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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF) HOWMET CASTINGS & SERVICES INC.) AGAINST NORTHERN INDIANA PUBLIC) SERVICE CO.)	CAUSE NO. 44291 APPROVED:
RESPONDENT: NORTHERN INDIANA PUBLIC) SERVICE CO.)	OCT 30 2013

ORDER OF THE COMMISSION

Presiding Officers:

James D. Atterholt, Chairman

Aaron A. Schmoll, Senior Administrative Law Judge

On October 29, 2012, pursuant to 170 IAC 16-1, Howmet Castings & Services, Inc. (“Howmet” or “Complainant”), filed a complaint with the Commission’s Consumer Affairs Division against Northern Indiana Public Service Company (“NIPSCO” or “Respondent”). On behalf of the Consumer Affairs Division, the Commission’s General Counsel referred the case to the Chief Administrative Law Judge on January 4, 2013, which was filed under this Cause on January 8, 2013.

On February 22, 2013, Howmet filed a motion for summary judgment. NIPSCO filed a response and cross motion for summary judgment on March 20, 2013. Howmet submitted a Reply on April 1, 2013. On May 30, 2013, the Commission entered a Docket Entry denying both motions for summary judgment.

On June 7, 2013, Howmet filed an appeal to the full Commission of the May 30 Docket Entry. NIPSCO filed a response on June 12, 2013, and Howmet filed a Reply on June 17, 2013.

On September 13, 2013, Howmet and NIPSCO (“Settling Parties”) filed a Notice of Settlement Agreement (“Notice”), and attached the Settlement Agreement (“Settlement Agreement”). The Notice indicates that the OUCC does not object to the Settlement Agreement. On September 27, 2013, the Settling Parties filed testimony in support of the Settlement Agreement.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, a public hearing was held on October 10, 2013, at 10:30 a.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. The Complainant, Respondent, and the OUCC participated in the hearing. At the hearing, the settlement testimony of both Complainant and Respondent were admitted into evidence. All parties waived cross-examination. No members of the general public appeared.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. **Notice and Jurisdiction.** Proper notice of the public hearing in this Cause was published as provided by law. Respondent is an Indiana corporation engaged in rendering electric public utility service in the State of Indiana and is a public utility within the meaning of Ind. Code § 8-1-2-1(a). This case involves issues of the terms and conditions of Respondent's electricity service to Complainant, a customer in Respondent's service territory. Therefore, the Commission has jurisdiction over the Respondent and over the subject matter of this proceeding.

2. **Characteristics of Parties.** Respondent is a public utility organized and existing under the laws of the State of Indiana and having its principal office at 801 East 86th Avenue, Merrillville, Indiana. Respondent renders 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. Complainant owns a manufacturing facility in LaPorte, Indiana, which specializes in integral compressor and turbine investment castings for the aerospace and industrial gas turbine industries. Complainant receives electricity service from the Respondent.

3. **Requested Relief.** In its Complaint and in subsequent pleadings, Howmet requested that NIPSCO be ordered to serve Howmet under NIPSCO's Rate 625. Howmet also requested that NIPSCO be required to refund the difference in price that Howmet has paid between service under Rate 625 and service under Rate 626 since Howmet's removal from Rate 625. Howmet and NIPSCO subsequently executed the Settlement Agreement to resolve the issues raised in this proceeding and now request the Commission to approve the Settlement Agreement.

4. **Summary of Evidence of the Parties.**

A. **Settlement Testimony of Howmet.** Michael P. Gorman, Managing Principal of Brubaker & Associates, Inc., provided settlement testimony on behalf of Howmet. Mr. Gorman explained that both parties agree the issue presented in this case is the proper interpretation of the Rate 625 language. Both parties filed for summary judgment offering different interpretations of the rate schedule language, and both motions were denied by the Commission's May 30, 2013 Docket Entry. Then, on September 12, 2013, Howmet and NIPSCO executed the Settlement Agreement. The OUCC does not object to the Settlement Agreement.

Mr. Gorman observed that the Settlement Agreement resolves the existing billing dispute between Howmet and NIPSCO. When NIPSCO removed Howmet from Rate 625 in August 2012, NIPSCO required Howmet to select another rate schedule. Howmet selected Rate 626 under protest, and paid under Rate 626 until January 17, 2013. Since then, Howmet has withheld the difference between Rate 625 and Rate 626.

