

ORIGINAL

[Handwritten initials]
SPA
JLO
[Signature]

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA)
PUBLIC SERVICE COMPANY FOR)
APPROVAL OF A FUEL COST CHARGE)
AND CUSTOMER CREDIT ADJUSTMENT)
TO BE APPLICABLE IN THE MONTHS OF)
NOVEMBER AND DECEMBER 2008 AND)
JANUARY 2009 PURSUANT TO IC 8-1-2-42)
AND CAUSE NO. 41746.)

CAUSE NO. 38706 FAC 80 S1

APPROVED: NOV 04 2009

BY THE COMMISSION:

David E. Ziegner, Commissioner
Aaron A. Schmoll, Administrative Law Judge

On August 5, 2008, Northern Indiana Public Service Company ("NIPSCO") filed its Petition for Commission approval of a change in its fuel cost charge to be applicable in the months of November and December 2008 and January 2009. Petitions to intervene were filed by certain NIPSCO industrial customers designated collectively as the NIPSCO Industrial Group ("Industrial Group") and LaPorte County and the City of Hammond, Indiana ("LaPorte County/Hammond") ("Intervenors") on August 7, 2008. On October 9, 2008, NIPSCO filed an unopposed motion for the creation of a subdocket "for the purpose of permitting the parties to address the issues raised in this Cause."

By its Order issued October 29, 2008, the Commission approved the proposed factors as contained in NIPSCO's August 5, 2008 filing, subject to refund and created a subdocket docketed as Cause No. 38706 FAC 80 S1 (the "Subdocket") consistent with the unopposed motion for the establishment of a subdocket. Because of the uncertain outcome of the Subdocket, the Commission found that the fuel adjustment charge ("FAC") rates approved therein should be interim rates, subject to refund.

Since the issuance of the October 29, 2008 Order, NIPSCO has continued to make quarterly FAC filings and the Commission, while approving the proposed FAC factors, has made those proceedings subject to the outcome of the Subdocket. Those proceedings include Cause Nos. 38706 FAC 81, FAC 82, FAC 83, and FAC 84. The Commission's Order in FAC 83 accepted the parties' proposal for inclusion of issues related to an outage at NIPSCO's Michigan City Unit 12 as an additional topic for the Subdocket.

On September 23, 2009, NIPSCO, LaPorte County/Hammond, the Industrial Group and the Office of Utility Consumer Counselor ("OUCC") entered into and filed a Stipulation and Agreement ("Agreement") with the Commission resolving all issues raised in the Subdocket. On October 2, 2009, the settling parties filed testimony and exhibits in support of the Agreement. The Commission conducted an evidentiary hearing on October 14, 2009 at 10:30 a.m. in Room 222, National City Center, 101 W. Washington Street, Indianapolis, Indiana. During the October 14, 2009 evidentiary hearing, the respective evidence of the parties was offered and admitted into

evidence without objection. No members of the general public appeared or participated at the hearing.

Based upon the applicable law and the evidence presented herein, the Commission now finds that:

1. **Commission Jurisdiction and Notice.** NIPSCO is a public utility incorporated under the laws of the State of Indiana and operating electric utility properties in northern Indiana. Legal notice of the October 14, 2009 hearing in this Cause was given as required by law and the Commission has jurisdiction over NIPSCO and the subject matter of this Cause, as provided in the Public Service Commission Act, as amended, Ind. Code § 8-1-2 *et seq.*

2. **Petitioner's Characteristics.** Petitioner is a public utility corporation, organized and existing under the laws of the State of Indiana, having its principal office at 801 East 86th Avenue, Merrillville, Indiana. It is engaged in rendering electric public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plants and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of electric utility service to the public.

3. **The Agreement.** The Agreement resolves all issues associated with NIPSCO's FAC filings. The Agreement provides that all issues deferred for consideration in Cause Nos. 38706 FAC 80, FAC81, FAC 82, FAC 83 and FAC 84 are resolved. The testimony of the parties discussed in detail the substantive provisions contained in the Agreement, including the Settlement Terms attached thereto. The Agreement is attached hereto and made a part hereof.

4. **Evidence Submitted in Support of the Agreement.**

A. *NIPSCO Evidence.*

NIPSCO presented the testimony of Timothy R. Caister, Director of Electric Regulatory Policy for NIPSCO, who together with the other settling parties' witnesses, sponsored Joint Exhibit 1, the Agreement executed by the settling parties. Mr. Caister said that the settling parties had varying and, if fully litigated, contentious views of the allocation issue and treatment of the block bilateral purchases. However, in the interest of settlement and to fully resolve the issues, NIPSCO agreed with the non-NIPSCO parties to credit \$8,200,000 to its FAC customers over the next four FAC periods. Since the settlement covers several FAC periods (FAC 80 through FAC 84), he stated that it is equitable to refund this credit over the next four FAC periods (FAC 84 through FAC 87).

Mr. Caister testified that the Agreement terms are as follows:

- (a) NIPSCO agrees to provide a credit to fuel costs of a total of \$8,200,000 through its FAC 84, FAC 85, FAC 86 and FAC 87 proceedings, subject to the amount set aside for Intervenor's request for attorney's fees and expenses set forth in Paragraph 6.b. of the Agreement. Such credit, less the amount set aside pursuant to Paragraph 6.b. of the Agreement, shall be applied equally in the amount of \$1,670,750 against the dollars for which recovery is sought in each of those proceedings, beginning with FAC 84.

