

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
 NORTHERN INDIANA PUBLIC SERVICE )  
 COMPANY FOR APPROVAL, PURSUANT ) CAUSE NO. 43989  
 TO IND. CODE § 8-1-2-84, OF THE PRICE )  
 AND RELATED TERMS OF SALE FOR AN ) APPROVED: JUN 14 2012  
 ASSET BEING SOLD TO UNITED STATES )  
 STEEL CORPORATION. )

ORDER OF THE COMMISSION

**Presiding Officers:**  
**David E. Ziegner, Commissioner**  
**Gregory R. Ellis, Administrative Law Judge**

On January 26, 2011, Northern Indiana Public Service Company (“Petitioner” or “NIPSCO”) filed its petition and testimony with the Indiana Utility Regulatory Commission (“Commission”) in this matter requesting the Commission to approve the sale of an asset by NIPSCO to United States Steel Corporation (“U.S. Steel”). Also on January 26, 2011, U.S. Steel filed its Petition to Intervene. On February 10, 2011, the Presiding Officers issued a Docket Entry approving the intervention of U.S. Steel.

Pursuant to proper notice of hearing, published as required by law, proof of which was incorporated into the record by reference, an Evidentiary Hearing was held in this Cause on March 11, 2011 at 11:00 a.m. EST in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. NIPSCO, U.S. Steel and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared at the hearing, and NIPSCO and the OUCC presented their evidence. NIPSCO presented testimony and exhibits sponsored by Timothy R. Caister, Director of Electric Policy for NIPSCO, and the OUCC presented testimony sponsored by Duane P. Jasheway, Utility Analyst in the Electric Division of the OUCC. No members of the general public appeared at the evidentiary hearing or otherwise opposed the relief requested.

The Commission, having examined all of the evidence of record, and being duly advised in the premises, now finds as follows:

- 1. Notice and Jurisdiction.** Due, legal and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. NIPSCO is a public utility within the meaning of the Public Service Commission Act, as amended, Ind. Code ch. 8-1-2 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. Ind. Code § 8-1-2-84(e) requires approval by the Commission of a utility’s sale of an asset to another public utility.

U.S. Steel in its Petition to Intervene indicated that it contests and has appealed the

Commission's determination in Cause Nos. 43363/43369 that U.S. Steel is a "public utility", and further indicates that the transformer purchase was made solely in its capacity as an electric consumer. NIPSCO's Petition indicated that its filing is not seeking to reopen or affirm the Commission's earlier "public utility" determination, but instead seeks confirmation that to the extent Ind. Code § 8-1-2-84(e) is deemed applicable, the price and other sale terms for the transformer are reasonable and should be approved. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

**2. Petitioner's Characteristics.** NIPSCO is a public utility corporation organized and existing under the laws of the State of Indiana and having its principal office at 801 East 86<sup>th</sup> Avenue, Merrillville, Indiana. NIPSCO is engaged in rendering electric public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the generation, transmission, distribution and furnishing of such service to the public. NIPSCO is authorized by the Commission to provide electric utility service to the public in various counties in northern Indiana, including Lake County.

**3. Relief Requested.** In its Petition, NIPSCO requests that to the extent necessary the Commission issue an order approving the price and other terms of sale associated with the sale of a transformer to U.S. Steel, pursuant to Ind. Code § 8-1-2-84(e).

**4. Parties' Evidence.** Petitioner's witness Timothy R. Caister provided background on the sale of a 138,000-volt transformer to U.S. Steel. He also testified in support of the reasonableness of the price and other terms relating to the sale.

Mr. Caister testified that in mid-December 2010 U.S. Steel had two transformers fail at its Gary Works location in Lake County. U.S. Steel contacted NIPSCO and learned that NIPSCO had a spare transformer in its inventory that it was willing to sell to U.S. Steel. The transformer was transported from LaGrange, Indiana to U.S. Steel's Gary Works on January 1, 2011. The installation took more than a week, as did the final negotiation of the contract terms. The transformer was energized on January 11, 2011.

Mr. Caister sponsored two exhibits attached to Exhibit TRC, Verified Direct Testimony of Timothy R. Caister, which set out the terms of the sale of the transformer. Exhibit TRC-1 is a copy of the Bill of Sale, and Exhibit TRC-2 is a copy of the Asset Purchase Agreement. Mr. Caister stated that the most notable provisions of those two exhibits are: (i) U.S. Steel has agreed to pay the replacement cost of a new spare transformer of similar capacity, (ii) U.S. Steel has agreed to pay all costs associated with the transport and installation of the transformer, and (iii) the agreed upon price is subject to Commission approval.