Mr. Gorman explained that under the Settlement Agreement, Howmet will continue to withhold the difference between Rate 625 and Rate 626 until the Commission approves the amended Rate 625 tariff language via the 30-day filing process. In addition, Howmet will keep the disputed amount already withheld. Finally, NIPSCO will credit Howmet's account in an

amount equal to the difference between Rate 625 and Rate 626 that Howmet paid prior to January 2013, when Howmet began withholding this difference.

Mr. Gorman also testified that the Settlement Agreement establishes a plan for the future. The Settlement Agreement provides that NIPSCO will amend its Rate 625 tariff language via a 30 day filing process, and that Howmet will not object to or intentionally cause objection to this filing. In addition, Mr. Gorman explained, Howmet will identify another rate schedule; enter into a one year service contract with NIPSCO; and begin paying under the new rate schedule on the day that the Commission amends the Rate 625 tariff language. Mr. Gorman stated that with three exceptions, the Settlement Agreement is contingent upon the Commission's approval of NIPSCO's 30-day filing to amend Rate 625.

Finally, Mr. Gorman testified that the settlement agreement offers a reasonable resolution of all issues in this case. Although the parties continue to disagree about the proper interpretation of the current Rate 625 rate schedule language, he testified that the Settlement Agreement resolves the billing dispute between Howmet and NIPSCO and offers a plan for both parties to move forward. Mr. Gorman observed that the Settlement Agreement represents compromises made by both parties and permits them to avoid expensive and protracted litigation.

B. Settlement Testimony of NIPSCO. Timothy R. Caister provided testimony on behalf of NIPSCO to explain the major provisions of the Settlement Agreement between NIPSCO and Howmet and to provide support for approval of the Settlement Agreement by the Commission. Mr. Caister provided a procedural history of the Cause No. 44291 and described the Settlement Agreement.

Mr. Caister testified that the Settlement Agreement resolves the existing billing dispute between Howmet and NIPSCO. NIPSCO removed Howmet from Rate 625 in August 2012 and required Howmet to select a different rate schedule. He stated Howmet selected Rate 626 under protest and paid under Rate 626 until January 17, 2013. He explained that after that date, Howmet began withholding the difference between Rate 625 and Rate 626 (the "disputed amount"), but continued to pay the undisputed portion of its bill. Mr. Caister testified that the Settlement Agreement requires NIPSCO to credit Howmet's account in an amount equal to the disputed amount paid prior to January 17, 2013 and allows Howmet to continue to withhold the difference between Rate 625 and Rate 626 until the Commission approves NIPSCO's request for an amendment to Rate 625 via the Commission's 30-Day Filing process (the "Rate 625 Amendment"), to which Howmet has not objected. He also noted that except as noted below, the Settlement Agreement is contingent upon the Commission's approval of the Rate 625 Amendment. There are three provisions that are not contingent upon Commission approval of the Rate 625 Amendment: (1) Paragraph 4, which relates to the procedural schedule and the Rate 625 Amendment; (2) Paragraph 5, which prohibits Howmet from objecting to NIPSCO's Rate 625 Amendment; and (3) the first sentence of Paragraph 3, which requires Howmet to identify another rate schedule for which it is eligible. Mr. Caister testified that the Settlement Agreement establishes that Howmet will select a different rate schedule; enter into a one year service contract with NIPSCO; and begin paying under the new rate schedule on the day the Commission approves the Rate 625 Amendment. He testified the Settlement Agreement also releases potential claims and disputes relating to Howmet's eligibility for Rate 625.

Mr. Caister described the Rate 625 Amendment. He testified that on September 23, 2013, as part of the Settlement, NIPSCO filed with the Commission a request via the 30-Day Filing process for approval of amendments to Rate 625 to clarify the eligibility criteria and certain terms and conditions that were in dispute in this Cause. He noted that the language amendments clarify that in order to be eligible for Rate 625, a customer must have a maximum thirty (30) minute on-peak Demand for a billing period that is less than 50% of their maximum thirty (30) minute off-peak Demand for that same billing period. He stated similar clarifications are incorporated into the terms and conditions of service under Rate 625 regarding when a current customer is no longer eligible. Mr. Caister testified that the proposed amendments are consistent with the way in which NIPSCO has interpreted and applied the Rate 625 eligibility criteria and terms and conditions since Rate 625 went into effect on December 27, 2011 and as a result, no existing Rate 625 customers are impacted by the proposed amendments.