- (b) NIPSCO shall set aside from the credit identified in Paragraph 6(a) of the Agreement in an interest-bearing account an amount equal to 18.5% of the credit, from which Intervenor and their attorneys may make a request, pursuant to the common fund doctrine, for the payment of reasonable attorneys' fees and expenses in Cause No. 38706 FAC 80 S1 and any related causes. The parties agree to jointly request the establishment of a separate subdocket, designated Cause No. 38706 FAC 80 S2, for the Commission to consider such request. NIPSCO shall not oppose the recovery of attorneys' fees and expenses by the Intervenor and their attorneys.
- (c) NIPSCO shall file revised FAC schedules reflecting the credit described in Paragraph 6.a. in FAC 84 as part of its evidence in support of the Agreement.
- (d) NIPSCO shall informally circulate a draft electric hedging policy to all parties for comment on or before October 15, 2009. In the event that no consensus is reached on the purpose, procedure and terms of such policy, NIPSCO will file a separately docketed proceeding with testimony supporting its electric hedging policy not later than January 22, 2010. The parties expressly acknowledge that all interested persons reserve their rights to object to and oppose any relief NIPSCO requests in the separately docketed proceeding. Unless superseded by the final order in Cause No. 43526, NIPSCO shall continue to abide by the guidelines set forth in Attachment 1 to the Settlement Agreement in Cause No. 38706 FAC 71 S1 until an agreement is reached by the parties regarding NIPSCO's electric hedging policy, or absent agreement, until the Commission issues its final order in the separately docketed proceeding addressing NIPSCO electric hedging policy.
- (e) NIPSCO will provide an electronic copy of its standard FAC audit workpapers to the Intervenor's counsel at the same time that it forwards them to the OUCC pursuant to Non-Disclosure Agreements in place at the time the standard FAC audit workpapers are transmitted.
- (f) NIPSCO agrees to file testimony describing each major forced outage that is reflected in the pertinent FAC reconciliation period, setting forth: (a) the reasons for; (b) the details of; and (c) the steps taken to minimize such major forced outages in the future. For the purposes of the Agreement, a "major forced outage" is defined as a unit forced outage lasting longer than three consecutive days.

Mr. Caister testified that NIPSCO allocates all resources on an after the fact basis. Currently block bilateral purchased power, if and when acquired, is allocated after the fact and the lowest cost resources are allocated to jurisdictional load with the exception of wind energy purchased pursuant to the July 24, 2008 Commission Order in Cause No. 43393 approving the Power Purchase Agreements ("PPAs") with Buffalo Ridge I LLC and Barton Windpower LLC. Mr. Caister stated that NIPSCO has not found it necessary to purchase any block bilateral purchases since the dispatch of Sugar Creek Generating Station into the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO") markets on December 1, 2008. He noted that NIPSCO has agreed to establish a Commission-approved hedging policy to address such purchases before they are made. He testified that NIPSCO will continue to discuss

any potential for purchases of block bilateral purchase power with the other parties as part of its hedging policy discussion.

Mr. Caister noted that the parties specifically agreed that the fuel cost charges approved in FAC 80, FAC 81, FAC 82 and FAC 83 no longer need to be considered interim subject to refund and such designation should be removed and that FAC 84 should be approved without the need for an “interim, subject to refund” referral to this Subdocket.

Mr. Caister opined that the Agreement is a reasonable compromise of the disputed issues in the Subdocket and approval of the Agreement is in the public interest.

B. OUCC Evidence.

Michael D. Eckert testified on behalf of the OUCC. He stated that the primary issues raised in FAC80 and subsequent FAC proceedings revolved around the nature of purchased power costs incurred by NIPSCO and their eligibility for recovery in the FAC pursuant to the Settlement Agreement approved in Cause No. 38706 FAC 71 S1. He explained that the consumer parties in this proceeding challenged costs which appeared to be contrary to the terms of the existing settlement agreement with respect to application of the purchased power benchmark tiers and allocation (“stacking”) of resources used to serve FAC customers.

Mr. Eckert testified that the OUCC reviewed extensive and detailed estimates regarding NIPSCO’s hedging policy and the allocation of the costs associated with certain block bilateral purchased power. He explained that the settling parties met on a number of occasions to examine the calculations and discuss the results.

Mr. Eckert concluded that in his opinion, the Agreement is a fair resolution of the issues that have been raised in FAC 80 through FAC 84, and provides benefits to ratepayers in the form of a direct credit to FAC customers and the establishment of a hedging plan to apply in future fuel cost recovery proceedings.

C. LaPorte/Hammond Evidence.

Reed W. Cearley testified on behalf of LaPorte County/Hammond. He stated that he worked with counsel for LaPorte County/Hammond in analyzing the “stacking” of generation resources and purchased power between native load customers and off-system sales, as well as NIPSCO’s hedging practices for power purchases and the impact of that hedging on the cost of fuel to ratepayers. He noted that the parties diligently pursued settlement of these key issues and other issues on which the parties held widely divergent views. In his opinion, the final settlement falls within the range of reasonable outcomes if this case were to be litigated by the parties and appropriately balances the interests of NIPSCO and its customers.

