

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA)
PUBLIC SERVICE COMPANY FOR (1) APPROVAL OF)
AN ADJUSTMENT TO ITS GAS SERVICE RATES)
THROUGH ITS TRANSMISSION, DISTRIBUTION,)
AND STORAGE SYSTEM IMPROVEMENT CHARGE)
("TDSIC") RATE SCHEDULE; (2) AUTHORITY TO)
DEFER 20% OF THE APPROVED CAPITAL)
EXPENDITURES AND TDSIC COSTS FOR) Cause No. 44403-TDSIC-4
RECOVERY IN PETITIONER'S NEXT GENERAL) *On Remand*
RATE CASE; AND (3) APPROVAL OF PETITIONER'S)
UPDATED 7-YEAR GAS PLAN, INCLUDING ACTUAL)
AND PROPOSED ESTIMATED CAPITAL)
EXPENDITURES AND TDSIC COSTS THAT EXCEED)
THE APPROVED AMOUNTS, ALL PURSUANT TO)
IND. CODE CH. 8-1-39 AND THE COMMISSION'S)
ORDERS IN CAUSE NOS. 44403 AND 44403-TDSIC-1.

AND

VERIFIED PETITION OF NORTHERN)
INDIANA PUBLIC SERVICE COMPANY LLC)
FOR (1) APPROVAL OF AN ADJUSTMENT)
TO ITS GAS SERVICE RATES THROUGH)
ITS TRANSMISSION, DISTRIBUTION, AND)
STORAGE SYSTEM IMPROVEMENT)
CHARGE ("TDSIC") RATE SCHEDULE; (2))
AUTHORITY TO DEFER 20% OF THE) CAUSE NO. 44403-TDSIC-9
APPROVED CAPITAL EXPENDITURES AND)
TDSIC COSTS FOR RECOVERY IN)
PETITIONER'S NEXT GENERAL RATE)
CASE; (3) APPROVAL OF PETITIONER'S)
UPDATED 7-YEAR GAS PLAN, INCLUDING)
ACTUAL AND PROPOSED ESTIMATED)
CAPITAL EXPENDITURES AND TDSIC)
COSTS THAT EXCEED THE APPROVED)
AMOUNTS IN CAUSE NO. 44403-TDSIC-8,)
ALL PURSUANT TO IND. CODE CH. 8-1-39-9,)
AND (4) APPROVAL OF PETITIONER'S)
RETURN OF EXCESS INCOME TAX)
REVENUE RECOVERED THROUGH ITS)
BASE RATES BETWEEN JANUARY 1 AND)
APRIL 30, 2018 THROUGH ITS TDSIC)
FACTOR.)

**SUPPLEMENTAL SETTLEMENT ON AWARD OF
ATTORNEY FEES AND LITIGATION EXPENSES**

This Supplemental Settlement on Award of Attorney Fees and Litigation Expenses (“Supplemental Settlement”) is entered into this 9th day of November, 2018, between and among duly authorized representatives of NIPSCO Industrial Group (“Industrial Group”) and Lewis & Kappes, P.C. (“Lewis & Kappes”) (together the “Petitioning Parties”), and the Indiana Office of Utility Consumer Counselor (“OUCC”). The Petitioning Parties and the OUCC are referred to collectively as the “Settling Parties.”

WHEREAS, on November 5, 2018, a Stipulation and Settlement Agreement (the “TDSIC Settlement”) was executed by the Industrial Group, the OUCC and Northern Indiana Public Service Company (“NIPSCO”) and filed with the Indiana Utility Regulatory Commission (the “Commission”) in the above-captioned causes;

WHEREAS, the TDSIC Settlement resolves disputes raised over the course of nearly three years of contested proceedings involving NIPSCO’s 7-Year Gas Plan as approved under the Transmission, Distribution, and Storage System Improvement Charges and Deferrals Act (the “TDSIC Statute”), Ind. Code ch. 8-1-39;

WHEREAS, in Cause No. 44403-TDSIC-4 (“TDSIC-4”), the Industrial Group raised challenges to the ratemaking treatment sought by NIPSCO with respect to certain multiple unit project portions of its 7-Year Gas Plan and associated cost increases that NIPSCO sought to recover through the TDSIC mechanism;

WHEREAS, in the final order in TDSIC-4, the Commission granted the relief sought by NIPSCO over the Industrial Group’s objections, and the Industrial Group then sought judicial review in an appeal docketed at the Court of Appeals as Case No. 93A02-1607-EX-1644;

