ORIGINAL

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 MAY, JUNE AND JULY, 2009 PURSUANT TO IC 8-1-2-42 AND CAUSE NO. 41746.	)))))))	**CAUSE NO. 38706 FAC 82** **APPROVED:** APR 29 2009

JLG

<u>BY THE COMMISSION</u>:
David E. Ziegner, Commissioner
Aaron A. Schmoll, Administrative Law Judge

On February 6, 2009, Northern Indiana Public Service Company ("NIPSCO" or "Petitioner") filed its petition for Commission approval of a fuel cost adjustment to be applicable and made effective for bills rendered by Petitioner during the billing months of May, June and July, 2009. Petitioner also prefiled its direct testimony and exhibits in support of its petition on February 6, 2009. NIPSCO Industrial Group ("NIPSCO-IG") and the City of Hammond, Indiana ("Hammond") filed Petitions to Intervene on February 11, 2009 and February 18, 2009, respectively, both of which were granted. On February 11, 2009, Petitioner submitted Exhibit B, Revised Schedule 5, Page 4 of 10. On February 13, 2009, Petitioner submitted Petitioner's Exhibit 3-A and Petitioner's Exhibit 3-B, both of which were inadvertently omitted from Petitioner's February 6, 2009 filing. On March 13, 2009, the Office of Utility Consumer Counselor ("OUCC") filed its report in this Cause and the Direct Testimony of Gregory T. Guerrettaz (Public's Exhibit No. 1) and Michael D. Eckert (Public's Exhibit No. 2). On April 14, 2009, the Commission issued a Docket Entry addressing a question to NIPSCO. NIPSCO filed its response to the Commission's Docket Entry on April 15, 2009.

Pursuant to public notice duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the Commission's official file, a public hearing in this Cause was held on April 16, 2009, at 9:30 a.m., in the National City Center, Room 222, 101 W. Washington Street, Indianapolis, Indiana. At the hearing Petitioner, the OUCC, NIPSCO-IG and Hammond appeared by counsel. Petitioner and OUCC offered their respective prefiled testimony and exhibits which were admitted into evidence without objection. Petitioner also offered its response to the Commission's Docket Entry, which was admitted into evidence as Petitioner's Exhibit 6 without objection. No members of the general public appeared or participated at the hearing.

Based upon the applicable law and the evidence of record, the Commission now finds:

1. **<u>Commission Jurisdiction and Notice</u>.** Proper notice of the hearing in this Cause was given as required by law. Petitioner is a public utility corporation incorporated under the laws of the State of Indiana, operating electric utility properties in northern Indiana and is subject to the jurisdiction of this Commission as provided in the Public Service Commission Act, as

amended, IC 8-1-2. Thus, the Commission has jurisdiction over NIPSCO and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner has its principal office at 801 East 86th Avenue, Merrillville, Indiana. Petitioner is engaged in rendered 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 such service to the public.

3. **Available Data on Actual Fuel Costs.** The Petitioner's cost of fuel to generate electricity and the cost of fuel included in the cost of purchased electricity in Petitioner's last base rate case order, approved, July 15, 1987, in Cause No. 38045, was $0.022556 per kWh (Petitioner's Exhibit B, Schedule. 1, Ln. 28). Petitioner's cost of fuel to generate electricity and the cost of fuel included in the cost of purchased electricity for the months of October, November and December, 2008 averaged $0.025313 per kwh (Petitioner's Exhibit B, Revised Schedule 5, p. 4, Ln. 27).

4. **Requested Fuel Cost Charge.** Petitioner seeks to change its fuel cost adjustment charge from the current charge of $0.011185 per kwh (Petitioner's Exhibit 1-C, Ln. 6) to a charge of $$0.007163 per kWh (Petitioner's Exhibit B, Schedule 1, Ln. 30) for all bills rendered in May, June and July, 2009 billing months. The requested fuel cost adjustment charge includes a variance of ($9,547,874) (Petitioner's Exhibit B, Schedule 1, Ln. 25) that was over collected during October, November and December, 2008. Petitioner's estimated monthly average cost of fuel to be recovered in this proceeding for the period May, June and July, 2009, is $39,341,690 (Petitioner's Exhibit B, Schedule 1, Ln. 23), and its estimated monthly average sales for that period are 1,227,966 MWh. (Petitioner's Exhibit B, Schedule 1, Ln. 11).