Mr. Cearley noted that his testimony filed in Cause No. 38706 FAC 80 raised a number of concerns regarding NIPSCO’s calculation of fuel costs. First, his testimony addressed the manner in which NIPSCO “stacked” its generation resources and purchased power when allocating fuel costs between native load customers and off-system sales. Second, he addressed whether NIPSCO’s hedging plan for purchased power actually benefited ratepayers in light of the Revised Benchmark established in the Settlement Agreement approved in Cause No. 38706

FAC 71 S1. He noted that there also were concerns about NIPSCO's calculation of fuel costs from its internal generation that was assigned to off-system sales. Mr. Cearley testified that in reviewing NIPSCO's responses to data requests in FAC 80, LaPorte County/Hammond became increasingly concerned that NIPSCO's cost of bilateral purchases were being inappropriately assigned to native load customers during hours in which NIPSCO's own, low-cost generation was being used to make off-system sales. He said NIPSCO was treating the bilateral purchases as must-run energy and charging ratepayers for that higher-cost energy. Mr. Cearley opined that the "[l]owest cost power should be allocated to FAC load, and highest cost power should be used for off-system sales." (Exhibit RWC-2, p. 19)

Mr. Cearley asserted that NIPSCO did not follow this "stacking" approach in Cause No. 38706 FAC 80 or the subsequent FACs. He alleged that allocation of bilateral purchases to native load customers resulted in higher fuel costs for native load customers while at the same time increasing NIPSCO's margins for off-system sales. In FAC 80, LaPorte/Hammond asserted that ratepayers were owed a refund of \$4,636,721.02 for the period April, May and June 2008. Mr. Cearley similarly calculated refunds for FAC 81, FAC 82 and FAC 83.

Mr. Cearley explained that the potential refund for the later FACs decreased because the volume of bilateral purchases made by NIPSCO and the level of off-system sales decreased after FAC 80. In FAC 80, NIPSCO made bilateral purchases of 400,000 MWHs. For FAC 81 through FAC 83, the total bilateral purchases were approximately 450,000 MWHs. Mr. Cearley concurred that when Sugar Creek became operable in the Midwest ISO on December 1, 2008, NIPSCO ceased making bilateral purchases.

Mr. Cearley stated that NIPSCO's hedging strategy in FAC80 involved significant purchases of bilateral contracts. He noted that according to NIPSCO, these purchases were made for reliability purposes (at least until June 2008) and to mitigate short-term volatility. As Mr. Cearley had previously explained in his testimony filed in FAC 80, the use of bilateral contracts was harmful to ratepayers under the Revised Benchmark adopted in the Settlement Agreement approved in Cause No. 38706 FAC 71 S1. He stated that LaPorte County/Hammond opposed NIPSCO's use of bilateral contracts to hedge NIPSCO's exposure under the Revised Benchmark because the savings to NIPSCO resulted in higher costs to ratepayers.

Mr. Cearley testified that the parties devoted substantial effort to addressing the complicated issues presented in the Subdocket. He stated that NIPSCO provided voluminous documents to the consumer parties, from which the parties were able to thoroughly analyze and fully consider NIPSCO's arguments and evidence. He explained that if the Subdocket had been litigated before the Commission, the parties would have presented divergent and contentious views regarding the "stacking" and hedging issues that were fully explored by the parties during the settlement process. Therefore, Mr. Cearley was confident that the settlement falls within a range of reasonably-likely litigation outcomes.

Mr. Cearley stated that the settlement amount is consistent with LaPorte County/Hammond's litigated position set forth in FAC 80, is consistent with its settlement analysis performed in the Subdocket, and represents a significant undertaking on NIPSCO's part.

Mr. Cearley explained that absent the creation of the Subdocket, LaPorte County was prepared to proceed to hearing in FAC80 based upon the testimony he filed in that Cause, which proposed a refund amount of \$4,636,721.02. Because of the decrease in the level of bilateral purchases and the level of off-system sales resulting from such purchases in FAC 81 through FAC83, Mr. Cearley explained that the refund claim for FAC 81 through FAC 83 would have been less than the refund claim presented in FAC80. Mr. Cearley concluded that as a result, the settlement of \$8,200,000 provides ratepayers with a reasonable refund. He further explained that the settlement of \$8,200,000 is consistent with LaPorte County/Hammond's settlement analysis and represents a significant undertaking on NIPSCO's part.

Mr. Cearley also testified that the refund claim asserted in the Subdocket accrued over four FAC periods and it is reasonable to allow NIPSCO to credit the \$8,200,000 over the next four FAC periods.

Mr. Cearley stated that the Agreement provides for an amount to be set aside from the credit from which Intervenors and their attorneys may make a request, pursuant to the common fund doctrine, for the payment of reasonable attorneys' fees and expenses. He stated this provision will allow the Commission to address such request in the separate subdocket, Cause No. 38706 FAC 80 S2, while permitting NIPSCO to proceed with the provision of the remaining credit beginning in FAC 84.

Mr. Cearley stated that the Agreement provides a framework for the establishment of a hedging policy for NIPSCO. The Agreement also provides for NIPSCO to provide electronic copies of its standard FAC audit workpapers to counsel for LaPorte County/Hammond and the NIPSCO Industrials, which should help expedite their consideration of NIPSCO's quarterly FAC proceedings. He stated that NIPSCO has also agreed to provide more detail in its testimony in future FAC proceedings regarding its forced outages.