Ex. A to Verified Motion for Award of Attorney Fees and Litigation Expenses

WHEREAS, in three successive proceedings under Cause No. 44403 designated as TDSIC-5, TDSIC-6 and TDSIC-7, the Industrial Group raised further challenges to the ratemaking treatment sought by NIPSCO regarding multiple unit projects and asserted further objections to additional cost increases that NIPSCO sought to recover through the TDSIC mechanism;

WHEREAS, the final orders in TDSIC-5, TDSIC-6 and TDSIC-7 all granted the relief sought by NIPSCO over the Industrial Group's objections, and the Industrial Group in each instance sought judicial review in further appeals docketed at the Court of Appeals as, respectively, Case No. 93A02-1701-EX-177, 93A02-1707-EX-1632 and 18A-EX-146;

WHEREAS, on June 20, 2017, the Court of Appeals issued a decision in the TDSIC-4 appeal, reported as NIPSCO Industrial Group v. Northern Indiana Public Service Co., 78 N.E.3d 730 (Ind. App. 2017), vacated, 100 N.E.3d 234 (Ind. 2018), affirming the Commission order and ruling against the Industrial Group;

WHEREAS, the Industrial Group petitioned for transfer in the TDSIC-4 appeal, that petition was granted by the Indiana Supreme Court, and on June 20, 2018, the Supreme Court issued its decision, reported as NIPSCO Industrial Group v. Northern Indiana Public Service Co., 100 N.E.3d 234 (Ind. 2018), reversing the TDSIC-4 order and finding in favor of the Industrial Group with respect to the challenges to multiple unit projects and associated cost increases;

WHEREAS, as of June 20, 2018, NIPSCO's next proceeding on its 7-Year Gas Plan, TDSIC-8, was pending before the Commission at a post-hearing stage, and NIPSCO sought leave to reopen the record in order to modify its plan update and adjust the requested ratemaking relief in light of the decision in the TDSIC-4 appeal, resulting in a Commission order granting the modified relief on an interim basis subject to refund;

Ex. A to Verified Motion for Award of Attorney Fees and Litigation Expenses

WHEREAS, the Industrial Group commenced an appeal from the TDSIC-8 order, docketed at the Court of Appeals as Case No.18A-EX-2281, which by agreement of the parties was stayed prior to record preparation and briefing;

WHEREAS, on petition for rehearing filed by NIPSCO, the Supreme Court modified its decision in the TDSIC-4 appeal on September 25, 2018, in a manner that did not alter the rulings with respect to multiple unit projects and the challenged cost increases (as modified, the “Supreme Court Decision”);

WHEREAS, the appeals from the orders in TDSIC-5, TDSIC-6 and TDSIC-7 are all fully briefed but have not been decided by the Court of Appeals;

WHEREAS, the Supreme Court Decision was certified on October 15, 2018, and the Commission then resumed jurisdiction over TDSIC-4 in order to carry out the remand instructions;

WHEREAS, as of October 15, 2018, NIPSCO’s next proceeding on its 7-Year Gas Plan, TDSIC-9, was pending before the Commission with an evidentiary hearing scheduled for November 29, 2018;

WHEREAS, upon certification of the Supreme Court Decision, the Industrial Group, NIPSCO and the OUCC engaged in negotiations in an effort to resolve by agreement the issues raised in the TDSIC-4 remand, the pending appeals in TDSIC-5, TDSIC-6, TDSIC-7 and TDSIC-8, and the pending TDSIC-9 proceeding;

WHEREAS, on November 2, 2018, the Industrial Group, NIPSCO and the OUCC reached an agreement in principle and, on that basis, moved at the Commission to consolidate the TDSIC-4 remand and TDSIC-9, and further moved at the Court of Appeals to stay the appeals from the orders in TDSIC-5, TDSIC-6 and TDSIC-7;

Ex. A to Verified Motion for Award of Attorney Fees and Litigation Expenses

WHEREAS, on November 5, 2018, the Industrial Group, NIPSCO and the OUCC executed the TDSIC Settlement and filed it with the Commission;

WHEREAS, a provision in the TDSIC Settlement calls for the Industrial Group and the OUCC, by separate agreement contingent on approval of the TDSIC Settlement, to determine a mutually acceptable award for recoverable fees and expenses consistent with common fund principles and established Commission practice;

WHEREAS, the OUCC, in its capacity as the statutory representative of the public served by NIPSCO, has reached agreement with the Petitioning Parties on an award of attorney fees and litigation expenses that the Settling Parties all believe to be reasonable and in the public interest in the context of this case; and

WHEREAS, the Settling Parties desire to avoid the hazards, costs and uncertainties associated with further litigation relating to the award of attorney fees and litigation expenses under the common fund doctrine in these consolidated causes;

NOW, THEREFORE, for good and sufficient consideration, receipt of which is hereby acknowledged, the Settling Parties stipulate and agree to an award of \$1.5 million, contingent on Commission approval of the TDSIC Settlement, and further in accordance with and subject to the following provisions:

Article I
Scope of Supplemental Settlement

1.1 This Supplemental Settlement sets forth the entire and only agreement reached among the Settling Parties with respect to the award of attorney fees and litigation expenses from the common funds arising from the Supreme Court Decision and the TDSIC Settlement.