Mr. Caister testified in support of the reasonableness of the sale terms. According to Mr. Caister, the transformer sold to U.S. Steel was only in service for NIPSCO for a period of one to two years before it was placed in inventory, so it is nearly new. Also, pursuant to the terms of a spare transformer sharing agreement (a voluntary, nationwide agreement involving multiple electric utilities), NIPSCO is contractually obligated to obtain another spare transformer within the next 18 months. Thus, NIPSCO will soon incur the cost of obtaining a replacement transformer.

Finally, NIPSCO believes it is reasonable to recover from U.S. Steel the transformer's replacement cost, as well as the transportation and installation costs, because such provisions are similar to terms of sale that appear in the Spare Transformer Sharing Agreement, an agreement which was approved by the Commission in its Order in Cause No. 43181 issued on March 22, 2007.

Mr. Caister testified that the transaction will have no ratemaking impact on customers once a replacement transformer is purchased and placed into inventory. Mr. Caister indicated that the cost of the new transformer, when received, will be recorded into inventory at its cost, and when the gross value of the new transformer is netted with the negative net book value of the previous transformer, the net book value of the new transformer will be equal to the book value of the previous transformer at the time of sale.

Mr. Caister testified that the book value of the transformer sold by NIPSCO to U.S. Steel is considerably less than the five percent (5%) threshold prescribed in Ind. Code § 8-1-2-84(e) for triggering a shareholder vote to such a sale. The original cost of NIPSCO's property used and useful in the provision of electric service was determined to be approximately \$2,639 million in NIPSCO's most recent electric rate case. Mr. Caister indicated the book value of the transformer is approximately \$729,000.

OUCG witness Duane P. Jasheway testified that ideally, the petition should have been filed after the bidding process had been concluded and a winning bidder had been selected. Mr. Jasheway stated that given U.S. Steel's immediate need for a transformer and the 10-12 month lead time to obtain a replacement transformer it was understandable why the filing was made at the time. Mr. Jasheway recommended that NIPSCO be required to file reports indicating the selection of a bidder, including the bid price; the estimated date of arrival of the new transformer; and a detailed explanation of the accounting treatment for the transaction, including supporting documents.

In his rebuttal testimony, Mr. Caister indicated that Petitioner was willing to provide the periodic reports recommended by Mr. Jasheway. At the evidentiary hearing, Mr. Caister provided supplemental testimony indicating the final approved bid price for the replacement transformer was \$1,134,200. He further testified that the replacement transformer was scheduled to be delivered by December 31, 2011.

**5. Commission Discussion and Findings.** The Commission issued an Order in consolidated Cause Nos. 43363 and 43369 on May 11, 2010 finding, among other things, that U.S. Steel was a public utility by its sale of electricity to ArcelorMittal Indiana Harbor Inc. ("ArcelorMittal") and by its transportation of natural gas to ArcelorMittal pursuant to Ind. Code § 8-1-2-87.5. On June 1, 2010, NIPSCO filed a Petition for Reconsideration in consolidated Cause Nos. 43363 and 43369, which the Commission denied pursuant to an Order dated August 18, 2010. On June 10, 2010, NIPSCO filed a Notice of Appeal in the matter, and U.S. Steel and ArcelorMittal filed a Joint Notice of Appeal. On June 9, 2011, the Indiana Court of Appeals issued a decision finding that U.S. Steel was not acting as a public utility by providing electricity to ArcelorMittal, a tenant at U.S. Steel's Gary Works location, because "U.S. Steel has provided electricity to only one customer located within its industrial complex pursuant to a special

