

ORIGINAL



STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE COMPLAINT OF THE)
NORTHERN INDIANA PUBLIC SERVICE COMPANY)
AGAINST UNITED STATES STEEL CORPORATION)
BECAUSE OF BREACH OF CONTRACT, VIOLATION OF)
ELECTRICITY SUPPLIERS' SERVICE AREA)
ASSIGNMENTS ACT; VIOLATION OF NATURAL GAS)
SERVICE TERRITORY; UNLAWFUL PROVISION OF)
RETAIL ELECTRIC SERVICE TO AN END USE)
CONSUMER; AND RELATED MATTERS)
)
RESPONDENT: UNITED STATES STEEL CORPORATION)**

CAUSE NO. 43363

**IN THE MATTER OF THE COMPLAINT OF UNITED)
STATES STEEL CORPORATION AND ARCELORMITTAL)
INDIANA HARBOR INC. AGAINST NORTHERN INDIANA)
PUBLIC SERVICE COMPANY FOR DETERMINATION)
THAT PASS-THROUGH ARRANGEMENT IS NOT IN)
VIOLATION OF TARIFF OR UTILITY LAW)
REQUIREMENTS)
)
**RESPONDENT: NORTHERN INDIANA PUBLIC SERVICE)
COMPANY)****

CAUSE NO. 43369

**ORDER ON MOTION FOR
RECONSIDERATION AND
MOTION FOR STAY**

APPROVED: AUG 1 8 2010

BY THE COMMISSION:
David Lott Hardy, Chairman
Angela Rapp Weber, Administrative Law Judge

On May 11, 2010, the Indiana Utility Regulatory Commission ("Commission") issued a Final Order in this consolidated Cause. On June 10, 2010, the Northern Indiana Public Service Company ("NIPSCO") filed NIPSCO's Notice of Appeal in this matter. On June 10, 2010 United States Steel Corporation ("U.S. Steel") and ArcelorMittal Indiana Harbor Inc. ("ArcelorMittal") also filed a Joint Notice of Appeal. On June 1, 2010, NIPSCO filed NIPSCO's Petition for Reconsideration ("Petition for Reconsideration") pursuant to 170 IAC 1-1.1-22(e). On June 11, 2010, U.S. Steel and ArcelorMittal filed Opposition to NIPSCO's Petition for Reconsideration ("Opposition to Reconsideration"). On June 18, 2010, NIPSCO filed NIPSCO's Reply in Support of Petition for Reconsideration ("Reply for Reconsideration").

Further, on June 10, 2010, U.S. Steel and ArcelorMittal filed a Motion to Stay. On June 21, 2010, NIPSCO filed NIPSCO's Opposition to Motion for Stay ("Opposition to Stay"). U.S. Steel and ArcelorMittal filed a Reply in Support of Motion to Stay ("Reply for Stay") on June 25, 2010.

1. Petition for Reconsideration. NIPSCO identified in its Petition for Reconsideration three issues that, according to NIPSCO, the Commission did not address in its May 11, 2010 Order in this Cause. The Petition for Reconsideration asked the Commission to make additional findings concerning these issues or to clarify that the issues were dismissed without prejudice. NIPSCO stated that it is seeking damages from U.S. Steel pursuant to its Complaint filed in Porter County, and without the relief it requests in the Petition for Reconsideration, “legal uncertainty” is created.

U.S. Steel’s and ArcelorMittal’s Opposition to Reconsideration stated that the Commission should deny the Petition for Reconsideration. The Opposition to Reconsideration asserted generally that NIPSCO failed to support the need or provide justification for additional findings in this Cause. Finally, the Opposition to Reconsideration alleged that NIPSCO requested additional findings to support its civil suit filed against U.S. Steel for money damages.

NIPSCO’s Reply for Reconsideration denied the allegation made in the Opposition to Reconsideration that NIPSCO is attempting to use this proceeding to further its civil lawsuit. NIPSCO also stated that it supported each additional finding with undisputed facts.

Having reviewed the Petition for Reconsideration, Opposition to Reconsideration, and Reply for Reconsideration, the Commission declines NIPSCO’s invitation to add additional findings to our Order in this Cause and hereby denies NIPSCO’s Petition for Reconsideration.

2. Motion for Stay. U.S. Steel and ArcelorMittal asked the Commission to stay the May 11, 2010 Order in this Cause. The Motion to Stay noted that in Cause No. 43525, the Commission denied British Products North America, Inc.’s (“BP”) request for a stay of the Final Order. The Commission denied BP’s request pursuant to an Order dated July 30, 2009 and cited the criteria listed in *Doe v. O’Connor*, 781 N.E.2d 672, 674 (Ind. 2003). U.S. Steel and ArcelorMittal stated the Motion for Stay should be granted because the four criteria have been met in this Cause.

NIPSCO’s Opposition to Stay asked the Commission to deny the Motion for Stay. The Reply for Stay generally asserted the Motion for Stay should be granted. U.S. Steel and ArcelorMittal argued they would suffer harm if operations at the Plate Mill stopped because transportation of gas to it had to cease as a result of the May 11, 2010 Order. In addition to preventing harm, a grant of the Motion for Stay would maintain the status quo pending the outcome of the proceedings.

Having reviewed the Motion for Stay, Opposition to Stay, and Reply for Stay, the Commission hereby denies the Motion for Stay.

In the Order dated July 30, 2009 denying BP’s request for a stay in Cause No. 43525, the Commission cited to the four criteria for analyzing requests for injunctions used by the Indiana Supreme Court in *Doe v. O’Connor*, 781 N.E.2d 672 (Ind. 2003). The Court treated plaintiffs request for a preliminary injunction as a stay. *Id.* at 673–74. When discussing whether to grant the request for a stay, the Court analyzed the four criteria required to justify a preliminary injunction, which are “(1) irreparable harm, (2) likelihood of success on the merits, (3) balance of harms, and (4) public interest.” (*Id.* at 674 (citation omitted)). After discussing the likelihood of success on the merits, balance of harms, and financial harm, the Court granted the stay and enjoined the defendants from acting.

In previous Orders regarding stays, a primary concern of the Commission has been the harm caused to the parties (*See, e.g., In the Matter of the Petition of Ind. Bell Tel. Co.*, Cause No. 41657

LEXIS, at *20--*21 (Ind. Util. Reg. Comm'n Nov. 28, 2001); *In the Matter of the Petition of the City of Carmel, Ind.*, Cause No. 42725 LEXIS, at *29--*30 (Ind. Util. Reg. Comm'n Feb. 2, 2005)). The examination of harm is consistent when comparing *Doe* and past Commission Orders.

The Commission's Ordering Paragraphs in its May 11, 2010 Order in this Cause are largely declarative, which do not harm U.S. Steel or ArcelorMittal. Only Ordering Paragraph 5 requires U.S. Steel to act by stating that "U.S. Steel must obtain a necessity certificate from the commission" The Commission did not require U.S. Steel to file a Petition for a necessity certificate by a certain date or require U.S. Steel to cease transporting gas to ArcelorMittal. The Commission finds that U.S. Steel and ArcelorMittal have failed to demonstrate how they would be harmed by simply complying with the Commission's directive to obtain a necessity certificate. Accordingly, because U.S. Steel and ArcelorMittal have failed to demonstrate how they would be harmed, the Commission denies the Motion for Stay.

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

1. NIPSCO's Motion for Reconsideration is hereby denied.
2. U.S. Steel's and ArcelorMittal's Motion for Stay is hereby denied.
3. This Order shall be effective on and after the date of its approval.

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

APPROVED: AUG 18 2010

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



Brenda A. Howe
Secretary to the Commission