D. Industrial Group.

James R. Dauphinais testified on behalf of the Industrial Group. Mr. Dauphinais explained that the general purpose of energy hedging is to protect against financial losses through (i) the purchase or sale of energy from or into the future market or (ii) the use of other instruments. Specifically, in regard to purchasing power for native load customers, hedging typically involves purchasing one or more blocks of energy for future delivery in lieu of purchasing that energy out of the hourly spot market (i.e., Midwest ISO day ahead and real-time energy markets) or another shorter term market. Each individual energy block is generally uniform in size and price over each hour of its future delivery period. The appropriate level of such hedging for native load customers is a function of the price risk exposure carried by native customers versus the cost to native customers to avoid that exposure.

Mr. Dauphinais testified that the Settlement Agreement approved in Cause No. 38706 FAC 71 S1 as it related to hedging contained: (i) provisions that affect the purchased power cost risk exposure of NIPSCO's jurisdictional native load customers, (ii) provisions that require NIPSCO to participate in hedging roundtable sessions with the OUCC, the Commission Staff and other interested parties, and (iii) guidelines for hedging.

He stated that the Settlement Agreement approved in Cause No. 38706 FAC 71 S1 specified a revised monthly standard benchmark (Revised Benchmark) that governs NIPSCO's recovery of purchased power cost from its jurisdictional native load. Under the Revised Benchmark, for power purchases up to an initial threshold of 500 MWs in any hour, the net energy cost of purchased power is only recoverable by NIPSCO up to a monthly standard based upon a hypothetical Combined Cycle Gas Turbine (CCGT) with a heat rate of 7,200 multiplied by fuel cost (where the fuel cost was established by Platt's Inside FERC's Gas Market Report, at the midpoint price for Chicago City Gate for the first flow day of the month, plus \$0.17 per MMBTU.)¹ During the FAC80 through 82 reconciliation period (prior to December 1, 2008), for the first 500 MWh purchased by NIPSCO in each hour, this 1st tier benchmark capped the purchased power cost risk exposure of NIPSCO's native load customers subject to the FAC to the fuel cost of a 7,200 heat rate CCGT. For the first 500 MWh of NIPSCO's energy purchases for native load in each hour, this practically left customers only exposed to price fluctuations in natural gas prices.

In addition, during the FAC 80 through FAC 82 reconciliation periods (prior to December 1, 2008), for the next 500 MW of power purchases in any hour above the first 500 MW purchased, the net energy cost of purchased power was only recoverable by NIPSCO in the FAC up to a monthly standard based upon a hypothetical Combustion Turbine with a heat rate of 12,500 multiplied by fuel cost (where that fuel cost was determined in the same manner as the 1st tier benchmark.) This 2nd tier benchmark provided yet an additional cap on the power purchase cost risk exposure of native load customers subject to the FAC during the FAC 80 to FAC 82 reconciliation periods.

Mr. Dauphinais noted that the Settlement Agreement approved in Cause No. 38706 FAC 71 S1 required NIPSCO to participate in technical sessions with interested parties in order to foster understanding about current electric industry hedging practices. In addition, under the Settlement Agreement approved in Cause No. 38706 FAC 71 S1, NIPSCO committed to meet with the other interested parties on an annual basis and provide a forward looking hedging plan for the succeeding 12-month period. Mr. Dauphinais asserted that the roundtable meetings were only informational in nature and did not provide any advance approval of NIPSCO's hedging practices.

Mr. Dauphinais testified that the hedging guidelines were included as Attachment 1 to the Settlement Agreement approved in Cause No. 38706 FAC 71 S1. The guidelines outlined how NIPSCO's hedging activity will be reviewed, documentation requirements for NIPSCO's hedging strategy plan, suggested goals for NIPSCO's hedging strategy plan, provisions for periodic meetings between NIPSCO, the OUCC and interested parties, the presentation of supporting data for hedging decisions and other matters.

Mr. Dauphinais prepared a table and summarized NIPSCO's monthly on-peak (5x16) energy block purchases during the FAC 80 through FAC 82 reconciliation periods. He noted that in addition, between April 2008 and December 2008, NIPSCO made a number of daily, weekly and balance of the month energy block purchases. He noted that NIPSCO witness Crum

¹ Note that this 1st tier benchmark ceased being applied to NIPSCO upon the commercial operation of NIPSCO's Sugar Creek Generation Facility within the MISO energy market on December 1, 2008.

asserted (i) it was reasonable to enter into these purchases to hedge the volatility of purchased power prices and (ii) the prices paid for these forward contracts were economic and reasonable under the circumstances known at the time NIPSCO entered into each transaction. Mr. Dauphinais testified that on a confidential basis, NIPSCO provided a copy of the hedging plan in effect during the relevant reconciliation periods and the spreadsheets it utilized to identify the size of its block purchases under its hedging plan. Mr. Dauphinais stated that the Industrial Group had concerns with the plan and NIPSCO's block energy purchases in light of the Settlement Agreement approved in Cause No. 38706 FAC 71 S1. Due to (i) the purchased power cost mitigation provided by NIPSCO's 1st and 2nd tier benchmarks that were in effect at the time and (ii) the price averaging effect of block purchases, NIPSCO's native load hedging plan was, in his opinion, not reasonable.