5. **Statutory Requirements.** Ind. Code § 8-1-2-42(d) states that this Commission shall grant a fuel cost adjustment charge if it finds that:

(1) The electric utility has made every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible;

(2) The actual increases in fuel cost through the latest month for which actual fuel costs are available since the last order of the Commission approving basic rates and charges of the electric utility have not been offset by actual decreases in other operating expenses;

(3) The fuel adjustment charge applied for will not result in the electric utility earning a return in excess of the return authorized by the Commission in the last proceeding in which the basic rates and charges of the electric utility were approved. However, subject to Ind. Code § 8-1-2-42.3, if the fuel charge applied for will result in the electric utility earning a return in excess of the return authorized by the Commission in the last proceeding in which basic rates and charges of the electric utility were approved, the fuel charge applied for will be reduced to the point where no such excess of return will be earned.

(4) The utility's estimates of its prospective fuel costs for each such (3) calendar months are reasonable after taking into consideration: (A) the actual fuel costs experienced by the utility during the latest three (3) calendar months for which actual fuel costs are available; and (B) the estimated fuel costs for the same latest three (3) calendar months for which actual fuel costs are available.

6. **Fuel Costs and Operating Expenses.** Petitioner's Exhibit 2-A, page 1, shows that fuel costs for the twelve months ending December 31, 2008, increased $211,828,590 (Petitioner's Exhibit 2-A, p. 1, Ln. 22) from the pro forma level established in Petitioner's last base rate case, Cause No. 38045. Petitioner's Exhibit 2-A also shows that Petitioner's total operating expenses, excluding fuel in the twelve months ended December 31, 2008, exceeded by $207,699,575 (Petitioner's Exhibit 2-A, p. 1, Ln. 24) the pro forma level of other operating expenses determined pursuant to this Commission's Order in Cause No. 38045. The Commission finds that Petitioner's fuel costs have increased since its last general rate order and that the actual increases in fuel costs have not been offset by actual decreases in other operating expenses.

7. **Efforts to Acquire Fuel and Generate or Purchase Power to Provide Electricity at the Lowest Reasonable Cost.** Petitioner's witnesses described Petitioner's efforts to purchase fuel and generate and purchase power at the lowest cost reasonably possible. Witness Strnatka testified that Petitioner's primary fuel for generation of electric energy is coal (99.49% for the three months ended December 31, 2008). (Petitioner's Exhibit 4, p. 1). Based on the evidence, and subject to further consideration in the subdocket established in FAC 80, we find that Petitioner has made every reasonable effort to acquire fuel and generate or purchase power so as to provide electricity to its retail customers in a reliable manner and at the lowest fuel cost reasonably possible, as hereinafter discussed.

8. **Midwest ISO Costs.** NIPSCO took into account in its forecast for this case the operational changes associated with the Midwest ISO Day 2 energy market, in accordance with the Commission's Orders in Cause Nos. 42685, 42962, 43471; 38706 FAC 68, 38706 FAC 69; 38706 FAC 70, 38706 FAC 71, 38706 FAC 72, 38706 FAC 73, 38706 FAC 74, 38706 FAC 75, 38706 FAC 76, 38706 FAC 77, 38706 FAC 78, 38706 FAC 79 and 38706 FAC 80. In Cause No. 42685, Petitioner was authorized to treat certain defined Midwest ISO Day 2 market costs as a cost of fuel for purposes of the FAC process. In Cause No. 42962 and 43471, Petitioner was authorized to recover in FAC proceedings its Revenue Sufficiency Guarantee ("RSG") costs incurred after December 8, 2005. In the evidence submitted in support of its requested relief in this proceeding, Petitioner followed our orders in both Cause No. 42685 and Cause No. 43471. The Petitioner included in the FAC factor $4,522,963 as the total "MISO Components of Fuel Cost" for the months of October, November and December, 2008. (Petitioner's Exhibit B, Revised Schedule 5, p. 4, Ln. 19). NIPSCO originally requested that the subject to refund provision applicable to FAC 78 and 79 be removed due to the filing by MISO of revised RSG tariffs. The OUCC recommended that the refund status regarding RSG charges reflected in FAC 78 and FAC 79 remain pending final outcome of Rehearing at FERC on the acceptance of the RSG tariffs. NIPSCO did not oppose this recommendation, and therefore the subject to refund status will remain with regard to RSG charges reflected in FAC 78 and 79.

9. **Estimation of Fuel Cost.** The Petitioner estimates that its prospective total average fuel costs for the billing months of May, June and July, 2009, will be $39,341,690 (Petitioner's Exhibit B, Schedule 1, Ln. 23) on a monthly basis. Petitioner previously made the following forecasts of its fuel cost in October, November, and December, 2008 and incurred the following actual costs, resulting in a percent error calculated as follows:

Month	**Estimated Fuel Cost**	**Actual Fuel Cost**	**Percent Estimate Over (Under) Actual**
October	$0.028611/kWh	$0.026998/kWh	5.97%
November	$0.028508/kWh	$0.023261/kWh	22.56%
December	$0.026168/kWh	$0.025457/kWh	2.79%
Weighted Average Error (%)			9.61%

Petitioners' Exhibit B, Schedule 5, pp. 1-3, Lns. 27-28; Petitioner's Exhibit B, Revised Schedule 5, p. 4, Ln. 28.