Finally, Mr. Caister testified that the Settlement Agreement is in the public interest because it constitutes a just, reasonable and complete resolution of the issues raised in this proceeding and brings closure to this protracted and costly litigation.

5. Commission Discussion and Findings. At the outset, we note that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. 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. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Serv. 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 Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the relief requested and the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

In this proceeding, the Commission reviewed the Settlement Agreement executed between Howmet and NIPSCO and the supporting testimony. The Settlement Agreement provides a resolution to the existing billing dispute between Howmet and NIPSCO. In addition, the Settlement Agreement provides that NIPSCO will request modification of its existing Rate 625 language to address the ambiguity noted by the Commission in its May 30, 2013 Docket Entry denying the parties’ respective motions for summary judgment.¹ As shown by the evidence of record, the Settlement Agreement is reasonable, just, and consistent with the

¹ Given that the Settlement Agreement will result in a modification of the Rate 625 language, we deem Howmet’s appeal to the full Commission moot.

purposes of Ind. Code ch. 8-1-2, and is therefore approved in its entirety. A copy of the Settlement Agreement is attached to this Order and incorporated herein by reference. With regard to future citation of this Order, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 (IURC March 19, 1997).

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

1. The Settlement Agreement attached hereto is approved in its entirety.
2. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: OCT 30 2013

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



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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF)
HOWMET CASTINGS & SERVICES INC. AGAINST)
NORTHERN INDIANA PUBLIC SERVICE)
COMPANY.) CAUSE NO. 44291
)
RESPONDENT: NORTHERN INDIANA PUBLIC)
SERVICE COMPANY)

STIPULATION AND SETTLEMENT AGREEMENT

Howmet Castings & Services, Inc. (“Howmet”) and Northern Indiana Public Service Co. (“NIPSCO”) (collectively, the “Parties”) solely for the purpose of compromise and settlement, having been duly advised by their respective staff, experts, and counsel, stipulate and agree that the following terms and conditions set forth below represent a fair, reasonable, and just resolution of the matters raised in this Cause, subject to their incorporation into a non-appealable final order of the Indiana Utility Regulatory Commission (“Commission”) without modification or further condition that may be unacceptable to any Party. Except as explicitly set forth below, if the Commission does not approve this Stipulation and Settlement Agreement (“Agreement”) in its entirety, the entire Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

TERMS AND CONDITIONS

1. Howmet keeps the disputed amount that it has withheld (i.e. the difference between service under Rate 625 and service under Rate 626) beginning with the January 17, 2013 billing statement through the most recent billing statement.

2. NIPSCO agrees that Howmet may withhold the difference between service under Rate 625 and service under Rate 626 (as calculated by NIPSCO and verified by Howmet) until the date the Commission approves amended Rate 625 tariff language (attached hereto) via the 30-day filing process.

3. As part of this settlement agreement, Howmet will identify a non-Rate 625 rate schedule for which it is currently eligible (as verified by NIPSCO). Howmet will enter into a standard written contract for an initial period of not less than one year to take service under that non-Rate 625 rate schedule and will begin making payments pursuant to the selected rate schedule beginning on the date that the Commission approves amended Rate 625 tariff language attached hereto via the 30-day filing process.

4. The parties will file this Agreement and a proposed procedural schedule with the Commission in Cause No. 44291 and NIPSCO will file for approval of amended Rate 625 tariff language (attached hereto) via the 30-day filing process.

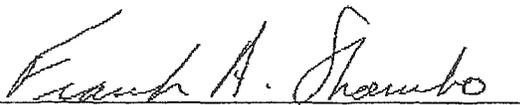
5. Howmet will not object to nor intentionally cause any objection to NIPSCO's making a 30 day filing to request approval of the amended Rate 625 tariff language (attached hereto).

6. Except as set forth in Paragraphs 4 and 5 and the first sentence of Paragraph 3 hereof, this settlement is contingent on, and shall not become effective until the date of, approval by the Commission of NIPSCO's 30-day filing to request approval of the amended Rate 625 tariff language attached hereto.

7. NIPSCO agrees to provide a lump sum credit to Howmet's account equal to the difference between Rate 625 and Rate 626 (as calculated by NIPSCO and verified by Howmet) that Howmet paid to NIPSCO under Rate 626 prior to the January 17, 2013 billing statement.

8. This settlement resolves all potential claims and disputes between the parties relating to Howmet's eligibility for Rate 625 for the period beginning December 27, 2011 through the most recent billing statement. Except with respect to enforcement of the terms of this settlement as provided herein, the parties agree to release all claims they might have for damages relating to such claims and disputes.

ACCEPTED AND AGREED TO THIS 12th DAY OF September, 2013:

NORTHERN INDIANA PUBLIC SERVICE COMPANY	HOWMET CASTINGS & SERVICES, INC.
 By: Frank A. Shambo Vice President Regulatory & Legislative Affairs NIPSCO - A Nisource Company 150 W. Market St., Suite 600 Indianapolis, IN 46204	 By: Bette J. Dodd LEWIS & KAPPES One American Square, Suite 2500 Indianapolis, Indiana 46282-0003

ATTACHMENT 1

RATE 625
RATE FOR ELECTRIC SERVICE
METAL MELTING SERVICE

No. 1 of 4 Sheets

TO WHOM AVAILABLE

This is a rate for customers who have substantial requirement for electric metal melting and/or holding equipment. Total capacity to be made available under this rate is limited to 100 Megawatts. This Rate Schedule is available to Industrial Customers with electric metal melting and/or holding equipment and an maximum thirty (30) minute on-peak Demand for a billing period that is less than 50% of their maximum thirty (30) minute off-peak Demand for that same billing period and is located adjacent to existing electric facilities adequate to meet the Customer's requirements.

A Customer requesting service hereunder is required to contract for a specific amount of electrical capacity which shall be not less than 500 kilowatts. The Company shall not supply demand in excess of 12,000 kilowatts under this schedule. The Company shall not be obligated to supply capacity in excess of that specified in the contract.

CHARACTER OF SERVICE

The Company will supply service to the extent of the capacity available from its electric supply lines, at such frequency, phase, regulation and one standard secondary voltage of 480 volts or above or the available primary or transmission voltage at the location where service is required. (See Company Rule 3 for the Company's Standard Voltages.)

The Customer will supply in accordance with plans and specifications furnished by the Company and at a mutually agreed upon location on the Customer's property, suitable buildings, structures, and foundations to house and support any protecting, switching, relaying, or metering equipment that may be supplied by the Company.

HOURS OF SERVICE

Off-Peak hours of service are twenty-four (24) hours on Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day and those commencing at 7:00 p.m. Central Standard Time (C.S.T.) and ending at 11:00 a.m., Central Standard Time (C.S.T.), the following day. On-Peak hours are all other hours, provided, however that the customer may, at its discretion, provide on an annual basis, of the five consecutive hours it designates as on-peak and the remaining three hours will also be considered as off-peak hours.

The Company reserves the right to curtail or interrupt during Off-Peak ~~periods~~ hours that portion of the Customer's service which is in excess of the highest Maximum On-Peak Demand established in the preceding eleven (11) months as hereinafter provided.

Issued Date
12/21/2011

Effective Date
12/27/2011

NIPSCO

RATE 625
RATE FOR ELECTRIC SERVICE
METAL MELTING SERVICE

No. 2 of 4 Sheets

DETERMINATION OF AMOUNT OF ELECTRIC SERVICE SUPPLIED

The electric service to be supplied under this rate shall be measured as to Maximum Demand, Energy Consumption and Power Factor, by suitable meters to be installed by the Company.

RATE

The electric service and energy supplied hereunder shall be billed under a two-part rate consisting of a Demand Charge plus an Energy Charge and applicable Riders. Subject to the adjustments herein provided, said rate is as follows:

Demand Charge

\$10,625.00 per month for the first 500 kilowatts or less of Billing Demand per month.
\$20.25 per kilowatt per month for all over 500 kilowatts of Billing Demand per month.

Energy Charge

\$0.031981 per kilowatt hour for all kilowatt hours used per month.

During Interruptions, all kilowatt hours used in excess of the highest Maximum On-Peak Demand shall be subject to an energy charge equal to the greater of:

1. Day-Ahead LMP; or
2. Real-Time LMP

If a Customer fails to comply with a Curtailment, the Customer shall be subject to the above energy charge during a Curtailment and, the Customer shall be liable for any charges and/or penalties from any outside agency(ies) or duly applicable organization including Midwest ISO, FERC and ReliabilityFirst Corporation for failure to comply with a Curtailment. Penalties and charges may be, but are not limited to, penalties associated with disqualification as a Load Modifying Resource.