1.2 This Supplemental Settlement settles and resolves all issues, claims, contentions, rights, obligations and remedies which the Petitioning Parties, or any of them, may now or in the

future have under the common fund doctrine with respect to the consumer benefits provided for in the Supreme Court Decision and the TDSIC Settlement.

Article II
Procedure Before the Commission

2.1 The Settling Parties shall each be represented at any conference or hearing that the Commission may hold concerning the subject matter of this Supplemental Settlement, and shall affirmatively support this Supplemental Settlement. The presentation by the Settling Parties at any such conference or hearing shall be discussed and agreed upon in advance by all the Settling Parties.

2.2 The Settling Parties shall support this Supplemental Settlement before the Commission and request that the Commission accept and approve the Supplemental Settlement without change or condition that is unacceptable to any of the Settling Parties. The Petitioning Parties shall be responsible for the preparation and submission of any and all evidence and other written materials supporting the Supplemental Settlement, subject to OUCC review and approval prior to submission. Upon review and approval of such submissions, the OUCC shall agree and stipulate to the admissibility of any such evidence and, except as may be mutually agreed otherwise, shall waive cross-examination of any witnesses offering testimony in support of the Supplemental Settlement. Except as may be mutually agreed among the Settling Parties, no other evidence may be offered by any of the Settling Parties. The Settling Parties shall support the Supplemental Settlement in proposed orders, briefs, motions and other pleadings before the Commission, provided such documents are prepared by the Petitioning Parties and subject to OUCC review and approval prior to filing.

2.3 Contingent on Commission approval of the TDSIC Settlement, the Settling Parties shall request that the Commission enter an order:

Ex. A to Verified Motion for Award of Attorney Fees and Litigation Expenses

- (a) Accepting and approving the Supplemental Settlement in its entirety, without change or condition unacceptable to any of the Settling Parties;
- (b) Finding that the acceptance and approval of the Supplemental Settlement resolves all issues before the Commission concerning the award of attorney fees and litigation expenses from the common funds arising from the Supreme Court Decision and the TDSIC Settlement; and
- (c) Directing NIPSCO to pay the award to the Petitioning Parties within ten (10) days after a final unappealable order approving the TDSIC Settlement, in accordance with timely and reasonable transmittal instructions to be provided by the Petitioning Parties to NIPSCO.

2.4 If the Commission does not enter an order consistent with the provisions of Section 2.3 above, the Petitioning Parties shall jointly appeal any such Commission order (without first seeking reconsideration or rehearing, unless all Petitioning Parties agree to the contrary) until the legality of the Commission's order and the award have been finally decided. Because of its status as a signatory to this Supplemental Settlement, the OUCC shall be designated as an appellant in any such appeal.

2.5 If some entity or person not a Settling Party appeals or seeks rehearing or reconsideration of a Commission order consistent with Section 2.3 above, then the Settling Parties individually and collectively shall actively defend and support, or in the case of the OUCC not oppose, the Commission's order on appeal or on rehearing or reconsideration, which may include the submission of appropriate briefs, motions and other pleadings in support of such order, to be prepared by the Petitioning Parties and reviewed and approved by the OUCC prior to filing.

Article III
Award of Fees, Costs and Expenses

3.1 The Petitioning Parties performed valuable services for the benefit of consumers in NIPSCO's service territory throughout the proceedings in TDSIC-4 through TDSIC-9 and the associated appeals, culminating in the tangible immediate and long-term benefits under the Supreme Court Decision and the TDSIC Settlement. The Petitioning Parties are entitled to an award of reasonable attorney fees, litigation expenses and court costs pursuant to the common fund doctrine and in accordance with the principles explained in Northern Indiana Public Service Co. v. Citizens Action Coalition, 548 N.E.2d 153 (Ind. 1989), and Citizens Action Coalition v. PSI Energy, Inc., 664 N.E.2d 401 (Ind. App. 1996).