Mr. Dauphinais explained that when NIPSCO hedges its projected power purchases, it does so by purchasing one or more 50 MW power blocks for delivery during the 16 wholesale on-peak hours of weekdays. These blocks typically have the same price in each hour. However, hourly spot market prices for energy are not the same in each hour of the day. As a result, in certain hours of the day, a spot hourly purchase could be priced in excess of NIPSCO's 1st tier benchmark, while an equivalent block purchase for that same hour would not.

Mr. Dauphinais stated that for the reconciliation months of FAC 80 through FAC 82, the Industrial Group's position was that NIPSCO should have reasonably known before the purchase of these blocks that they were very likely to cause unreasonable native load hedging losses. He explained that the Industrial Group's position was that NIPSCO should not have been entering into block purchases for native load that were not expected to at least break even for jurisdictional native load customers, unless NIPSCO could show the risk exposure of such customers is large enough to justify the expected hedging losses that would be incurred by such customers. Mr. Dauphinais estimated NIPSCO's total hedging losses would have been approximately \$10.2 million.

Mr. Dauphinais also described the Michigan City Unit 12 coal conveyor fire outage that took place during the reconciliation periods of FAC 83 and FAC 84. He stated that the coal ramp that brings coal into the main building of Michigan City Unit 12 experienced a fire on January 8, 2009. Due to the damage from the fire, Michigan City Unit 12 was not available to operate from January 8, 2009 until April 18, 2009 except by uneconomically burning natural gas. The Industrial Group was concerned that NIPSCO's maintenance practices for the coal conveyor might not have been prudent. However, after reviewing NIPSCO's responses to data requests in regard to the outage, he testified that the Industrial Group found no evidence of imprudence by NIPSCO in regard to the outage. He added that the Industrial Group has concerns about the completeness of NIPSCO's testimony on forced outages in the FAC proceedings.

5. Commission Discussion and Findings.

A. The Agreement.

Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private

contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest. The Commission may reject, in whole or in part, any proposed settlement if we determine the settlement is not in the public interest. 170 IAC 1-1.1-17(c).

“In the public utilities field, as in other contexts, the law favors settlements precisely because they help advance matters with far greater speed and certainty, and far less drain on public and private resources, than litigation or other adversarial proceedings.” *Re Petition of PSI Energy, Inc.*, Cause No. 42718, Order at 23 (IURC 5/24/06). Settlement of matters pending before the Commission is encouraged. The Agreement filed by the parties in this Cause settles not only the Subdocket but it also finalizes the Subdocket related issues in five separate FAC proceedings. The Agreement provides for refunds totaling \$8.2 million. The Agreement also has provisions designed to increase the transparency and understanding of NIPSCO’s FAC filing and the evolving electric marketplace as well as increased reporting on generation plant forced outages.

All parties submitted sworn testimony supporting Commission approval of the Agreement. Each witness testified to the complexity of the issues being settled and agreed that the public interest is promoted by bringing the numerous and complex issues to a conclusion. We agree the public interest can certainly be served by avoiding contentious and complex litigation. We discuss below the major features of the Agreement and set forth our reasoning and ultimate finding that the Agreement, as modified herein, is supported by probative evidence, in the public interest and should be approved. In so doing, we are cognizant of the fact that the Agreement was reached after months of negotiations and that all provisions of the Agreement tie together.

B. Refund.

NIPSCO has agreed to provide a credit to fuel costs of a total of \$8,200,000 through its FAC 84, FAC 85, FAC 86 and FAC 87 proceedings, subject to the amount set aside for Intervenor’s request for attorney’s fees and expenses set forth in Paragraph 6.b. of the Settlement Agreement. Such credit, less the amount set aside pursuant to Paragraph 6.b. of the Settlement Agreement shall be applied equally in the amount of \$1,670,750 against the dollars for which recovery is sought in each of those proceedings beginning with FAC 84.

Mr. Caister testified that in FAC 80, the OUCC and Intervenors raised concerns over NIPSCO's block bilateral purchased power. He stated that subsequently, NIPSCO worked regularly with the other parties to address their concerns. Mr. Caister explained that to facilitate resolution of the issues, NIPSCO internally assessed a reallocation of block bilateral purchased power resources as if such purchases were not made at all. He explained that this internal analysis yielded a credit to customers of approximately \$7,800,000 covering the period of April 2008 through November 2008.

Mr. Eckert stated that he was confident that the refund provided by the Agreement represents a reasonable amount of credit for NIPSCO's FAC customers. He noted that the provision for the filing of a hedging plan is also an important feature of the Agreement.

Mr. Cearley testified that a key concern and complaint made by LaPorte County/Hammond was that NIPSCO was increasing its off-system sales margins through bilateral purchases at the expense of ratepayers, who ultimately paid higher fuel costs in the FACs. Currently, NIPSCO retains 100% of the margins from its off-system sales. He noted that as Exhibit 2-A, Page 1B of 3 in Cause No. 38706 FAC 83 showed, NIPSCO's net margins from off-system sales (before taxes) for the period ending March 31, 2009 totaled \$7,113,211 (Exhibit RWC-6). Thus, by agreeing to a credit of \$8,200,000, he explained that NIPSCO essentially has agreed to forego its off-system sales net margins for the period encompassed by FAC 80 through FAC 83. Mr. Cearley observed that the settlement amount reflects a fair and reasonable compromise of the refund issue pursuant to each party's methodology used to calculate the refund.