The OUCC's witness Gregory T. Guerrettaz testified that a significant impact on the projected FAC is the increased cost of purchased power and increases in the renegotiated coal contracts that began in January 2009. Public's Exhibit No. 1, p. 7. OUCC's witness Eckert stated that Sugar Creek is now included in the MISO system and, therefore, is included in the estimated period. Public's Exhibit No. 2, p. 5.

Based on the evidence, we find that NIPSCO has made every reasonable effort to project its fuel related costs for May, June and July, 2009.

10. **Return Earned.** Petitioner's Exhibit 2, containing Exhibit 2-A, demonstrates that for the twelve months ended December 31, 2008, Petitioner earned a jurisdictional return of $174,061,004 (Petitioner's Exhibit 2-A, p. 1, Ln. 21c, Col. F), a 6.99% rate of return (Petitioner's Exhibit 2-B, Ln. 9) on its jurisdictional rate base from Cause No. 38045. This amount included $26,361,646 (Petitioner's Exhibit 2-A, p. lB, Ln. 1) of opportunity off-system sales made from internally generated power, offset by fuel, purchased power costs, supporting variable costs and taxes for a net profit of $6,777,683, (Petitioner's Exhibit 2-A, p. l, Ln. 21b) in accord with the settlement agreement, referred to as the "August Agreement," approved by the Commission in Cause No. 42824 Order, Ordering Paragraph 1 (Aug. 23, 2006). As shown in Petitioner's Exhibit 2-A, the jurisdictional return authorized in Cause No. 38045, beginning in 1992 and thereafter, and adjusted for the Environmental Cost Recovery Mechanism return authorized in Cause No. 42150 ECR 12, pursuant to Ind. Code § 8-1-2-6.6 and 6.8, was $242,737,617 (Petitioner's Exhibit 2-A, p. 1, Ln. 21c, Col. B). Therefore, during the 12-month period ending December 31, 2008, NIPSCO did not earn a return more than that authorized in its last base rate case, as appropriately adjusted.

11. **Earnings Subject to Sharing.** Pursuant to the Commission's September 23, 2002 Order in Cause No. 41746 and the settling parties' acceptance of that Order, NIPSCO must

share the over-earnings reported in each FAC. Petitioner's Exhibit 2-A reflects that for the 12-month period ended December 31, 2008, Petitioner has no such over-earnings.

12. **Fuel Cost Adjustment Factor.** As we have set forth herein, Petitioner has, subject to further consideration in the subdocket established in FAC 80, met the tests of Ind. Code § 8-1-2-42(d) for establishing a revised fuel cost charge. Petitioner's evidence presented a variance factor of $(0.002429) per kwh (Petitioner's Exhibit B, Schedule 1, Ln. 26), to be added to the estimated cost of fuel for the billing months of May, June and July, 2009, in the amount of $0.032038 per kwh (Petitioner's Exhibit B, Schedule 1, Ln. 24), resulting in a fuel cost charge factor of $0.007163 per kwh (Petitioner's Exhibit B, Schedule 1, Ln. 30), after subtracting from that cost the cost of fuel in NIPSCO's base rates and adjusting for applicable taxes. The average residential customer using 1,000 kwh per month will experience an overall decrease of $4.02 on his or her electric bill from the currently approved factor.

13. **Customer Credit Adjustment Factor.** Pursuant to our September 23, 2002 order in Cause No. 41746, Petitioner has set forth evidence of a Customer Credit Adjustment Factor percentage of 5.5326 (Petitioner's Exhibit D, p. 1, Ln. 10) to be applicable during the billing months of May, June and July, 2009. Petitioner's evidence showed the factor is calculated in accordance with the methodology prescribed in the September 23, 2002 order in Cause No. 41746.

14. **OUCC Report.** Mr. Guerrettaz testified: (1) NPSCO has calculated the fuel cost element of the proposed fuel cost adjustment in conformity with the requirements of Ind. Code § 8-1-2-42; (2) NIPSCO has calculated a variance for the quarter ending June, 2009 in conformity with the requirement of Ind. Code § 8-1-2-42; (3) the level of operating income for the twelve month period ending December 31, 2008 is less than the level approved in NIPSCO's last rate case, Cause No. 38045, adjusted to reflect our order in Cause No. 42150 ECR 12; and (4) the fuel adjustment for the quarter ending December 31, 2008 has been properly applied.

