through 2007. In 2007, I joined

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1 Mettler-Toledo as US Tax Manager responsible for all income tax matters
2 for their US subsidiaries. In 2012, I was named Head of US Taxation for
3 Mettler-Toledo responsible for all tax matters within the US. I joined NCSC
4 in May 2012 as Director of Income Taxes.

5 **Q4. What are your responsibilities as Director of Income Taxes?**

6 A4. As Director of Income Tax, I oversee the income tax accounting and tax
7 compliance for NiSource and its subsidiaries, which includes NIPSCO.

8 **Q5. Have you previously testified before this or any other regulatory agency?**

9 A5. Yes. Most recently, I submitted testimony before the Indiana Utility
10 Regulatory Commission ("Commission") in NIPSCO's electric rate case
11 currently pending in Cause No. 45159. I previously testified before the
12 Commission in support of NIPSCO's most recent gas rate case in Cause No.
13 44988 and electric rate case in Cause No. 44688. I have also testified before
14 the Public Service Commission of Maryland in various matters on behalf of
15 Columbia Gas of Maryland. In addition, I have also testified before the
16 Public Utilities Commission of Ohio in various matters on behalf of
17 Columbia Gas of Ohio.

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1 **Q6. Are you sponsoring any attachments to your testimony in this Cause?**

2 A6. No.

3 **Q7. What is the purpose of your direct testimony in this proceeding?**

4 A7. The purpose of my direct testimony is to describe the structure of the Joint
5 Venture and how it provides value to NIPSCO's customers.

6 **Q8. Is there a particular wind project that is being contemplated for the Joint
7 Venture structure?**

8 A8. Yes. There are two wind projects being negotiated with developers that
9 anticipate utilizing the Joint Venture structure. We are presenting one of
10 those projects in this proceeding.

11 **Q9. Please describe the wind project presented in this proceeding.**

12 A9. EDP Renewables North America LLC ("EDPR"), through a special purpose
13 entity known as Rosewater Wind Farm LLC ("Rosewater ProjectCo"), is
14 developing an approximately 25 turbine wind farm and associated electric
15 transmission line in White County, Indiana, which wind farm will have an
16 aggregate nameplate capacity of approximately 102 MW (the "Rosewater
17 Project"). EDPR is one of the leading renewable generation developers in
18 the country and has successfully developed several projects in Indiana.

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1 **Q10. Please describe the joint venture.**

2 A10. The joint venture will be a limited liability company that will own and
3 operate the wind generation assets. 100% of the energy and capacity of the
4 project will be sold to NIPSCO through a power purchase agreement
5 ("PPA"). There will be three members in the joint venture. These members
6 will consist of NIPSCO, the developer (EDPR), and the tax equity partner.

7 **Q11. What agreements control the joint venture?**

8 A11. There will be two documents that control the joint venture. First is a Joint
9 Venture Operating Agreement (the "LLC Agreement") and second is an
10 Equity Capital Contribution Agreement.

11 **Q12. Please describe the LLC Agreement.**

12 A12. Witness Campbell sponsors Confidential Attachment 1-E, which is an
13 Example Term Sheet of a joint venture agreement. This Term Sheet has not
14 been negotiated between parties and is intended only as an example of the
15 material terms that are typically addressed in joint venture agreements for
16 renewable energy wind projects. The Example Term Sheet outlines all the
17 material items that would be in an LLC Agreement. When the LLC

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1 Agreement is finalized a copy will be shared with all parties and can be
2 submitted to the Commission.

3 **Q13. What are the material terms of the LLC Agreement?**

4 A13. The LLC Agreement shall set forth the terms applicable to:

- 5 (1) The operation and management of joint venture and the Project
- 6 Company (Rosewater ProjectCo)
- 7 (2) The allocation of tax items
- 8 (3) The distribution of net cash flow by the joint venture after the Funding
- 9 Date.
- 10 (4) Managing members
- 11 (5) Milestones for investor returns
- 12 (6) Condition precedents
- 13 (7) Relationship to other related documents
- 14 (8) Representations and warranties of parties
- 15 (9) Purchase price option
- 16 (10) Governance

17 **Q14. Please describe the Equity Capital Contribution Agreement.**

18 A14. The Equity Capital Contribution Agreement is the document that binds the
19 tax equity partner to invest in the joint venture if all conditions precedent
20 in the ECCA Agreement are met. The Equity Capital Contribution
21 Agreement is the document that causes the joint venture to issue Class A
22 Interests to the Member and Class B Interests to the Investors, in each case,
23 in accordance with the terms of the LLC Agreement. On the financial
24 closing date, the joint venture will acquire all of the outstanding

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1 membership interests of the Rosewater ProjectCo for the purchase price.