Mr. Dauphinais testified that in his opinion the \$8.2 million credit reasonably addresses the Industrial Group's concerns in regard to the prudence of NIPSCO's block energy purchases during the FAC 80 through FAC 82 reconciliation periods.

Based on the evidence presented, we find this refund amount to be reasonable.

C. Attorneys Fees.

NIPSCO shall set aside from the credit identified in Paragraph 6.a. of the Settlement Agreement in an interest-bearing account an amount equal to 18.5% of the credit, from which Intervenors and their attorneys may make a request, pursuant to the common fund doctrine, for the payment of reasonable attorneys' fees and expenses in the Subdocket and any related Causes. The parties agree to jointly request the establishment of a separate subdocket, designated Cause No. 38706 FAC 80 S2, for the Commission to consider such request. NIPSCO shall not oppose the recovery of attorneys' fees and expenses by the Intervenors and their attorneys. This provision will be the subject of the Cause No. 38706 FAC 80 S2 proceeding.

Based on the evidence presented, we find the creation of a distinct subdocket is reasonable and should be approved. We note that our approval to set aside 18.5% of the credit amount shall not be considered as inherently approving that amount as a reasonable amount of attorneys' fees.

D. Revised FAC 84 Schedules.

NIPSCO filed revised FAC schedules reflecting the credit described in Paragraph 6.a. of the Settlement Agreement in FAC 84 as part of its evidence in support of this Agreement.

E. Hedging Policy.

NIPSCO shall informally circulate a draft electric hedging policy to all parties for comment on or before October 15, 2009. In the event that no consensus is reached on the purpose, procedure and terms of such policy, NIPSCO will file a separately docketed proceeding with testimony supporting its electric hedging policy not later than January 22, 2010. The parties expressly acknowledge that all interested persons reserve their rights to object to and oppose any relief NIPSCO requests in the separately docketed proceeding. Unless superseded by the final order in Cause No. 43526, NIPSCO shall continue to abide by the guidelines set forth in Attachment 1 to the Settlement Agreement in Cause No. 38706 FAC 71 S1 until an agreement is reached by the parties regarding NIPSCO's electric hedging policy and approved by the Commission, or absent agreement, until the Commission issues its final order in the separately docketed proceeding addressing NIPSCO electric hedging policy. The Commission recognizes that established hedging policies can add to the efficiency of summary fuel cost proceedings. However, the Commission notes that the guidelines set forth in the Settlement Agreement in Cause No. 38706 FAC 71 S1 may not be superseded by the parties' agreement alone.

Mr. Caister stated that NIPSCO personnel involved with hedging have committed to provide a draft hedging policy to the other parties by October 15, 2009. The other parties will then have an opportunity to review and comment on the draft hedging policy. He testified that the parties will work to get a consensus on a hedging policy that the parties can file with the Commission in a separately docketed proceeding by January 22, 2010, but in the event that no consensus is reached on the purpose, procedure and terms of such policy, NIPSCO will file a separately docketed proceeding with testimony supporting its electric hedging policy not later than January 22, 2010.

Mr. Cearley testified that in spite of the parties' efforts over the past year, no agreement has been reached on a hedging policy for NIPSCO. Mr. Cearley stated that the parties have established a definite timeline for NIPSCO to present its electric hedging policy to the Commission, and asserted that the parties remain committed to working cooperatively to establish a hedging policy that protects both NIPSCO and ratepayers from the volatility of the purchased power market while maintaining reasonable fuel costs for ratepayers.

Mr. Dauphinais testified that the Agreement provides for the development of a formal electric hedging policy for NIPSCO that should reduce the possibility of imprudent electric hedging by NIPSCO.

F. Electronic Copies of Workpapers.

NIPSCO will provide an electronic copy of its standard FAC audit workpapers to the Intervenor's counsel at the same time that it forwards them to the OUCG pursuant to Non-Disclosure Agreements in place at the time the standard FAC audit workpapers are transmitted.

Mr. Cearley testified that NIPSCO has agreed to provide electronic copies of its standard FAC audit workpapers to counsel for LaPorte County/Hammond and the NIPSCO Industrials, which should help expedite consideration of NIPSCO's quarterly FAC proceedings.

Mr. Dauphinais testified that the provision of electronic copies of NIPSCO's standard FAC audit workpapers to the Intervenor's counsel will help to resolve the challenge presented by the short amount of time available for discovery in NIPSCO's FAC reconciliation proceedings.

G. Information Regarding Forced Outages.

NIPSCO agrees to file testimony describing each major forced outage that is reflected in the pertinent FAC reconciliation period, setting forth: (a) the reasons for; (b) the details of; and (c) the steps taken to minimize such major forced outages in the future. For the purposes of the Agreement, a "major forced outage" is defined as a unit forced outage lasting longer than three consecutive days.

Mr. Dauphinais noted NIPSCO's agreement to file testimony describing each major forced outage that is reflected in the pertinent FAC reconciliation period, setting forth: (a) the reasons for; (b) the details of; and (c) the steps taken to minimize such major forced outages in the future should resolve the Industrial Group's concerns in regard to NIPSCO's FAC testimony concerning forced outages.

6. Effect of Settlement Agreement. With regard to future citation of the Agreement, we find the Agreement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/1997) and the terms of the Agreement regarding its non-precedential effect. The Agreement shall not constitute an admission or a waiver of any position that any of the parties may take with respect to' any or all of the items and issues resolved therein in any future regulatory or other proceedings, except to the extent necessary to enforce its terms.