3.2 Following a review of the proceedings, pertinent records and supporting information provided by the Petitioning Parties, the Settling Parties have negotiated and now agree that an award of \$1.5 million would be reasonable and in the public interest in the context of these proceedings. Such an award reflects the attorney time reasonably expended on the relevant proceedings, times the established hourly rates for the particular attorneys, enhanced with a multiplier of less than 3.2, plus recoverable expenses. Such an award also amounts to less than 14.4% of the readily quantifiable rate benefits to NIPSCO customers directly achieved through the legal efforts in the relevant proceedings, not counting additional and substantial rate benefits that cannot be quantified with precision, will be derived in future rate proceedings, or arise as an indirect consequence of the Supreme Court Decision.

3.3 In accordance with Section B ¶9 of the TDSIC Settlement, the Settling Parties agree and stipulate that the foregoing award is consistent with common fund principles and established Commission practice.

Ex. A to Verified Motion for Award of Attorney Fees and Litigation Expenses

3.4 The Supplemental Settlement was negotiated in good faith and at arm's length following full disclosure of all relevant information, including time and expense records of the Petitioning Parties. The pertinent time and expense records are those reasonably related to the regulatory proceedings in TDSIC-4, TDSIC-5, TDSIC-6, TDSIC-7, TDSIC-8 and TDSIC-9 and the related appeals.

3.5 In accordance with Section B ¶9 of the TDSIC Settlement, the agreed award of attorney fees and litigation expenses will be netted against the reduction in revenue requirements to be implemented in TDSIC-9.

3.6 In consideration of the payment of the agreed award and the other provisions of this Supplemental Settlement, but subject to Section 4.2, the Petitioning Parties jointly and severally release and otherwise discharge NIPSCO and its retail gas customers from any and all claims that they individually or collectively may now or in the future have for reasonable attorney fees, litigation expenses and court costs arising from and out of the regulatory and appellate proceedings that culminated in the TDSIC Settlement.

Article IV
Conditions

4.1 Neither the making of this Supplemental Settlement nor any of its provisions shall constitute in any respect an admission by any Settling Party in this or any other litigation or proceeding.

4.2 The release in Section 3.6 is expressly conditioned upon the entry by the Commission or a court of competent jurisdiction of a final, unappealable order consistent with the provisions of Section 2.3 above and the payment of the award described in Section 3.2 of this Supplemental Settlement.

Ex. A to Verified Motion for Award of Attorney Fees and Litigation Expenses

4.3 Neither the making of this Supplemental Settlement, nor the execution of any of the other documents or pleadings required to effectuate its provisions, nor any of the provisions thereof, nor the entry by the Commission of an order consistent with the provisions of Section 2.3 above, shall establish any principles or precedent. No Settling Party shall be deemed foreclosed by this Supplemental Settlement from making any contention or taking any position in any other proceeding or investigation, except that no contention shall be made or position taken challenging the validity or binding nature of this Supplemental Settlement or the legality of a Commission order approving it consistent with the provisions of Section 2.3.

4.4 This Supplemental Settlement shall inure to the benefit of and be binding upon the successors, heirs and assigns of the Settling Parties.

Article V
General Provisions

5.1 The Settling Parties have executed this Supplemental Settlement in their respective capacities and on behalf of themselves and any one claiming through or under them, individually or collectively. The Petitioning Parties have expressly executed this Supplemental Settlement on behalf of themselves and their members. The OUCC has expressly executed this Settlement Agreement pursuant to its authority under Ind. Code §§8-1-1.1-4.1 and 5.1 as the representative of consumers served by NIPSCO.

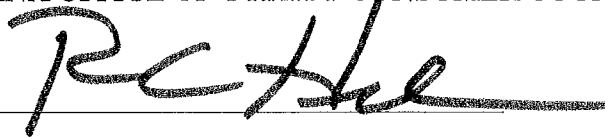
5.2 The members of the Industrial Group consist of: ArcelorMittal USA; Arconic, Inc.; BP Products North America, Inc.; Cargill, Inc.; Fiat Chrysler Automotive; General Motors LLC; Praxair, Inc.; USG Corporation; and United States Steel Corporation.

Ex. A to Verified Motion for Award of Attorney Fees and Litigation Expenses

THEREFORE, the Petitioning Parties and the OUCC enter into this Supplemental Settlement through their duly authorized representatives this 9th day of November, 2018.

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

By: _____



NIPSCO INDUSTRIAL GROUP

By: _____


Todd A. Richardson, its attorney

LEWIS & KAPPES, P.C.

By: _____


Todd A. Richardson