15. **Uninstructed Deviation Penalties.** In Cause No. 38706 FAC 74, Petitioner presented a Settlement Agreement regarding uninstructed deviation charges ("UD Settlement"). In the Commission's Order in FAC 71 S1, the Commission found that uninstructed deviation penalties are a reasonable cost of generating power in the Midwest ISO market and may be properly included as a cost of fuel in FAC proceedings, unless it is demonstrated that the utility failed to use Good Utility Operating Practice. The Commission further found that in any month that uninstructed deviation charges exceed uninstructed deviation revenue, Petitioner must provide an explanation as to why and quantify the impact on the FAC factor. Petitioner's Witness Crum stated that during the months of October, November and December, 2008, uninstructed deviation charges did not exceed revenues from uninstructed deviation.

OUCC Witness Eckert recommended that the Commission allow the recovery of the Uninstructed Deviation charges. Given that no party objected to the inclusion of the uninstructed deviation charges, the Commission finds that its inclusion should be accepted.

16. **Purchased Power Costs Above Monthly Standard.** Mr. Crum described the Revised Benchmark that applies to Petitioner's purchased power transactions on and after October 1, 2007. He stated that on January 30, 2008, a final order was issued in Cause No.

38706-FAC-71S1, instituting a three tier Benchmark. Tier 1 of the Benchmark utilizes the costs of a Combined Cycle Gas Turbine ("CCGT") to establish the benchmark for determining the level of purchased power costs to be recovered by Petitioner. The Commission found that the 500 MW threshold level is indicative of the likely size of the first addition to be added to Petitioner's current generation fleet. The heat rate and other cost inputs for the benchmark formula are predicated on publicly available information and, in some cases, reflect cost inputs previously approved by the Commission for other NIPSCO benchmarks. Effective December 1, 2008, Sugar Creek was dispatched into the Midwest ISO. In accordance with the FAC 71 S1 agreement, at the time NIPSCO adds a resource greater than 500 MW, Tier 1 is no longer applicable. Tier 2 of the Benchmark utilizes the costs of a Combustion Turbine ("CT") for determining the level of purchased power recovery. The Tier 2 formula is almost the same as the recovery formula previously approved for Petitioner and other Indiana utilities using a benchmark recovery mechanism. Therefore, the Commission found that use of a benchmark predicated on the costs of a CT is appropriate. Tier 3 permits, absent an act of God or a force majeure situation, Petitioner to recover 85% of its purchased power costs in excess of 1,000 MW.

The applicable purchased power benchmark computed for October, 2008 is $51.91/MWh for the first 500 MWs and $90.13/MWh for the next 500 MWs; for November, 2008 is $45.86/MWh for the first 500 MWs and $79.63/MWh for the next 500 MWs; and for December, 2008 is $86.75/MWh for the first 500 MWs. Petitioner did not seek recovery of any purchased power costs in excess of the computed standard.

OUCC Witness Eckert confirmed Petitioner's purchased power adjustments and confirmed $339,516 of purchase power as being non-recoverable in compliance with the Revised Benchmark.

Mr. Eckert stated that in FAC 80 and FAC 81, the parties agreed to move issues regarding NIPSCO's requested recovery of hedging losses, NIPSCO's hedging policy, NIPSCO's stacking of power purchases between native load and off-system sales, and NIPSCO's calculation of purchased power costs under the Revised Benchmark to a sub-docket in Cause No. 38706 FAC 80 S1 ("FAC 80 Subdocket"). Mr. Eckert stated that these same concerns are concerns in this Cause. Mr. Eckert recommended that Petitioner's FAC rates be made interim, subject to refund, pending the final outcome of the FAC 80 Subdocket.

17. **<u>Interim Rates</u>.** Because we are unable to determine whether Petitioner will earn an excess return while this Order is in effect and because of the uncertain outcome of the FAC 80 Subdocket as discussed in Finding No. 16 above, the Commission finds that the rates approved herein should be interim rates, subject to refund.

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

1. Petitioner's requested fuel cost charge to be applicable to bills rendered in the months of May, June, and July, 2009, as set forth in Finding No. 12 above is hereby approved on an interim basis subject to refund as set out in Finding No. 17 above.

2. Petitioner's requested Customer Credit Adjustment Factor percentage to be applicable to bills rendered in the months of May, June, and July, 2009, as set forth in Finding No. 13 above, is hereby approved.

3. Petitioner shall file with the Electricity Division of the Commission, prior to placing in effect the fuel cost adjustments herein approved, an amendment to its rate schedule with reasonable reference therein reflecting that such charges are applicable to the rate schedules reflected on the amendment.

4. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:
APPROVED: APR 29 2009

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission