

ALERTS

Energy, Telecommunications And Utilities Law Alert - Indiana Court Of Appeals Affirms IURC Order In NIPSCO Electric Rate Case

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On April 19, the Indiana Court of Appeals affirmed the Indiana Utility Regulatory Commission (IURC) order in Cause No. 44688, which approved a settlement agreement among less than all of the parties and authorized a rate increase for Northern Indiana Public Service Co (NIPSCO). In *Citizens Action Coalition v. Northern Ind. Pub. Serv. Co.*, the court addressed the July 18, 2016, settlement agreement that the Citizens Action Coalition (CAC) had not joined.

The CAC appealed the IURC order approving the settlement and challenged the sufficiency of the evidence and the findings addressing (1) the increase to the fixed customer charge and its impact on energy conservation and (2) the effects of the fixed charge and lack of a low-income rate on African-American and elderly customers. The CAC also challenged the IURC's decision not to require NIPSCO to begin gathering and reporting data that CAC claimed was essential to understanding affordability issues.

The court declined to reweigh the evidence and considered the rate increase as a whole. Further, the court afforded substantial deference to the IURC's approval of a settlement agreement. As to the sufficiency of the evidence, the court wrote: "CAC may genuinely believe that a different rate design is preferable . . . [but] we can only conclude that there is substantial evidence supporting its [the IURC's] decision to accept the [Settlement's] proposed rate design." (Bracketed information added for clarification.) As to the IURC's findings of fact, "the IURC was not required to make specific findings" on every particular CAC argument, but was instead only "required to consider NIPSCO's rate design scheme as a whole, making specific findings as to all factual determinations material to the ultimate conclusions."

With respect to low-income consumers, the court expressed privacy concerns over the data reporting requested by the CAC and policy concerns over shifting costs to other customers. Ultimately, the court found these policy issues were better addressed by the General Assembly.

Barnes & Thornburg represented NIPSCO before the court.

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