

**ORIGINAL**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

PETITION OF NORTHERN INDIANA PUBLIC SERVICE )  
COMPANY LLC PURSUANT TO IND. CODE §§ 8-1-2- )  
42.7, 8-1-2-61, AND, 8-1-2.5-6 FOR (1) AUTHORITY TO )  
MODIFY ITS RETAIL RATES AND CHARGES FOR )  
ELECTRIC UTILITY SERVICE THROUGH A PHASE IN )  
OF RATES; (2) APPROVAL OF NEW SCHEDULES OF )  
RATES AND CHARGES, GENERAL RULES AND )  
REGULATIONS, AND RIDERS (BOTH EXISTING AND )  
NEW); (3) APPROVAL OF A NEW RIDER FOR )  
VARIABLE NON-LABOR O&M EXPENSES )  
ASSOCIATED WITH COAL-FIRED GENERATION; (4) )  
MODIFICATION OF THE FUEL COST ADJUSTMENT )  
TO PASS BACK 100% OF OFF-SYSTEM SALES )  
REVENUES NET OF EXPENSES; (5) APPROVAL OF )  
REVISED COMMON AND ELECTRIC DEPRECIATION )  
RATES APPLICABLE TO ITS ELECTRIC PLANT IN )  
SERVICE; (6) APPROVAL OF NECESSARY AND )  
APPROPRIATE ACCOUNTING RELIEF, INCLUDING )  
BUT NOT LIMITED TO APPROVAL OF (A) CERTAIN )  
DEFERRAL MECHANISMS FOR PENSION AND OTHER )  
POST-RETIREMENT BENEFITS EXPENSES; (B) )  
APPROVAL OF REGULATORY ACCOUNTING FOR )  
ACTUAL COSTS OF REMOVAL ASSOCIATED WITH )  
COAL UNITS FOLLOWING THE RETIREMENT OF )  
MICHIGAN CITY UNIT 12, AND (C) A MODIFICATION )  
OF JOINT VENTURE ACCOUNTING AUTHORITY TO )  
COMBINE RESERVE ACCOUNTS FOR PURPOSES OF )  
PASSING BACK JOINT VENTURE CASH, (7) )  
APPROVAL OF ALTERNATIVE REGULATORY PLANS )  
FOR THE (A) MODIFICATION OF ITS INDUSTRIAL )  
SERVICE STRUCTURE, AND (B) IMPLEMENTATION )  
OF A LOW INCOME PROGRAM; AND (8) REVIEW AND )  
DETERMINATION OF NIPSCO'S EARNINGS BANK FOR )  
PURPOSES OF IND. CODE § 8-1-2-42.3. )

CAUSE NO. 45772

APPROVED: OCT 11 2023

**ORDER OF THE COMMISSION ON MOTION TO ENFORCE**

**Presiding Officers:**  
**James F. Huston, Chairman**  
**David E. Ziegner, Commissioner**  
**Lorraine L. Seyfried, Chief Administrative Law Judge**

On August 11, 2023, Intervenor NIPSCO Industrial Group (“Industrial Group”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (together, “Joint Movants”) filed a Verified Joint Motion (“Motion”) requesting the Commission require Northern Indiana Public Service Company, LLC (“NIPSCO”) to apply the new rates and charges approved in this Cause on a prospective basis. Joint Movants state that NIPSCO intends to apply the rate increase approved in this Cause to all bills-rendered on or after August 4, 2023, the effective date of the new rates, even where the bill includes some or all services that were rendered prior to the effective date of the new rates. Joint Movants assert that such implementation is contrary to the Commission’s August 2, 2023 Order in this Cause (“August Order”) and established Indiana law.

NIPSCO responded to the Motion on August 21, 2023, asserting that both the August Order and the Settlement Agreement approved therein authorized NIPSCO to implement the new rates, as it has done, on a bills-rendered basis. NIPSCO argues that the Settlement Agreement evidences the parties’ intention that rates would be implemented on a bills-rendered basis in Paragraph 6(a) of the Settlement Agreement, which provides that Step 1 rates will be implemented as soon as possible following a Commission Order, and Paragraph B.14, which provides that any matters not addressed by the Settlement Agreement will be adopted as proposed by NIPSCO’s case-in-chief, as modified on rebuttal. NIPSCO also argues that its rate implementation does not violate Indiana law and is distinguishable from the case presented in *PSI Energy, Inc.*, Cause No. 42359-S1 (IURC June 7, 2006) (“PSI Order”).

On August 25, 2023, Joint Movants filed its Reply, disagreeing that the August Order or the Settlement Agreement authorized NIPSCO to bill customers at the new rates for services rendered prior to the effective date of such rates. Joint Movants disagreed that NIPSCO’s Petition or case-in-chief evidenced a request to implement rates on a bills-rendered basis, noting that although NIPSCO’s proposed tariff included “effective for bills rendered” language for its tracking mechanisms, tracker rates are distinguishable from base rates.

For the reasons set forth below, we find that neither the Settlement Agreement nor the August Order approving that Settlement Agreement authorized NIPSCO to implement the new rates on a bills-rendered basis, as opposed to on a consumption basis. While both NIPSCO and Joint Movants make several arguments related to retroactive ratemaking and whether the Commission may approve base rates on a bills-rendered basis, we need not address those issues because we find the August Order is clear on its face that NIPSCO is authorized to place the new rates and charges into effect for service rendered on or after the effective date of the Step 1 rates, i.e., August 4, 2023.

