

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 NOVEMBER AND)
DECEMBER 2008 AND JANUARY 2009)
PURSUANT TO I.C. 8-1-2-42 AND CAUSE NO.)
41746)

CAUSE NO. 38706 FAC 80 S2

FINAL ORDER

APPROVED: SEP 22 2010

BY THE COMMISSION

David E. Ziegner, Commissioner

Aaron A. Schmoll, Senior Administrative Law Judge

This Subdocket proceeding was established by the Commission's Order of November 4, 2009 in Cause No. 38706 FAC 80 S1 ("FAC 80 S1"). In that Cause, the Commission approved a Stipulation and Agreement ("Settlement"), which provided a refund to the ratepayers of Northern Indiana Public Service Company ("NIPSCO") in the amount of \$8.2 million, but reserved 18.5% of that amount for resolution of awarding reasonable attorneys' fees and expenses in this Subdocket.

Following the issuance of the Commission's November 4, 2009 Order in Cause No. 38706 FAC 80 S1, Intervenor LaPorte County and the City of Hammond ("LaPorte County/Hammond") and NIPSCO Industrial Group (collectively "Intervenors") filed separate petitions for attorney fees, with supporting testimony. NIPSCO and the Indiana Office of Utility Consumer Counselor ("OUCC") also filed testimony in this Cause. Within this Order, the OUCC and Intervenor may collectively be referred to as the "consumer parties."

On February 3, 2010, pursuant to notice as required by law, the Commission conducted an evidentiary hearing in this Cause. NIPSCO, Intervenor, and the OUCC appeared and participated in the hearing. No members of the public attended the hearing. On February 23, 2010, the NIPSCO Industrial Group filed its Request for Administrative Notice, to the extent such notice was required.

On June 23, 2010, the Commission issued its Interim Order in this Cause ("Interim Order"). In the Interim Order, the Commission determined that \$984,000 was a reasonable award, but required the consumer parties to file "a compliance filing consisting of a verified statement quantifying the allocation of responsibility each consumer party, including the OUCC, bore in creating the common fund in this Cause and a quantification of how the consumer parties believe the award should be apportioned." Further, the Commission outlined an informal process to review the FAC process with stakeholders, and ordered the remainder of the refund set aside pursuant to the Settlement to be credited to FAC customers in NIPSCO's next FAC proceeding. On June 30, 2010, the consumer parties filed their *Joint Verified Statement Pursuant to June 23, 2010 Interim Order* ("Joint Verified Statement").

Based upon the applicable law and the evidence presented herein, the Commission makes the following findings and conclusions.

1. Commission Discussion and Findings. The Interim Order made certain findings, determined an appropriate overall attorney fee award, and ordered NIPSCO to refund the remaining portion of the \$8.2 million credit. Those findings shall be considered final upon issuance of this Order. The purpose of this Order is to finalize the specific award of attorney fees to the Intervenors, who were the petitioning consumer parties.

We noted in the Interim Order:

[W]hile the Intervenors proposed different multipliers for their respective lodestars, it is unclear whether the difference in the resulting proposed awards represents the actual allocation of work performed to create the common fund. While the Intervenors requested separate awards based on the hours tracked to the underlying Subdocket, it does not necessarily follow that splitting the award based on time records results in an appropriate division of the award.

Interim Order at 8.

Accordingly, the Commission ordered the consumer parties to file verified statements “quantifying the allocation of responsibility each consumer party, including the OUCC, bore in creating the common fund in this Cause and a quantification of how the consumer parties believe the award should be apportioned.” Interim Order at 9. With respect to quantifying responsibility, the consumer parties stated:

All the consumer parties collaborated and coordinated their positions in order to present a united front to NIPSCO during settlement discussions.... The creation of the common fund, accordingly, was the result of the combined efforts of all the Consumer Parties working together in a collaborative fashion. The distinct efforts of the Consumer Parties were not segregated into defined areas of specific responsibility or otherwise separately divided in a manner that can be readily quantified in terms of individual contribution to the outcome. Rather, each of the Consumer Parties contributed materially and substantially to the results achieved in this Cause.

Joint Verified Statement at 2.

In terms of quantifying the allocation of the award, the consumer parties noted that the OUCC did not request an award of attorney fees, but worked with the Intervenors to reduce the fee request. Between the two Intervenors, the consumer parties verified that the \$984,000 award determined in the Interim Order should be divided with \$802,827 (\$792,031 in attorney fees and \$10,796 in expenses) going to LaPorte/Hammond and \$181,173 (120,657 in attorney fees and \$60,516 in expenses) going to the Industrial Group.

The Commission finds that the consumer parties’ quantification of the award on a roughly 4 to 1 split (and over 7 to 1 if only attorney fees are considered) does not yield a reasonable award based upon the (unquantified) description of the division of each parties’ responsibility. While we respect the difficulty the consumer parties may have faced in attempting to quantify their respective responsibilities, we explicitly ordered the consumer parties to do so, and in the absence of an agreed quantification, each consumer party could have filed its own verified statement. Instead, a

reasonable interpretation of the description of the division of responsibility in the Joint Verified Statement (“each of the Consumer Parties contributed materially and substantially to the results achieved in this Cause”) leads us to conclude that each consumer party had equal responsibility for the result.

Given that “each of the Consumer Parties contributed materially and substantially,” we find that the division of the award, as proposed in the Verified Statement, is unreasonable. As proposed, the division of the award on a 4 to 1 basis does not seem to comport with a material and substantial contribution of the Industrial Group. Our conclusion that the consumer parties were equally responsible for the result suggests that an equal division of the award is also appropriate. If we consider the Interim Order’s reduction of the set aside from 18.5% to 12% as the OUCC’s contribution to the underlying settlement, each consumer party will receive approximately one third of the original set aside, which is consistent with each parties’ contribution to result described in the Joint Verified Statement.

We do note that the Intervenor had expert expenses that also contributed to the result, and we find it appropriate to include the parties’ experts as having contributed to the Settlement Agreement. Accordingly, the Commission finds that each Intervenor shall be awarded \$492,000, plus any accrued interest, which results in an award of \$481,204 in attorney fees and \$10,796 in expenses to LaPorte/Hammond, plus accrued interest, and \$431,484 in attorney fees and \$60,516 in expenses to the Industrial Group, plus accrued interest. Based on the Joint Verified Statement, the Commission finds this division to be a reasonable award for each requesting consumer party.

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

1. Intervenor’s request for an award of attorney fees and expenses is approved as set forth above. Within ten (10) days from the date of this Order, NIPSCO shall transfer the amount of \$492,000 plus any accrued interest on that amount to the trust accounts of Dean-Webster, Wright & Kite, LLC and Lewis and Kappes, P.C.
2. The Interim Order shall be considered final on the effective date of this Order.
3. This Order shall become effective on and after the date of its approval.

HARDY, ATTERHOLT, MAYS AND ZIEGNER CONCUR; LANDIS NOT PARTICIPATING:

APPROVED:

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

Brenda A. Howe
Secretary to the Commission