2 When the Equity Capital Contribution Agreement is finalized a copy will

3 be provided to all parties and can be submitted to the Commission.

4 **Q15. Which member will be the managing member of the joint venture?**

5 A15. NIPSCO will be the managing member of the joint venture.

6 **Q16. Has the limited liability company been formed yet?**

7 A16. Yes. RoseWater Wind Generation LLC ("Joint Venture") was formed on

8 December 11, 2018 with NIPSCO as the sole member. The other members

9 of the Joint Venture will be added when the Rosewater Project is completed

10 and indirectly sold to Joint Venture. Witness Campbell describes the

11 transaction in further detail.

12 **Q17. When is the project expected to be completed?**

13 A17. The project is expected to be completed and in-service no later than

14 December 31, 2020.

15 **Q18. Is there any significance to this date of completion?**

16 A18. Yes. This Rosewater Project is expected to qualify for Section 45 Production

17 Tax Credits ("PTC") as provided under the Internal Revenue Code. If the

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1 project is completed and in-service by December 31, 2020, it will qualify for
2 100% of the PTC. These credits are a significant source of value to the
3 project.

4 **Q19. How much PTCs are generated?**

5 A19. Based upon the projections, the Rosewater Project is anticipated to generate
6 approximately [REDACTED] of PTCs over the ten year period provided by
7 the Internal Revenue Code. The actual amount of the PTC generated can
8 vary based upon the output of the facility. The projections reflect a capacity
9 factor of [REDACTED] using the historic wind data for this region.

10 **Q20. How does the wind PTC work?**

11 A20. Under current legislation, the owner of a wind project will receive 100% of
12 the PTC if it started the project in 2016 and finished the project within a four
13 year window, so before 2021. Figure 1 illustrates the different percentages
14 of the PTC a wind project owner can receive. Projects that begin after 2019,
15 or go into service after 2023, are not eligible for the PTC.

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Figure 1.

Start	Finish	Percent of PTC
2016	2020	100%
2017	2021	80%
2018	2022	60%
2019	2023	40%
2020	2024	0%

1 **Q21. What factors determine when a project begins and is finished for**
 2 **purposes of qualifying for the wind PTC?**

3 **A21.** The Internal Revenue Service (“IRS”) will consider construction as having
 4 begun if the taxpayer paid or incurred 5 percent or more of the total cost of
 5 the facility in a particular taxable year, and thereafter made continuous
 6 efforts to advance towards completion of the facility. Generally, the
 7 continuous construction and continuous efforts requirements will be
 8 deemed satisfied if a facility is placed in service by the calendar year that is
 9 no more than four calendar years after the calendar year during which
 10 construction of the facility began.

11 The wind developer in this proceeding, EDPR, obtained in 2016, project
 12 equipment valued at more than 5% of the cost of the project. Therefore, the
 13 project will be eligible for 100% of the wind PTC in 2021 – 2030 (i.e., ten

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1 years) if it is placed into service by December 31, 2020. The listing of
2 equipment is in Exhibit BB of the Build Transfer Agreement ("BTA").

3 **Q22. What is the value of the PTC?**

4 A22. The PTC amount is \$0.015/kWh in 1993 dollars. It is adjusted for inflation
5 using the inflation adjustment factor published each year by the IRS in the
6 Federal Register. In 2018, the factor was 1.5792 and therefore the PTC was
7 ~2.4¢/kWh.

8 **Q23. Please describe the financial aspects of the structure of the Joint Venture.**

9 A23. The Rosewater Project is being developed by EDPR (the developer) through
10 its wholly owned subsidiary, Rosewater ProjectCo. When the project is
11 completed and ready to be placed in service, Joint Venture will purchase
12 Rosewater ProjectCo's equity from EDPR (the developer) for \$ [REDACTED]
13 subject to certain adjustments as set forth in the BTA. Each member of the
14 Joint Venture will contribute the requisite amount of cash for their
15 membership interest in order to have the cash available to purchase the
16 project from EDPR (the developer).