DEDUCTIONS AND ADJUSTMENTS

1. **Metering:**

If, at the Company's option and in its sole discretion, the metering is installed at a voltage level at or above a nominal 12,500 volts, the kilowatt hours metered will be reduced by one percent (1%) before computing the Energy Payment, and the maximum demand in each period will be reduced by one percent (1%) before the Billing Demand is determined. The Company shall provide the Customer an accurate method of demand clock synchronization or an "on-peak" start/stop pulse.

Issued Date
12/21/2011

Effective Date
12/27/2011

NIPSCO

RATE 625
RATE FOR ELECTRIC SERVICE
METAL MELTING SERVICE

No. 3 of 4 Sheets

DEDUCTIONS AND ADJUSTMENTS (continued)

2. Subtransmission and Transmission Service:

If service is taken by the Customer at 34,500 volts or 69,000 volts, and if the Customer supplies and maintains all transformation equipment (34,500 volts or 69,000 volts to utilization voltage), the monthly demand payment will be reduced by \$0.90 per kilowatt of monthly Billing Demand.

MONTHLY MINIMUM CHARGE

The Customer's Monthly Minimum Charge under this rate shall be the sum of the Demand Charge plus the Energy Charge, subject to the adjustments herein provided; however, in no case shall the Monthly Demand Payment be less than \$10,625.00.

NOTIFICATION OF INTERRUPTION OR CURTAILMENT

The Company shall provide four (4) hours of advance notice before curtailing or interrupting service during Off-Peak period.

DETERMINATION OF MAXIMUM DEMAND

The Customer's Maximum Demand in any month shall be determined by suitable maximum demand instruments. The Customer's demand of electric energy supplied shall be determined for each half-hour interval of the month. The phrase "half-hour interval" shall mean a thirty (30) minute period beginning or ending on a numbered clock hour as indicated by the clock controlling the metering equipment.

DETERMINATION OF BILLING DEMAND

The Billing Demand for the month shall be the greatest of the following demands:

- (1) The maximum metered On-Peak half-hour demand, adjusted for Power Factor.
- (2) 30% of the maximum metered Off-Peak half-hour demand, adjusted for Power Factor.
- (3) 75% of the highest Billing Demand established in the immediately preceding eleven (11) months.
- (4) 500 kilowatts.

DETERMINATION OF PEAK POWER FACTOR

The Power Factors shall be calculated, using the maximum On-Peak demand and the maximum Off-Peak demand, each expressed in kilowatts, and the lagging reactive kilovolt-amperes supplied during the same half-hour interval in which said demands occur.

Issued Date
12/21/2011

Effective Date
12/27/2011

NIPSCO

RATE 625
RATE FOR ELECTRIC SERVICE
METAL MELTING SERVICE

No. 4 of 4 Sheets

POWER FACTOR CORRECTION

For Power Factors of less than 95% lagging, the applicable demand shall be corrected by multiplying said demand by .95 and dividing by the Power Factor for the same half-hour interval in which said demand occurs.

If a Power Factor is equal to or in excess of 95% lagging, then no Power Factor Correction is made.

GENERAL TERMS AND CONDITIONS OF SERVICE

1. Contract

Any Customer requesting service under this Rate Schedule shall enter into a written contract for an initial period of not less than one year, and such contract shall continue from month to month for a period of not more than five years thereafter unless cancelled by either party giving to the other 60 days' prior written notice of the termination of such contract at the end of the initial period or the end of any calendar month thereafter.

2. On-peak Demand

To the extent Customer has a maximum thirty (30) minute on-peak demand for a billing period that is greater than 50% of their maximum thirty(30) minute off-peak Demand for that same billing period for three consecutive billing periods ~~months~~, then Customer shall not be eligible for this rate schedule and Company shall provide service under another applicable rate schedule.

3. Exigent Circumstances

To the extent exigent circumstances exist, the Company may by written notice, at its option, make available additional Off-Peak hours of service.

RULES AND REGULATIONS

Service hereunder shall be subject to the Company Rules and IURC Rules.

Issued Date
12/21/2011

Effective Date
12/27/2011

NIPSCO