agreement.” *United States Steel Corp. v. N. Ind. Pub. Serv. Co.*, 951 N.E.2d 542 (Ind. Ct. App. 2011). The Court also found that U.S. Steel’s provision of electricity was “not in an attempt to displace NIPSCO as an electricity supplier, but out of convenience and as a continuance of its previous distribution of electricity to itself when it owned the Plate Mill.” *Id.* at 556. The Court concluded that U.S. Steel did not act as a public utility because it was not providing service directly or indirectly to the public and thus did not violate Ind. Code ch. 8-1-2.3. The Court of Appeals remanded to the Commission with instructions to vacate the portions of the May 11, 2010 Order that concluded U.S. Steel was acting as a public utility with respect to the provision of electricity to ArcelorMittal and violating Ind. Code ch. 8-1-2.3. The Court of Appeals affirmed the Commission’s determination that U.S. Steel acted as a public utility by transporting gas to ArcelorMittal pursuant to Indiana Code § 8-1-2-87.5(b) and violated NIPSCO’s tariff ban on resale. The Indiana Supreme Court denied U.S. Steel’s and ArcelorMittal’s Petition to Transfer Jurisdiction on February 7, 2012. See *United States Steel Corp. v. N. Ind. Pub. Serv. Co.*, 2012 Ind. LEXIS 203 (Ind., Feb. 7, 2012).

On March 8, 2012, the Commission issued a Docket Entry requesting NIPSCO and U.S. Steel respond to the Commission indicating whether any additional filings would be made in light of the Indiana Court of Appeals’ decision. NIPSCO and U.S. Steel filed a joint response on March 30, 2012 indicating the sale of the transformer to U.S. Steel was a sale from one public utility to one of its customers, as opposed to a sale from one public utility to another and that such a transaction falls outside the terms of Ind. Code § 8-1-2-84(e). However, the parties indicated that if the Commission deems review of the transformer sale to be appropriate and subject to regulatory review, the Commission should grant all necessary and appropriate regulatory approval insofar as the price and terms were in all respects reasonable. Neither NIPSCO nor U.S. Steel has sought to dismiss this Cause.

Ind. Code § 8-1-2-84(e) provides: “Any such public utility may sell or lease its used or useful property, plant, or business, or any part thereof, to any other such public utility at a price and on terms approved by the commission.” The statute provides the Commission with jurisdiction to approve sales between public utilities of used and useful utility property. It is not limited to sales between public utilities that provide the same type of utility service. See e.g., *Northern Indiana Public Service Company*, Cause No. 42320, 2002 Ind. PUC LEXIS 569 (IURC, Dec. 26, 2002). Because U.S. Steel has been determined to be a public utility, we find it appropriate in this Cause that the Commission review the sale of the transformer from NIPSCO, a public utility, to U.S. Steel, a public utility. Petitioner’s evidence indicates that the sale terms associated with the transformer sold by NIPSCO to U.S. Steel require U.S. Steel to pay NIPSCO the replacement cost of the new transformer, and also the transportation and installation costs incurred by NIPSCO. Petitioner’s supplemental testimony indicated the replacement cost of the transformer was \$1,134,200, and that the transformer was scheduled to be delivered by December 31, 2011. Petitioner’s evidence indicated the sale and replacement of the transformer would not affect the book cost reflected in Petitioner’s books and records. Based on the evidence of record and relevant law, we find that the price and other terms of the sale of the transformer by NIPSCO to U.S. Steel were reasonable and should be approved. We further find that the cost of the transformer is less than five percent (5%) of the book cost of all of Petitioner’s properties, plants and business owned by Petitioner at the time the Petition was filed. Thus, NIPSCO is not required

to seek approval of its shareholders for this transaction as set out in Ind. Code § 8-1-2-84.

The OUCC requested Petitioner submit periodic reports relating to the transaction. Petitioner agreed to provide the requested information. At the evidentiary hearing, Petitioner provided two of the three items requested by the OUCC: the price of the transformer and the delivery date. With regard to the remaining report requested by the OUCC, the Commission finds that within thirty (30) days of this Order NIPSCO shall file with the Commission and the OUCC a report detailing the accounting entries associated with the sale of the transformer by NIPSCO to U.S. Steel and the related acquisition of a replacement transformer.

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

1. The price and other terms of sale associated with the above-described transformer sold by NIPSCO to U.S. Steel shall be and hereby are approved.
2. Petitioner shall file a report with the Commission and the OUCC detailing the accounting entries associated with the sale and replacement of the transformer within thirty (30) days of this Order.
3. This Order shall be effective on and after the date of its approval.

**LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT NOT PARTICIPATING;  
ATTERHOLT ABSENT:**

**APPROVED:            'JUN 14 2012**

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



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**Shala M. Coe  
Acting Secretary to the Commission**