7. Confidentiality. On October 2, 2009, LaPorte County/Hammond filed a Verified Motion for Protection of Confidential Information. At the hearing held in this Cause, the Presiding Officers found that pursuant to Ind. Code § 5-14-3-4, the confidential information presented in this proceeding should be afforded confidential treatment as trade secrets and continue to be held as confidential by the Commission.

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

1. The Stipulation and Agreement dated September 23, 2009, a copy of which is attached to this Order, as modified herein is hereby approved by the Commission.

2. The "subject to refund" provisions contained in the Orders in Cause Nos. 38706 FAC 80, FAC 81, FAC 82, FAC 83 and FAC 84 relating to the issues addressed herein are hereby removed.

3. The Parties' request for a Subdocket in which Intervenors LaPorte County/Hammond and the Industrial Group may file for an award of reasonable attorneys' fees and expenses is hereby assigned to a subdocket proceeding, under Cause No. 38706 FAC 80 S2, for further consideration. NIPSCO is ordered to transfer the amount of 18.5% of the credit to an interest-bearing escrow account within ten (10) days after the effective date of this Order.

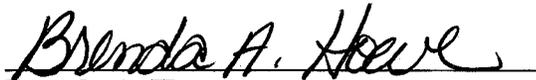
4. The confidential information presented in this proceeding is found to be confidential and shall continue to be excepted from public disclosure.

5. This Order shall become effective on and after the date of its approval.

ATTERHOLT, GOLC, LANDIS, AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: NOV 04 2009

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



**Brenda A. Howe,
Secretary to the Commission**

Joint Exhibit 1

IURC
JOINT

EXHIBIT No. 1
7-14-09 [Signature]
DATE REPORTER

OFFICIAL
EXHIBITS

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA)
PUBLIC SERVICE COMPANY FOR)
APPROVAL OF A FUEL COST CHARGE)
AND CUSTOMER CREDIT ADJUSTMENT) CAUSE NO. 38706-FAC 80-S1
TO BE APPLICABLE IN THE MONTHS OF)
NOVEMBER AND DECEMBER 2008 AND)
JANUARY 2009 PURSUANT TO IC 8-1-2-42)
AND CAUSE NO. 41746.

STIPULATION AND AGREEMENT

This Stipulation and Agreement is entered into this 23rd day of September, 2009, by and among Northern Indiana Public Service Company ("NIPSCO"), the Indiana Office of Utility Consumer Counselor ("OUCC"), LaPorte County and the City of Hammond, Indiana ("LaPorte County/Hammond"), and the NIPSCO Industrial Group ("NIPSCO Industrials") (collectively, "the Parties").

1. **Scope of Stipulation and Agreement.** This Stipulation and Agreement ("Agreement") comprehensively resolves all issues associated with all events encompassed in NIPSCO's fuel adjustment clause proceedings ("FAC") before the Indiana Utility Regulatory Commission ("Commission") through and including Cause No. 38706-FAC84, including without limitation all issues deferred for consideration in Cause No. 38706-FAC80-S1. The Parties specifically agree that the fuel cost charges approved in Cause Nos. 38706-FAC80, FAC81, FAC82 and FAC83 no longer need to be considered interim subject to refund, and that it would be appropriate for the final order approving this Agreement to remove the "interim subject to refund" designation applicable to those periods.

2. **Presentation and Approval of this Agreement.** The Parties shall jointly move to have this Agreement presented to and approved by the Commission, and shall take all reasonable steps to support its approval including the preparation and filing of evidence necessary to support Commission approval and the filing of a joint proposed final order consistent with, and approving, this Agreement. Until filed with the Commission, the terms and content of this Agreement, its supporting testimony and the joint proposed order shall remain confidential and may be disclosed to only the Parties' or their representatives, unless otherwise mutually agreed by the Parties. The terms and conditions of this Agreement shall not be severable, and in the event that the Commission does not approve the Agreement in its entirety without material modification or imposes conditions unacceptable to any Party, the Agreement shall be deemed withdrawn and of no effect; notwithstanding, however, within ten (10) calendar days of such Commission Order, any Party adversely impacted by such material modification(s) or condition(s) may provide written notice to the other Parties of its intent to waive such material modification(s) or condition(s) and deem the Agreement, as modified, effective. The issuance of a final Order by the Commission approving this Agreement in a manner consistent with this paragraph shall terminate all proceedings in regard to this Agreement.

3. **Support and Enforcement of this Agreement.** The Parties shall support this Agreement, and shall not appeal the Order approving it or any subsequent Commission order to the extent such order is specifically implementing, without material modification, its provisions, and the Parties shall not support any appeal of any such order by a person not a party to this Agreement. The provisions of this Agreement shall be enforceable by any Party at the Commission or any court of competent jurisdiction, whichever is applicable.

4. **Compromise and Negotiation.** The Parties agree that this Agreement is solely the result of compromise in the settlement process, and that nothing contained herein is to be construed or deemed as an admission, liability or wrongdoing. All communications and discussions during the negotiations and conferences resulting in this Agreement have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be considered privileged and confidential.