Ind. Code § 8-1-2-38 requires public utilities to file with the Commission schedules that reflect its established rates and charges, “which are enforced at the time for any service performed by it . . . .” Consistent with this requirement, Ind. Code §§ 44 and 103 make it unlawful for a public utility to charge a greater or less compensation “for any service performed by it” than is specified in the utility’s schedules then in force or established as provided in Ind. Code ch. 8-1-2.

The August Order approved the Settlement Agreement and authorized NIPSCO to increase its rates and charges in multiple steps, with Step 1 rates being implemented as soon as possible following the Commission’s August Order and Step 2 rates being implemented on or about March

1, 2024. August Order at 42-43, 44. Upon NIPSCO's certification of its net plant, original cost rate base, and capital structure at specified dates, both Step 1 and Step 2 rates would be made effective upon filing and approval of the Commission's Energy Division in accordance with the August Order, subject to being contested and trued-up consistent with the Settlement Agreement. *Id.* at 44. While the August Order addresses when the new rates would become effective and subject to implementation, nothing in the August Order authorizes NIPSCO to implement, or bill customers, its new rates for service rendered prior to the August Order.

Nor does Paragraph B. 14 of the Settlement Agreement provide for rates to be implemented in such a manner. Paragraph B. 14 sets forth the parties' agreement that any matters not addressed by the Settlement Agreement should be approved as proposed in NIPSCO's case-in-chief, as modified on rebuttal. August Order at 24 and Attachment A at 27. Neither NIPSCO's Petition nor its testimony includes a reasonably identifiable request by NIPSCO that its rates be implemented on a bills-rendered basis. More specifically, the record reflects no evidence that the parties had, or should have had, a reasonable indication that the issue now being questioned was put forth in the matters to be encompassed within Paragraph B.14. Instead, both its Petition and testimony address when NIPSCO was seeking to put the new rates and charges into effect. *See* Verified Petition at 12-13; NIPSCO Exhibit 2 at 7-8, 15. Although NIPSCO's proposed tariff included language in the Appendices (which relate to NIPSCO's tracking mechanisms as opposed to its base rates) that the factors would be "effective for bills rendered," we find such language is insufficient to establish a request by NIPSCO that its base rates be implemented on a bills-rendered basis.<sup>1</sup> Nor do we find NIPSCO's bill comparison information, which merely compares a customer bill for a set amount of electricity at current rates to the amount at the proposed rates, to sufficiently constitute a request by NIPSCO to implement its new rates on a bills-rendered basis.

The language in the August Order is essentially the same as the language in the PSI Order. In the PSI Order, the Commission found the language providing the utility's rates and charges to "be effective upon approval of the filed tariffs" to be clear on its face that rates should be implemented on a prorated, consumption basis. PSI Order at 9. The Commission explained that, although it had previously authorized the implementation of base rates on a bills-rendered basis, it did not do so in the PSI Order. The same is true in this case. Nothing in the August Order authorizes NIPSCO to implement the approved rates on a bills-rendered basis.

Finally, we disagree with NIPSCO that the enactment of a forward-looking test year in Ind. Code § 8-1-2-42.7 or of capital tracking mechanisms, such as federal mandates under Ind. Code ch. 8-1-8.4 or transmission, distribution, and storage system improvements under Ind. Code ch. 8-1-39, invalidates the Commission's decision in the PSI Order or renders it meaningless. None of these later enacted statutes require implementation of revised rates on a bills-rendered basis. And, as noted by the Joint Movants, the shifting of costs out of tracking mechanisms into base rates is a distinct process and addressed in Ordering Paragraph 8 of the August Order, which provides for changes in tracker mechanisms to be simultaneous with approval of NIPSCO's new base rates.

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<sup>1</sup> We note that unlike the Appendices, NIPSCO's proposed tariff rates generally reflect the rate to be charged for supplied service. For example, Rate 511 provides that the "rate for electric service and Energy supplied hereunder" shall be "as follows . . ." Exhibit 2-C at 47 of 235, attached to NIPSCO's Exhibit 2.

Accordingly, the Commission finds that NIPSCO shall make a compliance filing under this Cause within 30 days from the date of this Order providing: (1) the calculation of the refund amounts owed to customers as a result of applying the rate increase approved in the August Order on a bills-rendered basis as opposed to on a consumption basis; (2) the proposed manner to effectuate the refund to customers; and (3) the proposed interest rate to be applied to the refunds. The other parties to this Cause shall file any objection to NIPSCO's compliance filing within 30 days thereafter. NIPSCO shall file any reply within 15 days after the filing of an objection.

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

1. Joint Movants' Verified Motion to Enforce Prospective Application of New Rates is granted.

2. NIPSCO shall make a compliance filing under this Cause within 30 days from the date of this Order providing: (1) the calculation of the refund amounts owed to customers as a result of applying the rate increase approved in the August Order on a bills-rendered basis as opposed to on a consumption basis; (2) the proposed manner to effectuate the refund to customers; and (3) the proposed interest rate to be applied to the refunds. The other parties to this Cause shall file any objection to NIPSCO's compliance filing within 30 days thereafter. NIPSCO shall file any reply within 15 days after the filing of an objection.

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

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: OCT 11 2023**

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

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**Dana Kosco**  
**Secretary of the Commission**