17 Rosewater ProjectCo will enter into a PPA with NIPSCO as the exclusive
18 off-taker of power and capacity from the project. This PPA is described by

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1 Witness Campbell. NIPSCO will make payments under the terms of the
2 PPA to Rosewater ProjectCo. Out of the proceeds of the PPA payments,
3 Rosewater ProjectCo will pay for all of the operation and maintenance
4 expenses of the project along with any other expenses, including property
5 taxes. Any cash remaining after the payment of expenses will be
6 distributed to the tax equity investor and NIPSCO. Based upon the
7 projections, the tax equity partner is expected to take no more than [REDACTED] of
8 this excess cash from the project, with the remainder flowing to NIPSCO.

9 Under the terms of an anticipated LLC Agreement (see Sample Term Sheet),
10 [REDACTED] of the PTCs and tax losses of the Rosewater Project will be allocated to
11 the tax equity partner until such time as the tax equity partner has achieved
12 the negotiated internal rate of return ("IRR"). When this IRR is achieved,
13 the allocation of profits and losses to the tax equity investor will drop to [REDACTED].
14 NIPSCO projects that 100% of the PTCs will have been generated and
15 distributed prior to reaching this point.

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1 **Q24. Please describe the nature and timing of the cash investments required**
2 **to be made by the members of the Joint Venture.**

3 A24. As mentioned previously, the cash investments will be made when the
4 project is completed and ready to go into service, which is expected to be
5 on or before December 31, 2020. At this date, the tax equity partner is
6 anticipated to provide cash equal to approximately [REDACTED] of the
7 purchase price of the Rosewater Project, EDPR will provide cash equal to
8 approximately [REDACTED] of the purchase price of the Rosewater Project, and
9 NIPSCO will provide the remaining [REDACTED] of cash required to make up the
10 purchase price. No later than mid-2023, NIPSCO will be required to
11 purchase the ownership interest of EDPR for a fixed price as negotiated
12 under the terms of the BTA. This is anticipated to coincide with the
13 retirement of the R.M. Schahfer Generation Station. At this point, NIPSCO
14 will have invested approximately [REDACTED] cash in the Joint Venture.

15 **Q25. Will Joint Venture have any debt?**

16 A25. Other than accounts payable and operating lines of credit, Joint Venture
17 will not have any short or long term debt on its balance sheet.

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1 **Q26. What is the purpose of the tax equity partner in this transaction?**

2 A26. The tax equity partner brings financial efficiency to the project by virtue of
3 its ability to utilize the tax attributes on a more accelerated basis than the
4 other members in the Joint Venture. In essence, the tax equity partner is
5 monetizing the tax attributes of the Rosewater Project and thereby reducing
6 the cost to the NIPSCO customer.

7 **Q27. Why is the tax equity partner able to utilize the tax attributes more**
8 **efficiently than the other members in the Joint Venture?**

9 A27. EDPR typically employs tax equity partners in projects that EDPR develops
10 and owns as EDPR does not have an appetite for the tax attributes. NIPSCO
11 is similarly constrained in the use of tax attributes due to previous and
12 anticipated accelerated tax deductions that will limit its utilization of losses
13 and credits over the next several years.

14 The tax equity partner, on the other hand, is not involved in a capital
15 intensive industry and not subject to the tax incentives (i.e. accelerated
16 depreciation) provided by Congress for electric utility infrastructure
17 investing and therefore has the capacity to immediately utilize tax credits
18 as they are generated by the project. This ability of the tax equity partner

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1 to more efficiently utilize the tax attributes is reflected in the upfront cash
2 investment, which reduces the overall investment of NIPSCO in the project
3 (and ultimately the cost to the customer) while still allowing NIPSCO to
4 obtain 100% of the non-tax ownership attributes of the project.

5 **Q28. Does the tax equity partner remain a member of the Joint Venture for the**
6 **life of the Rosewater Project?**

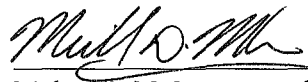
7 A28. Under the terms of the LLC Agreement, NIPSCO will have the option to
8 acquire the tax equity partner's remaining ownership interest after the tax
9 equity partner has achieved its negotiated IRR. This buyout option
10 provides for a fair market value purchase price of that remaining ownership
11 interest. The fair value of the ownership interest will be determined on the
12 discounted future cash flows of the project for the remaining 5% ownership
13 interest.

14 **Q29. Does this conclude your prefiled direct testimony?**

15 A29. Yes.

VERIFICATION

I, Michael D. McCuen, Director of Income Tax for NiSource Corporate Services, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.


Michael D. McCuen

Date: February 1, 2019