5. **Effect and Use of this Agreement.** The terms of this Agreement represent a fair, just and reasonable resolution by negotiation and compromise. As set forth in the Final Order of the Commission in *Re Petition of Richmond Power & Light*, Cause No. 40434 (Approved March 19, 1997), at page 10, as a term of this Agreement, the Order approving this Agreement must contain language to the effect that it is not the Commission's intent to allow this Agreement, or the Order approving it, to be cited as precedent by any person or deemed an admission by any Party in any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues.

6. **Terms of Agreement.** The Parties agree on the following in full resolution of all issues as described in Paragraph 1 of this Agreement.

- a. NIPSCO agrees to provide a credit to fuel costs of a total of \$8,200,000.00 through its FAC84, FAC85, FAC86 and FAC87 proceedings, subject to the amount set aside for Intervenors' request for attorney's fees and expenses set forth in Paragraph 6(b). Such credit, less the amount set aside pursuant to Paragraph 6(b), shall be applied equally in the amount of \$1,670,750.00 against the dollars

for which recovery is sought in each of those proceedings, beginning with FAC84.

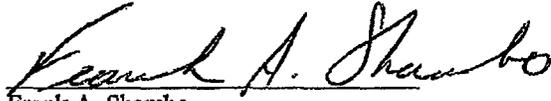
- b. NIPSCO shall set aside from the credit identified in Paragraph 6(a) in an interest-bearing account an amount equal to 18.5% of the credit, from which Intervenor LaPorte County/Hammond and their attorneys and the NIPSCO Industrials and their attorneys may make a request, pursuant to the common fund doctrine, for the payment of reasonable attorneys' fees and expenses in Cause No. 38706-FAC80-S1 and any related causes. The Parties agree to jointly request the establishment of a separate subdocket, designated Cause No. 38706-FAC80-S2, for the Commission to consider such request. NIPSCO shall not oppose the recovery of attorneys' fees and expenses by the Intervenor and their attorneys.
- c. NIPSCO shall file revised fuel adjustment charges schedules reflecting the credit described in Paragraph 6.a. in FAC84 as part of its evidence in support of this Agreement.
- d. NIPSCO shall informally circulate a draft electric hedging policy to all Parties for comment on or before October 15, 2009. In the event that no consensus is reached on the purpose, procedure and terms of such policy, NIPSCO will file a separately docketed proceeding with testimony supporting its electric hedging policy not later than January 22, 2010. The Parties expressly acknowledge that all interested persons reserve their rights to object to and oppose any relief NIPSCO requests in the separately docketed proceeding. Unless superseded by the final order in Cause No. 43526, NIPSCO shall continue to abide by the guidelines set

forth in Attachment 1 to the Settlement Agreement in Cause No. 38706-FAC71-S1 until an agreement is reached by the Parties regarding NIPSCO's electric hedging policy, or absent agreement, until the Commission issues its final order in the separately docketed proceeding addressing NIPSCO electric hedging policy.

- e. NIPSCO will provide an electronic copy of its standard FAC audit workpapers to the NIPSCO Industrials' counsel and LaPorte/Hammond counsel at the same time that it forwards them to the OUCC pursuant to Non-Disclosure Agreements in place at the time the standard FAC audit workpapers are transmitted.
- f. NIPSCO agrees to file testimony describing each major forced outage that is reflected in the pertinent FAC reconciliation period, setting forth: (a) the reasons for, (b) the details of and (c) the steps taken to minimize such major forced outages in the future. For the purposes of this Agreement, a "major forced outage" is defined as a unit forced outage lasting longer than three consecutive days.

7. **Authority to Execute.** The undersigned represent and agree that they are fully authorized to execute this Agreement on behalf of their designated clients who agree to be bound by all of its terms and conditions. The Parties agree that signatures may be made on duplicate copies of the signature pages hereto and incorporated into the original document.

For Northern Indiana Public Service Company:



Frank A. Shambo
Vice President, Regulatory and Legislative
Affairs
NIPSCO
101 West Ohio Street, Ste 1707
Indianapolis, IN 46204

9-22-2009
Dated

For Indiana Office of Utility Consumer Counselor

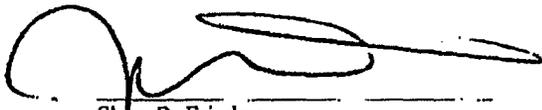


A. David Stippler
Randall C. Helmen
Robert Endris
Indiana Office of Utility Consumer Counselor
115 West Washington Street, Suite 1500 South
Indianapolis, IN 46204

9-23-09

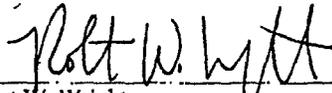
Dated

For LaPorte County and the City of Hammond, Indiana



Shaw R. Friedman
Friedman & Associates, P.C.
705 Lincolnway
LaPorte, IN 46350

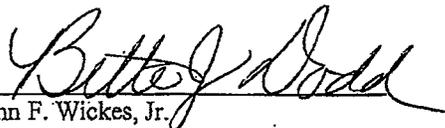
9/22/09
Dated



Robert W. Wright
Dean-Webster, Wright & Kie, LLP
50 South Meridian Street, Suite 500
Indianapolis, IN 46204

9/22/09
Dated

For NIPSCO Industrial Group



John F. Wickes, Jr.

Bette J. Dodd

Lewis & Kappes, P.C.

One American Square, Suite 2500

Box 82053

Indianapolis, IN 46282-0003

9-23-09

Dated